May 7, 2019

BIR RULING NO. 264-19

R.A. No. 9904; R.A. No. 8424; RMC No. 09-2013; RMC No. 53-2013

Terrazas De Punta Fuego Village Homeowners' Association, Inc.
Brgy. Natipuan, Nasugbu, Batangas

Attention: *AAA*

Gentlemen :

This refers to your letters dated October 8, 2013 and September 17, 2014 requesting for a ruling confirming the exemption from income tax and value-added tax/percentage tax of **TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC.**, pursuant to Republic Act No. 9904 otherwise known as the "Magna Carta for Homeowners and Homeowners' Associations," as enunciated in Revenue Memorandum Circular No. 9-2013 which clarifies the taxability of association dues, membership fees, and other assessments/charges collected by Homeowners' Associations.

Documents submitted disclosed that **TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC.**, is a non-stock and non-profit residential homeowners' association with Taxpayers Identification No. 000-000-000-000 and duly registered with the Housing and Land Use Regulatory Board (HLURB) with Registration No. 12944-R4A0505; that it is situated and within the jurisdiction of the City of Nasugbu, Batangas; and it is primarily organized "to promote and advance the best interest and general welfare of the residents, lot owners, lessees, tenants, and occupants in the Terrazas de Punta Fuego residential Project by adopting and enforcing such rules and regulations regarding the use, enjoyment and occupancy of all the properties in the Project."

On September 15, 2014, the Office of the Municipal Mayor of Nasugbu, Batangas certified that:

"x x x Terrazas de Punta Fuego Village Homeowners' Association, Inc. x x x is

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an ASSOCIATION that provides and funds the basic services for its homeowners/members, such as but not limited to safety and security, garbage collection and disposal, upkeep of the common areas and beaches, repairs and maintenance of the village facilities such as street lights, sewage system, roads and other infrastructure.

Our Local Government cannot cater the above-mentioned services being required and provided for by the TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC. to its homeowners or members, for lack of resources to render such services."

In support of your request, Terrazas de Punta Fuego Village Homeowners' Association, Inc. has completely submitted the following documents:

1) Amended letter application for tax exemption;

2) Certified true copy of the Certificate of Registration with the HLURB;

3) HLURB certified true copy of the Articles of Incorporation and By-Laws;

4) Certified true copy of the Annual Information Returns and Financial Statements for the 2010 and 2011;

5) Certification from the Office of the Municipal Mayor of Nasugbu, Batangas dated September 15, 2014;

6) BIR Certificate of Registration; and

7) Other pertinent documents.

Terrazas de Punta Fuego Village Homeowners' Association, Inc. bases its claim for tax exemption on Section 30 of the Tax Code of 1997, as amended and Section 18 of R.A. No. 9904.

In reply thereto, please be informed that for tax purposes, the association dues, membership fees, and other assessments/charges collected by a homeowners' association constitute income payments or compensation for beneficial services it provides to its members and tenants. (RMC No. 9-2013) However, R.A. 9904 provides for tax relief, as follows:

*"**SECTION 18. Relationship with LGUs**. — Homeowners' associations shall complement, support and strengthen LGUs in providing vital services to their members and help implement local government policies, programs, ordinances, and rules.*

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Associations are encouraged to actively cooperate with LGUs in furtherance of their common goals and activities for the benefit of the residents of the subdivisions/villages and their environments.

Where the LGUs lack resources to provide for basic services, the associations shall endeavor to tap the means to provide for the same. In recognition of the associations' efforts to assist the LGUs in providing such basic services, association dues and income derived from rentals of their facilities shall be tax-exempt: Provided, That such income and dues shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages. x x x"

The law, therefore, specifically exempts from income tax **association dues** and **income related from rental of its facilities** as an incentive to the association for providing basic services to its members and homeowners which otherwise should be provided by the LGU.

The *Implementing Rules and Regulations (IRR) of R.A. No. 9904* defines "basic community services and facilities" as services and facilities that redound to the benefit of all homeowners and from which, by reason of practicality, no homeowner may be excluded such as, but not limited to: security; street and vicinity lights; maintenance, repairs and cleaning of streets; garbage collection and disposal; and other similar services and facilities.

Exempt Association Dues

It should be noted that the Association Dues exempt under R.A. No. 9904 is limited to dues that are regularly imposed by a Homeowners' Association to a homeowner-member as defined in Section 5 of the same law and its implementing rules and regulations, which shall be used for the cleanliness, safety, security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages, and does not include other special assessments.

Special assessments, while collected by the association and which collection may redound to the common benefits of all the members, cannot be construed to be the same as association dues exempted by R.A. No. 9904. The law makes a distinction regarding what pertains to association dues and other special assessments. Section 8, Rule 2 of the IRR provides:

*"**Section 8. Duties and Responsibilities of Homeowners**. — Every homeowner must pay the necessary fees, charges pertaining to basic community services, and other special assessments such as but not limited to construction bond and stickers."*

Thus, forfeited bond deposits, fees for the identification cards processing,

construction fees, fees for residents' stickers and other assessments not falling within the purview of association dues are not exempt from income tax. Also not exempt from income tax is income from investment activities.

Exempt Rental Income

In giving the incentive to the homeowners' association, R.A. No. 9904 contemplates that the requirement that upon completion of the subdivision project, roads, alleys, sidewalks and playground shall be donated by the owner or developer to the city or municipality having jurisdiction thereon to the homeowners' association with the consent of the city or municipality concerned, under Section 2 of Presidential Decree No. 1216, [1] has been complied with. Logically, since these properties are maintained, repaired or administered by the homeowners' association in behalf of the LGU, the homeowners' association were given the incentive of tax exemption on the association dues and the rental income on the properties with the condition that the said income "shall be used for the cleanliness, safety security and other basic services needed by the members, including the maintenance of the facilities of their respective subdivisions or villages." Consequently, this Office can only exempt rental income from the lease of: (1) properties owned by the homeowners' association; and (2) properties owned by the LGU and under administration of the homeowners' association.

Following the above discussions, we hereby hold that **TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC.** is exempt from income tax, value-added tax [2] or percentage tax, whichever is applicable **only on** its income derived from association dues, membership fees, other assessments and charges collected on a purely reimbursement basis and rentals of facilities or properties in the name of the Association, or are owned by the Municipality of Nasugbu and under the administration of Terrazas de Punta Fuego Village Homeowners' Association, Inc., provided that such income and dues shall be used for the cleanliness safety, security and other basic services needed by the members, including maintenance of the facilities of their subdivision/village.

TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC., however, shall be subject to the applicable internal revenue taxes on its other income from trade, business or other activities. Specifically:

Income Tax

It shall be subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997, as amended, on its income derived from sources other than association dues, membership fees, other assessments and charges collected on a purely reimbursement basis nor rentals of its facilities, which income should be returned for taxation. Likewise, interest income from currency bank deposits and yield or any other monetary benefit from deposit

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substitute instruments and from trust funds and similar arrangements, and royalties derived from sources within the Philippines are subject to the 20% final withholding tax; provided, however, that interest income derived from it from a depository bank under the expanded foreign currency deposit system shall be subject to 15% [3] final withholding tax pursuant to Section 27 (D) (1) in relation to Section 57 (A), both of the Tax Code of 1997, as amended. Moreover, it is required to file on or before April 15 of each year a profit and loss statement and balance sheet with the annual information return under oath, stating its gross income and expenses incurred during the year and a certificate showing that there has not been any change in its By-Laws, Articles of Incorporation, manner of operation and activities as well as resources and disposition of income.

Value-Added Tax or Percentage Tax

Likewise, **TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC.**'s gross receipts from operations not derived from association dues, membership fees, other assessments and charges on a purely reimbursement basis, nor rentals of its facilities shall be subject to the 12% VAT as imposed under Section 108 of the Tax Code of 1997, as amended, which tax payment may legitimately be passed on to buyers of such goods and services; or 3% percentage tax imposed under Section 116 in relation to Section 109 (BB) of the same Code if the gross sales or receipts from such sale of goods and services do not exceed Three Million Pesos (P3,000,000.00). [4]

It is requested that a copy of this letter of exemption be attached to the annual information return which **TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC.** will file on or before the 15th day of the fourth month of each year.

Under Section 235 of the Tax Code of 1997, as amended, any provision of existing general or special law to the contrary notwithstanding, the Revenue District Officer shall conduct an audit of annual information return filed, the books of accounts and other pertinent records of **TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC.** to determine compliance with the conditions set forth in this letter of tax exemption and tax liabilities, if any.

It should be understood that **TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC.** shall be constituted as withholding agent of the government if it acts as an employer and its employees receive compensation income subject to the withholding tax under Section 57 of the Tax Code of 1997, as amended.

Finally, **TERRAZAS DE PUNTA FUEGO VILLAGE HOMEOWNERS' ASSOCIATION, INC.** is also subject to the payment of the annual registration fee of

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PhP500.00 as prescribed in Section 236 (B) of the Tax Code of 1997, as amended. It is also required under Section 6 (C) in relation to Section 237 of the same Code to issue duly registered receipts for services rendered which do not comprise income from association dues and rentals of their facilities.

Donations

Endowments or gifts received by such associations are not exempt from donor's tax considering that gifts to Associations are not qualified for exemption under Section 101 (A) (3) [5] of the Tax Code of 1997, as amended.

As clarified in RMC No. 53-2013, contributions to associations in exchange for goods, services and use of properties constitute as other assessment/charge from activity in exchange for the performance of services, use of properties or delivery of an object. As such, these fees are income tax under Section 27 of the Tax Code of 1997, as amended. Further, considering that these fees are received in the conduct or pursuit of commercial or economic activity, these fees are also subject to value added tax (VAT) imposed in Sections 106 and 108, or percentage tax under Section 116 of the Tax Code of 1997, whichever is applicable. *(RMC No. 53-2013 dated August 16, 2013)*

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered null and void.

Very truly yours,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. Defining "Open Space" in residential subdivisions and amending Section 31 of Presidential Decree No. 957 requiring subdivision owners to provide roads, alleys, sidewalks and reserve open space for parks or recreational use.
2. Section 4.109-1 (B) (1) (y) of the RR No. 13-2018.
3. As amended by Republic Act No. 10963.
4. R.A. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective January 1, 2018.
5. Now Section 101 (A) (2).

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