REPUBLIC OF THE PHILIPPINES
DEPARTMENT OF FINANCE
BUREAU OF INTERNAL REVENUE
Quezon City

E.O. 226; RR 16-2011
Secs. 57(B); 106(A)(1)(a) ; 196 NIRC
BIR Ruling No.334-11 dated-September 7, 2011
#073-2016
3-1-2016

JOHNDORF VENTURES CORPORATION
14th Floor Ayala Life - FGU Bldg., Mindanao Ave.,
Cor. Biliran Rd., Cebu Business Park, Ayala, Cebu City

Attention : **LUCILLE DY-PARCON**
Finance Manager-VisMin

Gentlemen:

This refers to your letter dated February 14, 2015 stating that **Johndorf Ventures Corporation** ("**Johndorf**" for brevity) with Tax Identification No. is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. It is registered with the Board of Investments (BOI) as a New Developer of Low-Cost Mass Housing Project **(Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City)** on a Non-Pioneer status under Certificate of Registration No. dated January 22, 2015 in accordance with the Omnibus Investments Code of 1987 or Executive Order (EO) No. 226. Johndorf has been granted Income Tax Holiday (ITH) by the BOI for a period of four (4) years from January 2015 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **Johndorf's Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** is registered with Housing and Land Use Regulatory Board (HLURB) under Certificate of Registration No. and holds HLURB License to Sell No. and under the Specific Terms and Conditions of its BOI Registration, Johndorf shall construct and sell three hundred seventy four (374) units of low-cost mass housing for **Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** based on the following schedule:

Year	Volume (No. of Units)	Value(P'000)
1	94	
2	150	
3	93	
4	37	
Total	**374**	

On the basis of the foregoing, you now request for an opinion on the tax consequences of the said ITH granted by BOI. Specifically, if Johndorf, being a BOI- registered enterprise, is exempt from the payment of the creditable withholding tax (CWT) imposed under Revenue Regulations No. 2-98 on income payments received during the aforementioned period with respect to its registered activity.

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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.

Accordingly, since **Johndorf's Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by Johndorf in connection with its housing project, **Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City** (*on the 374 low-cost mass housing units as mentioned in the Specific Terms and Conditions of its BOI Registration*), is exempt from CWT under RR No. 2-98, as amended by RR No. 6-2001, for a period of four (4) years from January 2015 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration.[1] It must be emphasized, however, that the above exemption from CWT covers only income directly attributable to revenues generated from its registered activity, **Johndorf's Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** on the 374 low-cost mass housing units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding [illegible]. However, pursuant to HLURB License to Sell No. [illegible] the maximum selling price of units in **Johndorf's Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** shall be P[illegible] per House and Lot package. In the computation of ITH, interest income from in-house financing shall not be considered as revenues generated from the registered activity.

Moreover, the entitlement to ITH of **Johndorf's Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** is not automatic as it still has to comply with the following provisions of the Specific Terms and Conditions of its BOI Registration, *viz:*

1. The enterprise shall submit proof of verified compliance with the 20% socialized housing requirement for its existing projects under CR Nos. [illegible] (Granvia Residences); [illegible] (Portville Subdivision); [illegible] (148 Residences); [illegible] Bellevue Expansion); [illegible] (Granvia Suites); [illegible] (La Buenvenida Extension); [illegible] a Bienvenida); [illegible] (Josephine Homes); and [illegible] Bellevue) before availment of ITH.

2. In the grant of incentives, the extent of the project's ITH entitlement shall be based in the project's ability to contribute to the economy's development based on the following parameters: (1) net value added, (2) job generation, (3) multiplier effect, and (4) measured capacity. The Board may reduce the ITH if the project does not realize the extent of economic benefits represented by the proponent at the time of its application. The enterprise shall comply with the following representations:

   a. Net Value Added (NVA) should be at least 25%

[1] *Movement of ITH period is subject to Art. 7 of E.O. 226 per BOI Specific Terms and Conditions No. 1*

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	Year 1	Year 2
NVA	26%	26%

b. Job Generation

	Pre-op	Year 1	Year 2	Year 3	Year 4
Employees	12	186	186	18	18

c. Investments and Timetable

Activity	Schedule	Related Expense/s	Cost (In Php'000)
Land acquisition	January 2013	Land cost	
Secure necessary license/permit/registration from the government/ training costs	February to June 2014	Pre-operating expenses	
Site preparation and development	August 2014 - February 2015	Land/site development cost	
Building/House construction	November 2014 – August 2016	Building/House Construction cost	
Start of commercial operation	January 2015	Working capital	
Total Project Cost			

d. Sales Revenues

Year	Volume (No. of Units)	Value(P'000)
1	94	
2	150	
3	93	
4	37	
Total	**374**	

Net income qualified for ITH availment shall not be a result of gross revenues exceeding 10% of the projected gross revenue represented by the firm in its application.

In cases where the project's actual revenues exceed the projections in its application due to new markets/orders; additional employment/shifts, additional investments, the Board may increase the project's ITH availment proportionately. Request/s for adjustment of projected revenue must be filed before the filing of application for ITH.

3. The enterprise shall submit the list of cost items common to all its projects/activities (whether BOI or not-BOI-registered) and the methodology adopted in allocating the common costs between the registered activity/ies and non-registered activity/ies.

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4. Secure from the HLURB an endorsement that it has faithfully complied with the approved development plan and a "Certificate of Good Housekeeping".

5. File an application with the BOI Incentives Service within one (1) month from 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.

6. Secure a Certificate of ITH Entitlement (CoE) from the BOI Legal Service prior to filing of ITR with the BIR; otherwise, ITH for that particular taxable year without CoE shall be forfeited.

7. In the event the enterprise fails to maintain the 75:25 debt-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.

8. The enterprise shall submit proof of compliance that at least twenty percent (20%) of the total subdivision area (5,478 sq.m) or total subdivision project cost (estimated at PhP) has been developed and allocated for socialized housing within one year from date of registration or prior to availment of ITH, whichever is earlier. This may be done through development of new settlement directly undertaken by the registered entity. Otherwise, the ITH for that particular taxable year shall be deemed forfeited.

   Compliance with the twenty (20%) percent housing requirement must be completed within the ITH availment period and should be proportionate to the number of low-cost housing units being applied for ITH for the taxable year.

9. The enterprise must abide by the principles of Good Corporate Governance.

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, **Johndorf's Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** was clearly granted a 4-year ITH but such terms and conditions do not provide for any exemption from other taxes that Johndorf may be subject to on its business transactions. Thus, **Johndorf's Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** will remain subject to Value-Added Tax (VAT) and Documentary Stamp Tax (DST) on its sales of house and lot units pursuant to Sections 106 (A)(1)(a) and 196 of the Tax Code of 1997, as amended. *(BIR Ruling No. 334-11* 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 (P1,919,500.00) and below, or house and lot and other residential dwellings

valued at Three Million One Hundred Ninety Nine Thousand Two Hundred Pesos (P3,199,200.00) and below is VAT-exempt[2]. Thus, only the sales by **Johndorf's Portville - Davao Subdivision – Landmark 3, Brgy. Sasa, Davao City Project** of housing units with selling price of not more than the aforementioned price ceilings shall be exempt from VAT.

Pursuant to Section 4 of Republic Act (RA) No. 10708, 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, **Johndorf** shall file with BOI a complete annual tax incentives report of its income-based tax incentives, value-added tax (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 **Johndorf** 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 at source as required under Chapter XIII and Section 57 of the Tax Code of 1997, as amended and implemented by Revenue Regulations No. 2-98, as amended.

Likewise, **Johndorf** is required to file on or before the 15th day of the fourth month following the close of its accounting period 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, **Johndorf's** 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 has been 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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[2] The increase in the threshold amount 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.