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. 412-13
#088-2016
3-14-2016

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 March 14, 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, **Kensington Phase 7-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, **Kensington Phase 7-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 June 2013 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, **Kensington Phase 7-Brgy. Navarro, General Trias, Cavite.**

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It is further shown that **Pro-Friends- Kensington Phase 7-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 Four Hundred Fifty Three (453) low-cost mass housing units based on the following prices and schedules:

Name of Project	Year	Sales Volume (No. of Units)	Sales Value (PhP)
1. Kensington Phase 7	1	135	
	2	183	
	3	135	
	Total	**453**	

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. 412-13* dated November 11, 2013)

Accordingly, since **Pro-Friends-Kensington Phase 7-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 **Four Hundred Fifty Three (453)** 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 **June 2013** 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 the income directly attributable to the revenues generated from the project, **Pro-Friends-Kensington Phase 7-Brgy. Navarro, General Trias, Cavite,** consisting of **Four Hundred Fifty Three (453)** units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding [1]

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- Kensington Phase 7-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 its 20% socialized housing requirement for its existing projects under C.R. Nos.

Compliance with the 20% socialized housing requirement must be

[1] Per HLURB License to Sell No. dated June 3, 2013 issued for the project, Kensington Phase 7, the maximum selling price per lot/unit shall be at P1,250,000.00

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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, 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 fully sold or fully paid for 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: (1) net value added, (2) job generation, (3) multiplier effect, and (4) measured capacity. The Board may reduce the project's ITH entitlement 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 should be at least 25%

	Pre-Op	Year 1	Year 2	Year 3
NVA (%)	89%	89%	89%	89%

b. Job Generation

	Number of Employees			
	Pre-Op	Year 1	Year 2	Year 3
Total Employees	37	125	125	125

c. Investments and Timetable

Activity	Schedule (Month/Year)	Related Expenses	Cost (Php)
Land Acquisition	April 2010	Land Cost	
Secure necessary license/ permit/ registration from the government/training costs	April 2012-October 2012	Pre-Operating Expenses	
Site Preparation and Development	October 2012 to January 2016	Land/Site Development Cost	
Building/ House Construction	March 2013 to February 2016	Building/ House Construction Cost	
Start of Commercial Operations	June 2013	Working Capital	
Total Project Cost			

a. Sales Revenues

Year	Volume (No. of Units)	Sales Value (Php)
1	135	
2	183	
3	135	
Total	453	

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Net income that exceeds 10% of the revenue represented at the time of application shall not be eligible to ITH unless the Board is informed in writing by the proponent in advance before the revenue is expected to exceed the projections in the application for registration submitted to the Board.

(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 6,892 sq. m.) or total subdivision project cost (estimated at Ph l) 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 shall submit to the BOI Supervision and Monitoring Department, on a semestral basis within fifteen (15) days from the end of each semester, a report on actual investments, employment, sales, production costs and other information that the Board may require at any given time with respect to the registered project.

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, **Kensington Phase 7-Brgy. Navarro, General Trias, Cavite**, consisting of **Four Hundred Fifty Three (453)** 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-Kensington Phase 7-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. 412-13* dated November 11, 2013)

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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.[2] Thus, only the sales by **Pro-Friends-Kensington Phase 7-Brgy. Navarro, General Trias, Cavite** of housing units with selling price of not more than the aforementioned price ceiling shall be exempt from VAT.

It should be understood that **Pro-Friends** 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.

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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[2] 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.