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

E.O. 226; RR 2-98
BIR Ruling No. 342-14; BIR Ruling No. 329-14
#089-2016
3-14-2016

BORLAND DEVELOPMENT CORPORATION
1216 Luwasan Zone 4, National Road,
Brgy. Muzon, San Jose Del Monte City,
Bulacan 3023

Attention : **Mr. Ramiro R. Dimas**
Assistant General Manager

Gentlemen:

This refers to your letter dated November 3, 2015, applying for tax exemption on the tax consequences of the Income Tax Holiday (ITH) granted by the Board of Investments (BOI) to **BORLAND DEVELOPMENT CORPORATION** under Executive Order (EO) No. 226 otherwise known as the "Omnibus Investments Code of 1987", for a period of three (3) years from the start of commercial operations.

Documents submitted disclosed that **BORLAND DEVELOPMENT CORPORATION**, with Taxpayer's Identification No. (TIN) , is a domestic corporation duly organized and existing under Philippine Laws; that it is registered with the Securities and Exchange Commission (SEC) bearing SEC Certificate of Registration No. that it is engaged in real estate development; that it is registered with the BOI as an Expanding Developer of Economic and Low-Cost Housing Project on a Non- Pioneer status for the mass housing project:

Project Name	Location	BOI Reg. No.	Date of BOI Registration	Start of Commercial Operation/ ITH	No. of Units
Estrella Homes Marilao Phase 4	Brgy. Sta. Rosa II, Marilao, Bulacan		July 22, 2015	August 2015	717

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that under its BOI Terms and Conditions, the following project shall construct and sell units of low-cost mass housing units based on the following schedule:

Project Name	Year	No. Of Units	Sales Value (PhP)
Estrella Homes Marilao Phase 4	1	215	
	2	287	
	3	215	
Total		717	

that **Estrella Homes Marilao Phase 4**, located at Brgy. Sta. Rosa II, Marilao, Bulacan, is duly registered with the Housing and Land Use Regulatory Board (HLURB) under the following Certificate of Registration and was issued a License to Sell, to wit:

Project Name	Location	HLURB Certificate of Registration No./ Date Issued	HLURB License to Sell No./ Date Issued	No. of Units
Estrella Homes Marilao Phase 4	Brgy. Sta. Rosa II, Marilao, Bulacan	November 17, 2014	November 17, 2014	717

that according to the Specific Terms and Conditions of its BOI Registration, **Borland Development Corporation (Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II, Marilao, Bulacan)** is entitled to ITH for a period of Three (3) years from August 2015 or the actual start of commercial operations whichever is earlier, but in no case earlier than the date of registration; that **Borland Development Corporation (Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II, Marilao, Bulacan)'s** ITH shall be limited only to the revenue generated from the registered project; and that revenues from units with selling price exceeding shall not be covered by ITH.

In reply, please be informed that under Section 2.57.5 (B)(2) of Revenue Regulations 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 the Omnibus Investments Code of 1987. *(BIR Ruling No. 342-14 dated August 26, 2014)*

Accordingly, since **Borland Development Corporation (Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II, Marilao, Bulacan)** is a BOI-registered project, this Office is of the opinion that income payments received by **Borland Development Corporation** in connection with its housing project, **Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II, Marilao, Bulacan**, (on the 717 low-cost mass housing units as mentioned in the Specific Terms and Conditions of its BOI Registration), are exempt from the creditable withholding tax imposed under RR No. 2-98, as amended by RR No. 6-2001,

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for a period of three (3) years from August 2015 or the actual start of commercial operations whichever is earlier but in no case earlier than the date of registration[1].

It must be emphasized, however, that the above exemption from creditable withholding tax covers only income directly attributable to revenues generated from **Borland Development Corporation's** BOI-registered activity **Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II, Marilao, Bulacan**, involving Seven Hundred Seventeen (717) low-cost mass housing units used solely for family home or dwelling purposes and not for commercial purposes such as leasing, retail stores, offices, etc. Furthermore, such exemption shall not cover revenues from units with selling price exceeding Three Million Pesos (P3,000,000.00)[2]. *(BIR Ruling No. 342-14 dated August 26, 2014)*

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

Moreover, the entitlement of **Borland Development Corporation (Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II, Marilao, Bulacan)** to ITH is not automatic as such project has to comply with Items 2, 3, 4, 5, 6, 7, 8 (ii)(iii)(iv)(v), 9, 10, 12 and 13 of the Specific Terms and Condition of its pertinent BOI Registration, *viz:*

(1) The enterprise shall submit a detailed report on low-cost mass housing units sold. Annual report shall be submitted to the BOI reflecting compliance to this condition;

(2) The enterprise shall submit a duly notarized Affidavit executed by a licensed engineer or architect indicating the area or the number of lots and actual units built and the construction costs on the development of the compliance project for its existing BOI-registered housing projects before availment of ITH;

The following documents relevant to the compliance project shall be attached to the Affidavit:

a. License to Sell;
b. Project Development Plan;
c. Development Permit; and
d. Verified Survey Return

(3) The enterprise shall submit a proof of verified compliance with the 20% socialized housing requirement for its existing registered projects before availmant of ITH. Non-compliance to the 20% socialized housing requirement of existing projects of a BOI registered enterprise, including projects of its parent corporation and their subsidiaries, shall cause the non-registration of their new housing projects, until the corresponding compliance of the non-complying existing projects are satisfied;

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

[2] Per HLURB License to Sell Nos dated November 17, 2014 issued for the project, Estrella Homes Marilao Phase 4, the maximum -selling price per House and Lot is P1,250,000.00.

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(4) 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 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%

	Yr-1	Yr-2	Yr-3
NVA (%)	90.35%	90.35%	90.35%

b. Job Generation

	Yr-0	Yr-1	Yr-2	Yr-3
Employees	132	105	113	101

c. Investments and Timetable

Activity	Schedule	Related Expenses	Cost (In Php'000)
Land acquisition	April 2013 - April 2014	Land Cost	
Secure necessary license/permit/ registration from the government/training costs	April 2014 - August 2018	Licenses and Permits Expense	
Site preparation and development	August 2014 - February 2016	Land/Site Development Cost	
Building/House Construction	August 2015 - August 2018	Building/House Construction Cost	
Start of Commercial Operations	August 2015	Working Capital	
Total			

d. Sales Revenues

Year	Volume (No. of units)	Value (Php)
1	215	

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2	287	
3	215	
Total	**1,051**	

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;

(5) The enterprise should endeavour to undertake meaningful and sustainable Corporate Social Responsibility (CSR) activities in the locality where the project is implemented;

(6) The enterprise shall maintain books of account for this registered project separate from all its other operation/s and/or activity/ies;

(7) The enterprise shall submit the list of cost items common to all its projects/activities (whether BOI or non-BOI registered) and the methodology adopted in allocating common costs between the registered and non-registered activity/ies;

(8) Interest Expense on the enterprise's liabilities shall be appropriately allocated between the registered and the non-registered activity/ies;

(9) In the computation of ITH, interest income from in-house financing shall not be considered as revenues generated from the registered activity;

(10) In the availment of ITH, the enterprise shall secure from the HLURB an endorsement that it has faithfully complied with the approved development plan and a "*Certificate of Good Housekeeping*";

(11) An application should be filed with the BOI Incentives Administration Service 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 by SSS that the enterprise is in good standing in the remittances of SSS contributions of its employees. Further, any request for extension of the reckoning date of ITH availment should be filed prior to the scheduled date or within ninety (90) days from the occurrence of the fortuitous events and/or government delays;

(12) The enterprise must secure a Certificate of ITH Entitlement (CoE) from the BOI Legal and Compliance Service (LCS) prior to the filing of ITR with the BIR, otherwise, ITH for that particular taxable year without CoE shall be forfeited;

(13) 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

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be entitled to ITH and shall be required to refund any capital equipment incentives availed of;

(14) The enterprise shall submit proof of compliance that at least twenty percent (20%) of the total subdivision area (estimated at 11,318 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 will be done through the development of new settlement directly undertaken by the registered entity. Otherwise, the ITH for that particular taxable year shall be deemed forfeited.

(15) The enterprise shall ensure (a) that its contractors are duly licensed by the Philippine Contractors Accreditation Board (PCAB) as required under Republic Act No. 4566 ("Contractors License Law"), and (b) that any construction activity, under its project and supervision, shall be undertaken in accordance with the rules and regulations prescribed by PCAB as well as all applicable laws;

(16) The enterprise shall submit to the BOI Legal and Compliance Service, on a semestral basis within fifteen (15) days from the end of each semester, a report on actual investments, employment, sales, production cost, actual ITH availed of for each year 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. 266. In this regard, under the terms and conditions of its BOI registration, **Borland Development Corporation (Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II, Marilao, Bulacan)** was clearly granted 3-year ITH but such terms and conditions do not provide for any exemption from other taxes that it may be subject to on its business transactions. Thus, **Borland Development Corporation (Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II, Marilao, Bulacan)** 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. 329-14 dated August 14, 2014)*

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[3]. Thus, only the sales by **Borland Development Corporation (Estrella Homes Marilao Phase 4-Brgy. Sta. Rosa II,**

3 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.

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Marilao, Bulacan) of housing units with selling price of not more than the aforementioned price ceiling shall be exempt from VAT. *(BIR Ruling No. 329-14 dated August 14, 2014)*

It should be understood that **Borland Development Corporation** shall be constituted as a withholding agent for the government if its 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 RR No. 2-98, as amended.

Likewise, **Borland Development Corporation** 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, **Borland Development Corporation'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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