

REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Date: August 16, 2013

REVENUE MEMORANDUM CIRCULAR NO. 53-2013

SUBJECT : Clarifying the Taxability of Donations given to Homeowners' Association of Subdivisions and Villages

TO : All Internal Revenue Officers and Others Concerned

The taxability of other assessments/charges collected by Homeowners' Association had already been clarified in Revenue Memorandum Circular (RMC) No. 9-2013 dated January 29, 2013. It has been observed, however, that Homeowners' Associations (Associations) are receiving contributions from members and non-members as donations in exchange for goods, services or use of properties. As such, this Circular is issued to clarify the taxability of donations to Associations of Subdivisions and Villages, as follows:

I. Valid Donation.

Subject to the compliance with the requisites of a valid donation under Articles 748¹ and 749² of the New Civil Code of the Philippines, all donations to Associations for tax purposes must be covered by Donor's Tax Return (BIR Form No. 1800). This return shall be filed in triplicate by any person, natural or juridical, resident or non-resident, who transfers or causes to transfer property by gift. The return shall be filed within thirty (30) days after the date the gift (donation) was made.

II. Gratuitous Donations to Associations.

Gifts, donations, and other contributions received by the Associations are subject to the payment of donor's tax pursuant to Sections 98 and 99 of the Tax Code, as amended.

¹ Art. 748. The donation of a movable may be made orally or in writing. An oral donation requires the simultaneous delivery of the thing or of the document representing the right donated. If the value of the personal property donated exceeds five thousand pesos, the donation and the acceptance shall be made in writing, otherwise, the donation shall be void.

² Art. 749. In order that the donation of an immovable may be valid, it must be made in a public document, specifying therein the property donated and the value of the charges which the donee must satisfy. The acceptance may be made in the same deed of donation or in a separate public document, but it shall not take effect unless it is done during the lifetime of the donor. If the acceptance is made in a separate instrument, the donor shall be notified thereof in an authentic form, and this step shall be noted in both instruments.

Section 98 of the Tax Code, as amended, provides:

“Chapter II
Donor's Tax

SECTION 98. Imposition of Tax. —

(A) There shall be levied, assessed, collected and paid upon the transfer by any person, resident or nonresident, of the property by gift, a tax, computed as provided in Section 99.

(B) The tax shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible.”

Endowments or gifts received by such associations are not exempt from donor's tax considering that gifts to Associations are not qualified for exemption under Section 101 (A) (3) of the Tax Code.

III. Onerous Donation or Donation in Exchange for Goods, Services or Use or Lease of Properties.

Article 733 of the New Civil Code provides that:

“Article 733. Donations with an onerous cause shall be governed by the rules on contracts and remuneratory donations by the provisions of the present Title as regards that portion which exceeds the value of the burden imposed. (622)”

Under the above provision, it can be inferred that donation with onerous cause is not strictly a donation since it is governed by the rules on contracts. *Technically, the contributions are not given in the nature of an endowment or donation. Rather, the amounts are in the concept of a fee or price in exchange for the performance of a service, use of properties or delivery of an object.*

Pursuant to RMC No. 9-2013, Associations are subject to the corresponding internal revenue taxes imposed under the Tax Code of 1997 on their income of whatever kind and character. However, they may be exempted from income tax, value added tax (VAT) and percentage tax derived from the association dues and rentals of its properties subject to the conditions under Section 18 of Republic Act No. (RA) 9904, as implemented by RMC No. 9-2013.

In this regard, contributions to associations in exchange for goods, services and use of properties constitute as other assessments/charges from activity in exchange for the performance of a service, use of properties or delivery of an object. As such, these fees are income on the part of the associations that are subject to income tax under Section 27 of the Tax Code, as amended.

Further, considering that these fees are received in the conduct or pursuit of commercial or economic activity, these fees are also subject to value added tax (VAT) imposed in Sections 106 and 108 of the same Code.

Those exempt from the payment of VAT under Section 109 (v) (*now (w)*) are liable to pay percentage tax. Section 116 provides:

"SECTION 116. Tax on Persons Exempt from Value-added Tax (VAT). — Any person whose sales or receipts are exempt under Section 109(V) 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 or receipts: Provided, That cooperatives shall be exempt from the three percent (3%) gross receipts tax herein imposed."

Example:

ABC Homeowner's Association is collecting association dues, membership fees and other assessments/charges from its members. Likewise, it is accepting donations from non-members in exchange for stickers for the right of way in their subdivision road or toll fees for the maintenance of the road.

In this case, association dues, membership fees and other assessments/charges collected from the members and the donations from non-members are subject to income tax, and VAT or percentage tax, as the case may be.

All concerned are hereby enjoined to be guided accordingly and give this Circular as wide a publicity as possible.

This Circular shall take effect immediately.

(Original Signed)
KIM S. JACINTO-HENARES
Commissioner of Internal Revenue