October 1, 2019

BIR RULING NO. 551-19

Section 30, RA 8424; RMC No. 9-2013;
BIR Ruling No. 402-13

St. Jude Orchard Homeowners Association, Inc.
St. Jude Orchard Clubhouse, Almeda Highway,
Concepcion Grande, Naga City 4400

Attention: *AAA*

Gentlemen :

This refers to your letter dated May 28, 2015 requesting for a confirmatory ruling that the **ST. JUDE ORCHARD HOMEOWNERS ASSOCIATION, INC.** is entitled to tax exemption as a non-stock, non-profit corporation.

It is represented that **ST. JUDE ORCHARD HOMEOWNERS ASSOCIATION, INC.**, with Taxpayer Identification Number (TIN) 000-000-000-000 is a non-stock and non-profit residential homeowners association duly organized under Section 2 (a) of Executive Order No. 535 and Section 26 of Republic Act No. 8763; and that among the purposes for which it is formed are:

1. *To construct, manage, maintain and operate adequate facilities and services for its members;*

2. *To initiate and organize socio-cultural projects and activities to awaken community consciousness and belonging;*

3. *To promote, enhance and foster the development and improvement of the quality of life of the members through livelihood projects and other economic activities.*

4. *To acquire, accept donations, purchase, own, hold, develop, lease, mortgage, pledge, exchange, sell, transfer or otherwise invest, deal in or trade, in any manner permitted by the law and the rules and regulations of government regulatory or licensing agencies, real and personal property of every kind and description, or any interest therein, as may be necessary for the accomplishment of the purposes*

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of the Association;

5. *To borrow or otherwise contract indebtedness and issue notes, bonds and other evidence of indebtedness and secure payment thereof by mortgage, pledges, or deed of trust, or through encumbrances or any and all of its then-owned or after-acquired real or personal properties and assets as may be permitted by law;*

6. *To enter into, make, perform, and carry out, or cancel and rescind contracts of every kind and for any lawful purposes with any person, firm, association, corporation, syndicate, domestic or foreign, or others;*

7. *To do or perform any other acts and things, and to have and exercise any other power which may be necessary, convenient and appropriate to accomplish the purpose to which the Association is organized in conformity with the deed of restrictions for the use of property and facilities.*

In reply thereto, please be informed that **ST. JUDE ORCHARD HOMEOWNERS ASSOCIATION, INC.** is not among those non-stock, non-profit corporations contemplated under Section 30 of the Tax Code of 1997, as amended. (*BIR Ruling No. 402-13* dated November 7, 2013)

Hence, **ST. JUDE ORCHARD HOMEOWNERS ASSOCIATION, INC.** is subject to regular corporate income tax imposed by Section 27 (A) of the same Code. Revenue Memorandum Circular (RMC) No. 9-2013 discussed the taxability of association dues, membership fees, and other assessments/charges collected by a homeowners' association from its homeowner-members and other entities, herein quoted as follows:

> "**I. Income Tax** — Section 18 of R.A. No. 9904 which exempts from taxation the association dues and income derived from rental subject certain conditions is an implied recognition by Congress that such receipts are subject to tax under existing laws. Thus, the amounts paid in as dues or fees by homeowner-members of a homeowner's association form part of the gross income of the latter subject to income tax. This is because a homeowner's association furnishes its members with benefits, advantages and privileges in return to such payments. For tax purposes, the association dues, membership fees, and other assessment/charges collected by a homeowners' association constitute income payments or compensation for beneficial services it provides to its member and tenants. The previous interpretation that the assessment dues are funds which are merely held in trust by a homeowners' association lacks legal basis and is hereby abandoned.
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> Moreover, since a homeowner's association is subject to income tax, income payment made to it are subject to applicable withholding taxes under existing

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regulation.

II. Value-Added Tax (VAT) and **Percentage Tax** — Association dues, membership fees, and other assessment/charges collected by a homeowners' association are subject to VAT since they constitute income payment or compensation for the beneficial services it provides to its homeowner-members.

Section 105 of the NIRC, as amended, provides:

> 'SECTION 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, render services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Section 106 to 108 of this Code.
>
> xxx xxx xxx
>
> The phrase 'in the course of trade or business' means the regular conduct or pursuit of a commercial or an economic activity, including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to member or their guests), or government entity.' (Emphasis supplied)

The above provision is clear — even a non-stock, non-profit organization or government entity is liable to pay VAT on the sale of goods or services. This conclusion was affirmed by the Supreme Court in *Commission of Internal Revenue v. Court of Appeals and Commonwealth Management and Services Corporation*, (G.R. No. 125355, March 30, 2000). In this case, the Supreme Court held:

> 'Even a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto. The term "in the course of trade or business" requires the regular conduct or pursuit of a commercial or an economic activity, regardless of whether or not the entity is profit-oriented.
>
> The definition of the term "in the course of trade or business" incorporated in the present law applies to all transactions even to those made prior to its enactment. Executive Order No. 273 stated that any person who, in the course of trade or business, sells, barters or exchanges goods and services, was already liable to pay VAT. The present law merely stresses that even a nonstock, nonprofit organization or government entity is liable to pay VAT for the sale of goods and services.
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> Section 108 of the National Internal Revenue Code of 1997 defines the phrase "sale of service" as the "performance of all kinds of service for

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others for a fee, remuneration or consideration." It includes "the supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking or project."

On February 5, 1998, the Commissioner of Internal Revenue issued BIR Ruling No. 010-98 emphasizing that a domestic corporation that provided technical, research, management and technical assistance to its affiliated companies and received payments on a reimbursement-of-cost basis, without any intention of realizing profit, was subject to VAT on services rendered. In fact, even if such corporation was organized without any intention of realizing profit, any income or profit generated by the entity in the conduct of its activities was subject to income tax.

Hence, **it is immaterial whether the primary purpose of a corporation indicates that it receives payments for services rendered** to its affiliates on a **reimbursement-on-cost basis only**, without realizing profit, for purposes of determining liability for VAT on services rendered. **As long as the entity provides service for a fee, remuneration or consideration, then the service rendered is subject to VAT.**'

Accordingly, the gross receipts or homeowners' association including association dues, membership fees, and other assessment/charges are subject to VAT, income tax and income payments made to it are subject to applicable withholding taxes under existing regulations.

Those exempt from payment of VAT under Section 109 (1) (W) are liable to pay percentage tax. Section 116 provides:

'**SEC. 116.** ***Tax on Persons Exempt from Value-Added Tax (VAT)***. — Any person whose sales or receipts are exempt under Section 109 (V) [1] of this Code from the payment of value-added tax and who is not a VAT-registered person shall pay a tax equivalent to three percent (3%) of his gross quarterly sales of receipts: Provided, that cooperatives shall be exempt from the three percent (3%) gross receipts tax herein imposed.'

As clearly stated in the law, non-VAT registered entities exempt under Section 109 (1) (W) of the NIRC, as amended, are covered by percentage taxes."

RMC 9-2013 likewise provides that in order for the association dues and income derived from rentals of the properties of **ST. JUDE ORCHARD HOMEOWNERS ASSOCIATION, INC.** may be exempted from income tax, VAT and percentage tax, the following conditions must be complied with pursuant to Section 18 of RA No. 9904:

a. The homeowners' association must be a duly constituted "Association" as defined under Section 3 (b) of RA No. 9904;

b. The local government unit having jurisdiction over the homeowners' association must issue certification identifying the basic services being

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rendered by the homeowners' association and therein stating its lack of resources to render such services notwithstanding its clear mandate under applicable laws, rules and regulations. Provided further, that such services must fall within the purview of the "basic community services and facilities" which is defined under Section 3 (d) of RA No. 9904 as those referring to service and facilities that rebound 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; and

c. The homeowners' association must present proof (*i.e.*, financial statements) that the income and dues are 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 this case, there was no showing that St. Jude Orchard Homeowners Association, Inc. met the above conditions to be entitled to the exemption under R.A. 9904. In view of the foregoing, your request for the issuance of a Certificate of Tax Exemption pursuant to the Tax Code of 1997, as amended, is hereby denied.

Please be guided accordingly.

Very truly yours,

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

Footnotes

1. This Section is now Section 109 (1) (W) as amended by Section 2 of R.A. 10378.

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