REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE

Quezon City

E.O. 226
Secs. 57(B); 106(A)(1)(a) ;196 NIRC
BIR Ruling No. 334-2011
#052-2016
2-2-2016

PROPERTY COMPANY OF FRIENDS, INC.
PROFRIENDS CENTER, 55 Tinio St.
Brgy. Addition Hills, Mandaluyong City

Attention: **Marilyn T. Santos**
Financial Control Group Head

Gentlemen:

This refers to your letter dated January 7, 2014 requesting on behalf of **Property Company of Friends, Inc.** ("**Pro-Friends**"), certificate of tax exemption from income and expanded withholding taxes on its income derived from the low-cost housing project, **Somerset Phase 3-Brgy. Navarro, General Trias, Cavite**, duly registered with the Board of Investments (BOI) under Executive Order No. 226, otherwise known as the "Omnibus Investments Code of 1987".

Documents submitted show that **Pro-Friends**, with Tax Identification No. (TIN) is a domestic corporation duly organized under the Philippine laws; that it is registered with the Securities and Exchange Commission (SEC) bearing SEC Certificate of Registration No. that the primary purpose for which **Pro-Friends** was organized is to own, use, improve, develop, subdivide, sell, exchange, lease, and hold for investment or otherwise, real estate of all kinds, including buildings, houses, apartments and other structures; that at present, **Pro-Friends** has a low-cost mass housing project, **Somerset Phase 3-Brgy. Navarro, General Trias, Cavite**, which has been duly registered with the Board of Investments (BOI) under the Omnibus Investments Code of 1987 (E.O. 226), bearing BOI Certificate of Registration No. ; that the Corporation shall be entitled to income tax holiday (ITH) for the aforesaid project for a period of three (3) years beginning from August 2012 or actual start of commercial operations/selling, whichever is earlier, but in no case earlier than the date of registration; that the project is duly registered with the Housing and Land Use Regulatory Board (HLURB) under Certificate of Registration No. and License to Sell No. pursuant to Batas Pambansa 220; and that the ITH of the Corporation shall be limited only to the revenue generated from the registered housing project, **Somerset Phase 3-Brgy. Navarro, General Trias, Cavite.**

It is further shown that **Pro-Friends- Somerset Phase 3-Brgy. Navarro, General Trias, Cavite**, under the Specific Terms and Conditions of its BOI Registration for the above housing project, is obligated to construct and sell Three Hundred Twenty Nine (329) low-cost mass housing units based on the following prices and schedules:

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Name of Project	Year	Sales Volume (No. of Units)	Sales Value (PhP'000)
1. Somerset Phase 3	1	98	
	2	133	
	3	98	
	Total	**329**	

In reply, please be informed that under Section 2.57.5 (B) (2) of Revenue Regulations (RR) No. 2-98, as amended by RR No. 6-2001 implementing Section 57 (B) of the Tax Code of 1997, as amended, the withholding tax prescribed in the said Regulations shall not apply to income payments to persons enjoying exemption from the income tax provided by Republic Act No. 7916 and the Omnibus Investments Code of 1987. (*BIR Ruling No. 334-2011* dated September 7, 2011)

Accordingly, since **Pro-Friends- Somerset Phase 3-Brgy. Navarro, General Trias, Cavite**, is duly registered with the BOI under the Omnibus Investments Code of 1987, this Office is of the opinion as it hereby holds, that the income payments received by **Pro-Friends** in connection with the aforementioned housing project, consisting of **Three Hundred Twenty Nine (329)** units, are exempt from the creditable withholding tax imposed under RR No. 2-98, as amended by RR No. 6-2001, for a period of three (3) years beginning from **August 2012** or actual start of commercial operations/selling, whichever is earlier, but in no case earlier than the date of registration of the housing project with the BOI.

It must be emphasized, however, that the aforesaid exemption from the creditable withholding tax covers only income directly attributable to the revenues generated from the project, **Pro-Friends- Somerset Phase 3-Brgy. Navarro, General Trias, Cavite,** consisting of **Three Hundred Twenty Nine (329)** units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding Two Million Five Hundred Pesos (Php2,500,000.00) (*BIR Ruling No. 334-2011* dated September 7, 2011).

In the computation of ITH, interest income from in-house financing shall not be considered as part of the revenues generated from the registered housing project.

Moreover, **Pro-Friends- Somerset Phase 3-Brgy. Navarro, General Trias, Cavite's** entitlement to ITH for its BOI-registered housing project is not automatic as it has still to comply with the provisions of the Specific Terms and Conditions of its BOI Registration, *viz:*

(1) The enterprise shall submit proof of verified compliance with the socialized housing requirement for its seven (7) housing projects (The Cedar Village, California West Hills Phase 6, Parc Regency E, Lancaster Villages Phase 1, Montecillo Villas Phase 1, The Cedar Residences Phase 3, The Cedar Residences Phase 2) registered under the 2010 IPP, prior to ITH availment and to be completed within the ITH entitlement period. Compliance to the 20% socialized housing requirement should be proportionate to the number of low-cost housing units being applied for ITH for the taxable year, e.g., if the total revenue corresponding to the total registered units is 300 and 100%

is sold and collected by the first year of availment, then the 20% socialized housing requirement for the 300 units should be met by the first year;

(2) In the grant of incentives, the extent of the project's ITH entitlement shall be based on the project's ability to contribute to the economy's development based on the following parameters in this order of importance: (1) project's net value added, (2) job generation, (3) multiplier effect, and (4) measured capacity. In the event that the registered enterprise fails to implement the projects as represented in its project application, the Board may reduce the project's ITH entitlement proportionate to the actual performance of the enterprise. The project's entitlement to incentives shall be based on the following:

a. Net Value Added should be at least 25%

	Year 1	Year 2	Year 3
Total Construction Cost (Php)			
Cost of Imported Raw Materials (Php)			
NVA (%)			

b. Job Generation

	Year 1	Year 2	Year 3
Employees paid on monthly basis	7	7	7
Full-time workers paid by contractors	114	114	114
Others (Managers and Supervisors)	3	3	3
TOTAL	124	124	124

c. Investments and Timetable

Activity	Schedule	Related Expense/s	Cost (Php'000)
Site/Land Acquisition	April 2010	Raw Land Cost	
Obtaining appropriate license/agreement/permit from the government	July 2011 to June 2012	Pre-Operating Expenses	
Site Preparation and Development -Hiring of contractors -Completion of site preparation and development	June 2011 to August 2011	Land Development Cost	

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House Construction	March 2012 to January 2015	House Construction Cost	
Start of Commercial Operations	August 2012	Working Capital	
Total Project Cost			

d. Sales Revenues

Year	Sales Volume (No. of Units)	Sales Value (Php'000)
1	98	
2	133	
3	98	
Total	**329**	

Income qualified for ITH availment shall not exceed by more than 10% of the projected income represented by the enterprise in its application provided the project's actual investments and employment match the enterprise's representations in its application. In cases where the project's actual revenues exceed the projections in its application by more than 10%, the Board may increase the project's ITH availment proportionately for reasons such as but not limited to (a) additional investments; (b) new markets/orders; (c) additional employment and/or increase in number of working shifts. Request/s for adjustment of projected income may be submitted to the Board within the ITH entitlement period.

(3) Secure from the Housing and Land Use Regulatory Board (HLURB) an endorsement that it has faithfully complied with the approved development plan and a "certificate of good housekeeping";

(4) File an application with the BOI Incentive Department within one (1) month from the filing of the final Income Tax Return (ITR) with the Bureau of Internal Revenue (BIR) in order to validate the claim for income tax exemption. The application shall be accompanied by a certification from the Social Security System (SSS) that the enterprise is in good standing in the remittance of SSS contributions of its employees;

(5) Secure a Certificate of ITH Entitlement (CoE) from the BOI Supervision and Monitoring Department prior to filing of ITR with the BIR; otherwise, ITH for that particular taxable year without CoE shall be forfeited;

(6) In the event the enterprise fails to maintain the 75:25 debt-to-equity ratio requirement, it shall show proof that the construction of housing units have been completed and delivered to buyers prior to availment of ITH. Otherwise, the enterprise shall not be entitled to ITH and shall be required to refund any capital equipment incentives availed of;

(7) The enterprise shall submit proof of compliance that, at least twenty percent (20%) of the total subdivision area (estimated at 10,679 sq. m.) or total

subdivision project cost (estimated at Php47.881 million) has been developed and allocated for socialized housing within one year from date of registration or prior to availment of ITH, whichever is earlier. Otherwise, the ITH for that particular taxable year shall be deemed forfeited; and

(8) The enterprise must abide by the principles of Good Corporate Governance. It must likewise accomplish the BOI form on self-rating Governance Scorecard every year as a requirement for ITH availment.

Furthermore, BOI-registered enterprises enjoy no tax exemption/privileges other than those granted under E.O. 226. In this regard, under the terms and conditions of its BOI registration, **Pro-friends** was clearly granted a 3-year ITH for its project, **Somerset Phase 3-Brgy. Navarro, General Trias, Cavite,** consisting of **Three Hundred Twenty Nine (329)** units, but such terms and conditions do not provide for any exemption from other taxes that the Corporation may be subject to on its business transactions. Thus, **Pro-Friends- Somerset Phase 3-Brgy. Navarro, General Trias, Cavite** will remain subject to Value-Added Tax (VAT) and Documentary Stamp Tax (DST) on its sales of housing units pursuant to Sections 106 (A)(1)(a) and 196 of the Tax Code of 1997, as amended. (*BIR Ruling No. 334-2011* dated September 7, 2011)

In relation thereto, Section 109(1)(P) of the Tax Code of 1997 provides, that the sale of residential lot valued at One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500) and below, or house and lot and other residential dwellings valued at Three Million One Hundred Ninety Nine Thousand Two Hundred Pesos (P3,199,200) and below, is VAT-exempt.[1] Thus, only the sales by **Pro-Friends-Somerset Phase 3-Brgy. Navarro, General Trias, Cavite** of housing units with selling price of not more than the aforementioned price ceiling shall be exempt from VAT.

Pursuant to Section 4 of Republic Act (RA) No. 10708[2], Pro-Friends is required to file its tax returns and pay its tax liabilities, on or before the deadline as provided under the 1997 Tax Code, as amended, using the electronic system for filing and payment of taxes of the BIR. Furthermore, Pro-Friends shall file with BOI a complete annual tax incentives report of its income-based tax incentives, VAT and duty exemptions, deductions, credits or exclusions from the tax base, as may be provided under E.O. 226, within thirty (30) days from the deadline for filing of tax returns and payment of taxes.

It should be understood that **Pro-Friends- Somerset Phase 3-Brgy. Navarro, General Trias, Cavite** shall be constituted as a withholding agent for the government if it acts as employer and any of its employees received compensation income subject to compensation withholding tax, or if it makes payments to individuals or corporations subject to the withholding taxes as source as required under Chapter XIII and Section 57 of the Tax Code of 1997, as amended and implemented by *Revenue Regulations (RR) No. 2-98*, as amended.

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[1] The increase in the threshold amounts for the sale or lease of goods or properties or the performance of services covered by Section 109(P), (Q) and (V) of the 1997 Tax Code took effect on January 1, 2012, pursuant to *Revenue Regulations No. 16-2011* dated October 27, 2011.

[2] An Act Enhancing Transparency in the Management and Accounting of Tax Incentives Administered by Investment Promotion Agencies.

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Likewise, **Pro-Friends** is required to file on or before the 15th day of the fourth month following the close of its accounting period of a Profit and Loss Statement and Balance Sheet with the Annual information Return under oath, stating its gross income and expenses incurred during the taxable year.

Finally, **Pro-Friends'** books of accounts and other pertinent records shall be subject to periodic examination by revenue enforcement officers of this Bureau for the purpose of ascertaining whether it is complying with the conditions under which it has been granted tax exemption or tax incentives and its tax liability, if any, pursuant to Section 235 of the Tax Code of 1997, as amended.

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,

KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

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