November 18, 2016

BIR RULING NO. 391-16

R.A. No. 9904; R.A. No. 8424; RMC No. 9-2013; BIR Ruling No. 105-14

Ecology Village Homeowners Association, Inc.
139 Ecology Village, Makati City

Attention: *AAA*

Gentlemen :

This refers to your letters dated November 26, 2013 and July 22, 2015, requesting for a confirmatory ruling that the **ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC.** is entitled to the exemption from all taxes under 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 **ECOLOGY 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 Securities and Exchange Commission (SEC) with Registration No. 96593 dated December 17, 1980; that said corporation was included in the batch of corporate records transmitted to the Home Insurance Guaranty Corporation (HIGC) pursuant to Executive Order No. 535 and was registered under Registration No. 04-2381 dated May 12, 1993; the Ecology Village is situated and within the jurisdiction of the City of Makati; that among the purposes for which the Association was incorporated are the following:

1. *To unite the residents and homeowners in the ECOLOGY VILLAGE, Makati, Metro Manila, Philippines, and to promote their best interests and well-being, as well as to safeguard the welfare and security of their persons and properties;*

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2. *To enter into any contract or agreement for the benefit of all members of the Corporation;*

3. *To represent the members in any conference or negotiations with the proper government ministry, bureau, or agency for the improvement of subdivisions, villages, etc., or on the complaints of members re: public projects, such as improvements and/or repair of streets, gutters, sidewalks, drainage, garbage collection, postal services, water service, public order and security, etc.;*

4. *To represent the members and make representations with public service companies for the repair and/or improvement of or to act on the complaints of members regarding such services, e.g., MERALCO, PLDT, MANILA GAS CO., etc.;*

5. *To acquire property and services for the benefit of all members of the Corporation; and*

6. *To deposit the funds of the Corporation in a saving and/or current accounts in a banking institution.*

and that the Office of the OIC-City Budget Department of Makati certified that **ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC.** is a legitimate Homeowners Association that provides funds and basic services to its members, such as and not limited to the following:

1. *Security;*

2. *Street lightings;*

3. *Provision for water facilities;*

4. *Repair of the road;*

5. *Garbage collections;*

6. *Maintenance and cleaning of streets;*

7. *De-clogging of drainage pipes and repairs of other village facilities.*

The City Government of Makati (CGM) did not appropriate fund and resources intended for the above basic services to the members of EVHAI since it involves private properties. Hence, the aforesaid basic services to the members of EVHAI is not included among the programs and projects of the CGM. Furthermore, as private

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organization, the delivery of basic services is within their exclusive control and supervision in accordance with Section 3(d) of Republic Act No. 9904, otherwise known as the Magna Carta for Homeowners Associations.

Considering that the CGM lacks resources due to the reason stated above, we would like to recommend the approval of their application for tax exemption.

xxx xxx xxx

ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC. bases its request for exemption on Section 18 of R.A. No. 9904, which provides:

"**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.

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 environs.

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. . . ."

In reply thereto, considering the fact that ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC. is a duly registered Homeowners Association with the SEC; that its financial statements show the delivery of basic community services defined under Sec. 3 (d) of R.A. 9904; and that the Local Government units covering the jurisdiction of the Homeowners Association have issued Certificates that they lack the resources to provide these services to the Association, hence, this Office hereby holds that the income derived from association dues and rentals of facilities of ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC. is exempt from income tax, value-added tax or percentage tax, whichever is applicable. 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.

However, ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC. shall be subject to the applicable internal revenue taxes on its other income from trade, business or

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other activities. Specifically:

Income Tax

It shall be subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997 on its income not derived from association dues 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 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 7 1/2% final withholding tax pursuant to Section 27 (D) (1) in relation to Section 57 (A), both of the Tax Code of 1997. 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 no 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, ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC.'s gross receipts from operations not derived from association dues 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 (W) of the same Code if the gross sales or receipts from such sale of goods and services do not exceed One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500.00).

It is requested that a copy of this letter of exemption be attached to the annual information return which ECOLOGY 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 ECOLOGY 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 ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC. shall be constituted as withholding agent of the government if it acts

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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, ECOLOGY VILLAGE HOMEOWNERS ASSOCIATION, INC. is also subject to the payment of the annual registration fee of 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.

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

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