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
#091-2016
3-14-2016

COMMUNITIES TARLAC, INC.
3rd Level Starmall Bldg., CV Starr Avenue
Philamlife Village, Las Pinas City

Attention: **Atty. Cecilia A. Ramilo**
Tax Department Head

Gentlemen:

This refers to your letter dated March 24, 2015 stating that Communities Tarlac, Inc. ('Communities Tarlac' for brevity) with Tax Identification No. ; 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 **(Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija)** on a Non-Pioneer status under Certificate of Registration No. dated March 23, 2015. Communities Tarlac has been granted Income Tax Holiday (ITH) by the BOI for a period of four (4) years from March 2015 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **Communities Tarlac's Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija Project** is registered with Housing and Land Use Regulatory Board (HLURB) Region III, particularly described as follows:

Certificate of Registration No.	License to Sell No.	Name of Project/Location	No. of Saleable Lots	Maximum Selling Price
(Dec. 23, 2013)	(Dec. 23, 2013)	***Camella Nueva Ecija- Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija***	396 lots/units	P per house & lot package
(Dec. 23, 2013)	(Dec. 23, 2013)	***Camella Nueva Ecija- Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija***	186 lots/units	n/a
		Total	582 units	

Under the Specific Terms and Conditions of its BOI Registration, the ITH of Communities Tarlac shall cover only five hundred forty eight (548) units of low-cost mass housing for **Camella Tarlac's Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Project** based on the following schedule:

Year	Volume (No. of Units)
1	71
2	185
3	191
4	101
Total	**548**

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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 Communities Tarlac, 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.

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 **Communities Tarlac's Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by Communities Tarlac in connection with its housing project, **Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija Project** (on the 548 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 4 years from March 2015 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. It must be emphasized, however, that the above exemption from CWT covers only income directly attributable to revenues generated from the registered activity, **Communities Tarlac's Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija Project** involving 548 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). 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 **Communities Tarlac's Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija Project** is not automatic as it still has to comply with the following provisions of the Specific Terms and Conditions of their 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. and before availment 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 ITH-based compliance of the non-complying existing projects are satisfied.

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 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:

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

	Yr-1	Yr-2	Yr-3	Yr-4
NVA	98%	98%	98%	98%

b. **Job Generation**

Total Employees	Number of Employees			
	Yr-1	Yr-2	Yr-3	Yr-4
	67	178	185	95

c. **Investments and Timetable**

Activity	Schedule	Related Expense/s	Cost (In Php'000)
Land acquisition	August 2012 to November 2014	Land cost	
Secure necessary license/permit/registration from the government/training costs	December 2012 to September 2014	Pre-operating expenses	
Site preparation and development	December 2013 to October 2016	Land/Site development	
Building/House Construction	December 2013 to November 2017	Building construction	
Start of Commercial Operations	March 2015	Working capital	
TOTAL			

d. **Sales Revenues**

Year	Volume (No. of units)	Value (Php)
1	71	
2	185	
3	191	
4	101	
Total	**548**	

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

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proportionately. Request/s for adjustment of projected revenue must be filed before the filing of application for ITH.

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

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 Department 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 and Compliance Service prior to filing of ITR with the BIR; otherwise, ITH for that particular 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 (estimated at 14,827.40 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 development of new settlement through joint venture with a developer accredited by the HLURB. Otherwise, the ITH for that particular year shall be deemed forfeited.

9. The enterprise must commit to the tenets 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, **Communities Tarlac's Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija Project** was clearly granted a 4-year ITH but such terms and conditions do not provide for any exemption from other taxes that Communities Tarlac may be subject to on its business transactions. Thus, **Communities Tarlac's Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija 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)

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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 (P1,919,500.00) 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[1]. Thus, only the sales by **Communities Tarlac's Camella Nueva Ecija - Brgy. Valle Cruz, Cabanatuan City, Nueva Ecija Project** of housing units with selling price of not more than the aforementioned price ceilings shall be exempt from VAT.

It should be understood that **Communities Tarlac** 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 No. 2-98, as amended.

Likewise, **Communities Tarlac** 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, **Communities Tarlac'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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[1] 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.