



Republic of the Philippines
DEPARTMENT OF FINANCE

Roxas Boulevard Corner Pablo Ocampo, Sr. Street
Manila 1004

DOF Opinion No. 004.2019

9/20
12/1/18
Atty. Cesar L. Villanueva

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20th/F 139 Corporate Center, 139 Valero St.
Salcedo Village, Makati City

**SUBJECT: Request for Review of Bureau of Internal Revenue (BIR)
Ruling No. 174-2017**

Dear **Atty. Villanueva**,

This refers to the Request for Review dated 2 May 2017 ("Request for Review") filed by your firm, on behalf of, Makati Commercial Estate Association, Inc. ("MACEA"), with this Department to request the review of BIR Ruling No. 174-2017 dated 6 April 2017 ("BIR Ruling"), which ruled on the tax exemption application of MACEA with the BIR through its Law and Legislative Division pursuant to Republic Act ("RA") No. 9904, or the Magna Carta for Homeowners and Homeowners' Association ("Magna Carta"), and BIR Revenue Memorandum Circular ("RMC") No. 009-2013.

Based on the records, MACEA is an association of property owners in the Makati Central Business District ("MCBD"). It was established for the purpose of promoting the following:

- i. General welfare, property, service and reputation of the Ayala-Paseo de Roxas Administrative Office and commercial area; and
- ii. The best interest and well-being, as well as safeguard the welfare of the owners, lessees and occupants of property in the Ayala Avenue-Paseo de Roxas administrative office and commercial area in the Municipality of Makati, Province of Rizal and the area as described in the Articles of Incorporation of MACEA.¹

On 14 October 2013, MACEA filed a letter dated 14 October 2013 requesting for tax exemption of the association dues and income derived from rentals of MACEA's properties pursuant to RMC No. 008-2013 in accordance with Section 18 of the Magna Carta.

Subsequently, the BIR issued the questioned BIR Ruling wherein it denied the request of MACEA based on the following grounds:

- i. MACEA does not fall within the definition of "Associations" under RA No. 9904.² According to Section 3(b) of the Magna Carta, an "Association"

¹ Amended Articles of Incorporation of MACEA issued on 7 October 2011.

²Section 3(b), RA No. 9904.

pertains to one that is organized by homeowners or residential property owners or persons having legal rights over residential properties.

BIR held that MACEA is an organization of property owners in the MCBBD which is primarily a commercial district. Also, the BIR found that the name of MACEA alone suggest that it is composed of commercial property owners.

- ii. The Local Government Unit ("LGU") having jurisdiction over the area covered by MACEA, which are Barangays Bel-Air, San Lorenzo, and Urdaneta, did not lack the resources to provide the basic services³ that are instead being rendered by MACEA to its members as required under RA No. 9904.

The BIR cited MACEA's Audited Financial Statement ("AFS") for the year 2012 wherein it found that MACEA received subsidies from the Barangays described as monthly support to assist MACEA on the costs of providing the basic services.

MACEA received the unfavorable BIR Ruling on 7 April 2017. In response, MACEA, through counsel, filed the Request for Review dated 2 May 2017 with the Department on 8 May 2017 wherein it alleged:

- i. MACEA is an association within the purview of RA No. 9904;
- ii. The Barangays lacked sufficient resources to provide basic services;
- iii. The association dues collected by MACEA from its members are merely held in trust for the specific purpose of covering the cost of providing the basic services; and
- iv. MACEA is a civic organization exempt under Section 30(G) of the National Internal Revenue Code ("Tax Code").

We partially agree with the BIR.

MACEA does not Qualify for the Tax Exemptions under RA No. 9904 as Described by the Magna Carta

According to the BIR, MACEA is an organization of property owners in the MCBBD which is primarily a commercial district. Also, the BIR found that the name of MACEA alone suggest that it is composed of commercial property owners. As such, the BIR held that MACEA is not entitled to the tax benefits granted by RA No. 9904.

On the other hand, MACEA alleges that, contrary to the findings of the BIR, it is an association as contemplated by RA No. 9904. MACEA alleges that it is organized by owners and purchasers of lots in subdivisions and villages within the jurisdiction of the association, and owners and long-term lessees of real estate within the boundaries of the MACEA.

We agree with the findings of the BIR.

³Basic services provided by MACEA includes street lights, garbage services, security services and grounds and maintenance.



RMC No. 009-2013⁴ provides for the conditions for an organization to qualify for the tax exemptions provided in RA No. 9904, which are as follows:

- i. The homeowners' association must be a duly constituted "Association" as defined under Section 3(b) of RA No. 9904;
- ii. The local government unit having jurisdiction over the homeowners' association must issue a certification identifying the basic services being 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 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; and
- iii. 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.

Moreover, Section 3(b) RA No. 9904 defines an "Association" as:

"Association' refers to the homeowners' association which is a non-stock, non-profit corporation registered with the Housing and Land Use Regulatory Board (HLURB), or one previously registered with the Home Insurance Guarantee Corporation (now Home Guaranty Corporation) or the Securities and Exchange Commission (SEC), organized by owners or purchasers of a lot in a subdivision/village or other residential real property located within the jurisdiction of the association; or awardees, usufructuaries, legal occupants and/or lessees of a housing unit and/or lot in a government socialized or economic housing or relocation project and other urban estates; or underprivileged and homeless citizens as defined under existing laws in the process of being accredited as usufructuaries or awardees of ownership rights under the Community Mortgage Program (CMP), Land Tenure Assistance Program (LTAP) and other similar programs in relation to a socialized housing project actually being implemented by the national government or the LGU."

As similarly found by the BIR, RA No. 9904 clearly requires that the association must be composed of members having ownership or other legal right over residential real property over a certain jurisdiction.

However, a review of MACEA's purpose as detailed in its Articles of Incorporation ("AOI") immediately shows that it was established to cater to owners and/or holders of legal rights of commercial properties located within MACEA's area, to wit:

- i. To promote the general welfare, property, service and reputation of the Ayala-Paseo de Roxas administrative office and commercial area; and

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- ii. To promote the best interest and well-being, as well as safeguard the welfare of the owners, lessees and occupants of property in the Ayala Avenue-Paseo de Roxas administrative office and commercial area in the Municipality of Makati, Province of Rizal and the area as described in the Articles of Incorporation of MACEA.⁵

In addition, MACEA is located at the heart of the MCB, the country's premier financial center, with numerous high-rise buildings majority which houses commercial entities conducting business that fuels the Philippine economy.

Although there are residential towers in MCB that are located within the area of MACEA, the fact remains that MACEA's area is still recognized as a business district and that the association caters mostly to its members who are commercial real property owners and/or holders of legal rights. At most, services rendered to residential property owners and/or legal right-holder are merely coincidentally since they fall within the area MACEA services which are primarily composed of commercial establishments and entities.

It must also be stressed that MACEA failed to provide any proof that there is a significant number of residential properties located in MACEA aside from mere allegations in its Request for Ruling. Therefore, absent any evidence to the contrary, it is safe to conclude that MACEA covers commercial real property area.

Furthermore, MACEA's corporate name alone already discloses that its area is a commercial estate and its members are commercial property owners and/or holders of legal rights.

With the foregoing factors, it is can be justly concluded that MACEA is not an Association within the purview of RA No. 9904 since it is organized by commercial property owners and/or holders of legal rights located within MACEA's area located at the MCB.

MACEA does not Qualify as a Civic Organization under Section 30(G) of the NIRC

MACEA submits that it is exempt from income tax as a civic organization under Section 30(G) of the Tax Code. Firstly, it must be noted that this argument, similar to the preceding argument, was not raised earlier with the BIR. Section 30(G) of the Tax Code provides:

Sec 30. Exemptions from Tax on Corporations - The following organizations shall not be taxed under this Title in respect to income received by them as such:

x xx

(G) Civic league or organization not organized profit but operated exclusively for the promotion of social welfare;

⁵Supra 1.



In BIR Ruling No. 162-2014⁶, the BIR ruled that Palm Village Association, Inc. ("Palm Village"), a homeowner's association, is not an exempt organization under Section 30(G) of the Tax Code. To be considered as tax exempt under Section 30(G) of the Tax Code, the BIR clarified that the civic leagues or organizations must not be organized for profit but operated exclusively for the promotion of social welfare, to wit:

"An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements.

According to the BIR, Palm Village does not offer services for the direct betterment of the community as a whole. It is a privately-devoted endeavor whose work, in part, incidentally redounds to society but not the "social welfare" contemplated by the Tax Code. Since Palm Village's activities are for the private benefit of its members, it cannot be said to be operated exclusively for the promotion of social welfare.

Furthermore, the essence of the tax exemption granted under Section 30(G) of the Tax Code is to recognize the free services rendered by the private institution to address the public needs which should otherwise have been provided by the government.⁷

Applying BIR Ruling No. 162-2014 and the aforementioned doctrine, MACEA is a privately-devoted endeavor whose work incidentally redounds to society but not the "social welfare" required by Section 30(G) of the Tax Code. It is tasked to promote the best interest and the welfare of the owners, lessees and occupants of property within MACEA's area. Verily, MACEA does not fit the definition of a civic organization as prescribed by Section 30(G) of the Tax Code and therefore not entitled to the tax benefits of such organization.

Requisites and Conditions for Income Tax and VAT Exemption of Association Dues

BIR rulings have consistently ruled that association dues and other assessments/charges collected from the members are merely held in trust and used solely for administrative expenses and other services for the benefit of its members.⁸

Furthermore, numerous BIR rulings likewise held that since associations do no sell, barter, exchange, lease goods or property and neither do they render service for a

⁶ BIR Ruling No. 162-2014, 30 May 2014.

⁷ Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc., G.R. Nos. 195909 and 195960, 26 September 2012.

⁸ BIR Ruling No. [DA-304-06], 10 May 2006. See also BIR Ruling No. [DA-(C-129) 410-08], 11 November 2008, and BIR Ruling [DA-(-253)648-09], 4 November 2009, and BIR Ruling [DA-515-04], 30 September 2004.



fee but merely implement the administration of the required services to collect the association dues from the members pursuant to its corporate purposes as "trustee" of the funds thereof, such associations are not subject to VAT on said activity.⁹

Since the funds collected by an association are merely held in trust, the expenses incurred by the advancing party for the benefit and for the account of the party accommodated, can be considered reimbursable expenses not forming part of gross receipts of the advancing party subject to tax. Moreover, the reimbursement of expenses are without any mark-up, then it should not be considered as part of gross receipt for purposes of the expanded withholding tax.¹⁰

In addition, The mere collection of purely reimbursable costs billed, for instance, in the name of a client but collected through a broker or agent shall not be subject to the 12% VAT provided that such fact of reimbursement is clearly shown in the billing and/or official receipt.¹¹

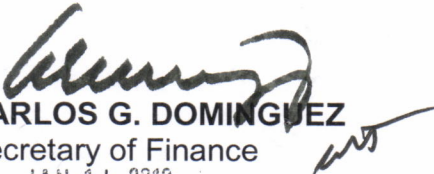
Accordingly, we agree with BIR Ruling No. 174-2017 that MACEA is not entitled to the tax exemption granted by RA No. 9904 and it is not a civic organization as defined by Section 30(G) of the Tax Code.

Based on the foregoing discussions, we hereby **REMAND** the Request for Review to the BIR for their further evaluation and reception of relevant documents to determine if the dues collected by MACEA are not subject to income tax and VAT pursuant to the foregoing discussions and other relevant laws and BIR issuances.

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 as null and void.


Thank you.

Sincerely yours,


CARLOS G. DOMINGUEZ
Secretary of Finance
JAN 14 2019



CC Commissioner Caesar R. Dulay
Bureau of Internal Revenue


JAN 17 2019

⁹*Id.*

¹⁰ BIR Ruling [DA-(C-189) 478-09], 26 August 2009. Please see also BIR Ruling [DA-(VAT-019) 335-08], 23 October 2008, VAT Ruling No. 026-97, 1 April 1997, and VAT Ruling No. 048-97, 11 July 1997.

¹¹ *Id.*