REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

Section 105 of the Tax Code; Association of Non-Profit Clubs, Inc vs. BIR; CIR vs Federation of Golf Club of the Philippines, Inc.	VAT-347-2022

Person to Contact: Chief, Law Division
Tel Nos. 926-55-36 / 927-09-63

JUN 30 2022

Manila Polo Club, Inc.
35 McKinley Road
Forbes Park, Makati City

Attention: **Noel B. Barrameda**
General Manager

Gentlemen:

This refers to your request for confirmation of your opinion that the townhouse dues collected by **Manila Polo Club, Inc**. (the "Club") from its member-lessees are not subject to value-added tax (VAT).

Manila Polo Club Inc. is a non-stock and non-profit corporation with principal office address at 35 Mckinley Road, Forbes Park, Makati City. The club was formed as a membership club with the objective of promoting social interaction among its members and providing them with a venue to meet, engage in sports activities and have social gatherings, recreation and entertainment.

In relation to its objective to "establish, maintain, and lease real properties owned by the corporation to its members", the club owns forty-two (42) townhouse units located within the club premises which are leased to its members-lessees.

It is represented that aside from the rent which the Club collects from the member-lessees for the use of the townhouses, the Club also collects townhouse dues which are similar to association dues collected by homeowners' associations or condominium corporations. The townhouse dues are not intended for profit but only for the purpose of answering the necessary expenses that arise from the operation and maintenance of the townhouse. Also, the said dues form part of a pool from which the Club draws funds in order to bear the cost for maintenance, repairs, and other administrative expenses, which are provided and performed by third party suppliers.

In this regard, you request for confirmation of your opinion that the townhouse dues are not subject to VAT under that National Internal Revenue Code of 1997 (Tax Code), as amended.

In reply, ***Section 105 of the Tax Code, as amended***, states that "any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code." Hence, before VAT is imposed, a sale, barter or exchange of goods or properties, or sale of a service is required.

As represented by the Club, the townhouse dues collected are used to defray the necessary expenses for the operations and maintenance of the townhouses located within the Club's premises. Accordingly, the Club does not derive any income from the collected townhouse dues since the same are used to pay for services rendered by third-party suppliers who are engaged to supply utilities and perform maintenance and repairs of the townhouses.

In ***Association of Non-Profit Clubs, Inc. vs. Bureau of Internal Revenue***[1], the Supreme Court declared that membership fees, assessment dues and fees of similar nature collected by clubs organized and operated exclusively for pleasure, recreation and other non-profit purposes do not form part of the gross receipts of recreational clubs that are subject to VAT. Thus, the Supreme Court ruled in this wise:

> "***It is a basic principle that before a transaction is imposed VAT, a sale, barter or exchange of goods or properties, or sale of a service is required.*** *This is true even if such sale is on a cost-reimbursement basis. Section 105, Chapter I, Title IV of the 1997 NIRC reads:*
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> > *"Section 105. Persons Liable. — Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code."*
>
> *xxx xxx xxx*
>
> *As ANPC aptly pointed out,* ***membership fees, assessment dues, and the like are not subject to VAT because in collecting such fees, the club is not selling its service to the members. Conversely, the members are not buying services from the club when dues are paid****; hence, there is no economic or commercial activity to speak of as these dues are devoted for the operations maintenance of the facilities of the organization.* ***As such, there could be no "sale, barter or exchange of goods or properties, or sale of a service" to speak of, which would then be subject to VAT under the 1997 NIRC****."* (Emphasis and underscoring ours)

Similarly, in ***Commissioner of Internal Revenue v. Federation of Golf Clubs of the Philippines, Inc.***[2], the Supreme Court held that membership dues and the like are not subject to VAT, *viz*:

> *"Likewise, VAT on membership dues, assessment fees, and the like of recreational clubs shall not be imposed as Section 105 of NIRC delineates*

[1] G.R. No. 228539, dated June 26, 2019
[2] G.R. No. 226449, dated July 28, 2020

the imposition of VAT only on sale, barter, exchange, lease, rendering of service or importation of goods. ***In such context, membership dues and the like cannot be considered as payment for the purchase of goods and services. Instead, they are "capital contributions" to defray administrative costs and maintenance expenses of the recreational clubs.*** " (Emphasis and underscoring ours)

Based on the above-quoted Supreme Court decisions, membership dues, assessment fees and fees of similar nature do not pertain to the sale of services to the member-lessees by the Club, and conversely, the member-lessees are not buying services from the club when the townhouse dues are paid. There is no economic or commercial activity to speak of as the townhouse dues are devoted for the operations/maintenance of the townhouses. Therefore, the townhouse dues assessed and collected by the Club from its members-lessees should not be considered as income and should not be subject to VAT.

In view of the foregoing, since the townhouse dues described herein do not involve a sale, barter or exchange of goods or properties, or sale of a service, VAT is therefore not applicable.

Please note that the rental income earned from the lease of the Club's townhouses or income derived from any of its properties, real or personal, or any activity conducted for profit, regardless of disposition, shall be subject to the corporate income tax rate of twenty five percent (25%) as provided in Section 27 of the Tax Code, as amended. The income derived thereof shall be included in the Club's gross receipts which shall be subject to VAT pursuant to Section 105 of the Tax Code, as amended, if the Club's gross receipts from the sale exceed Php 3,000,000.00, or to the 3% percentage tax if its gross receipts do not exceed Php 3,000,000.00. The gross rentals, however, from the lease of the residential units not exceeding Php 15,000.00 per month per unit shall be exempt from VAT and percentage tax regardless of the aggregate amount of the gross receipts[3].

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,

CAESAR R. DULAY
Commissioner of Internal Revenue

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[3] Section 4.109-1. (B)(1)(c) of Revenue Regulations (RR) No. 16-2005, as amended by RR No. 13-2018