December 9, 2019

BIR RULING NO. 757-19

R.A. No. 9904; R.A. No. 8424; RMC No. 09-2013; BIR Ruling No. 399-2013

Augustine Grove Homeowners Association, Inc.
Augustine Grove Subd., Brgy. San Augustine,
Dasmariñas, Cavite

Attention: *AAA*

Gentlemen :

This refers to your application, as indorsed by the Regional Director, Revenue Region No. 9, San Pablo City, through 4th Indorsement dated September 15, 2016, requesting for Tax Exemption of **AUGUSTINE GROVE 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 **AUGUSTINE GROVE 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) under Registration No. 02107; that it is situated and within the jurisdiction of the City of Dasmariñas, Cavite; and that among the purposes for which the Association was incorporated are the following:

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*

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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 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 of the Association;*

5. *To borrow and otherwise contract indebtedness and issue notes, bonds and other evidence of indebtedness and to secure payment therefore by mortgage, pledge or deed of trust of, or through encumbrances on any or 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 purpose with any person, firm, association, corporation, syndicate, domestic or foreign, or others;*

7. *To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient and appropriate to accomplish the purposes for which the Association is organized.*

and that the City Mayor of Dasmariñas, Atty. Elpidio F. Barzaga, Jr., on Feb. 9, 2018 states that:

> *"The **AUGUSTINE GROVE HOMEOWNERS ASSOCIATION, INC.** provides basic community services to its residents such as security services, garbage collection and maintenance of facilities inside the subdivision.*
>
> *This further certifies that since the roads and open spaces inside Augustine Grove are not donated or turned over to the City of Dasmariñas, it is the HOA which shoulders the provision of the said basic services."*

AUGUSTINE GROVE HOMEOWNERS ASSOCIATION, INC. bases its claim for tax 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*

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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"

In reply thereto, we regret to inform you that **AUGUSTINE GROVE HOMEOWNERS ASSOCIATION, INC.** does not fall within the purview of those homeowners' associations which may be exempted under Section 18 of RA No. 9904. Since the requisite qualification that the **city or municipality concerned lacks resources to provide for basic services** is absent from the certification issued by the Office of the Mayor of Dasmariñas City, your request cannot be granted for lack of factual and legal basis. *(BIR Ruling No. 399-2013 dated November 7, 2013)*

Consequently, **AUGUSTINE GROVE HOMEOWNERS ASSOCIATION, INC.**, shall be subject to the applicable internal revenue taxes on its income from association dues, rentals of its facilities, trade business and other activities. Specifically:

Income Tax

It shall be subject to the corresponding internal revenue taxes imposed under the National Internal Revenue Code of 1997, as amended, on its income derived from sources other than association dues, membership fees, other assessments and charges collected in a purely reimbursement basis and 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 15% [1] 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

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Likewise, **AUGUSTINE GROVE HOMEOWNERS ASSOCIATION, INC.**'s gross receipts from operations not derived from rentals of its facilities, association dues, membership fees, other assessments and charges collected in a purely reimbursement basis, 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). [2]

It should be understood that **AUGUSTINE GROVE 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, **AUGUSTINE GROVE 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

Footnotes

1. As amended by Republic Act No. 10963.
2. R.A. 10963 increased the VAT threshold from P1,919,500.00 to P3,000,000.00 effective January 1, 2018.

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