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
#247-2016
6-21-2016

Sr. Sto. Niño De Cebu Resources and Development Corporation
106 Brgy. Milagrosa
Calamba City, Laguna

Attention: **Guillermo C. Uy, Jr.**
President

Gentlemen:

This refers to your letter dated March 18, 2016 requesting on behalf of **Sr. Sto. Niño De Cebu Resources and Development Corporation** ("**Sr. Sto. Niño De Cebu**"), certificate of tax exemption from income and expanded withholding taxes on its income derived from the housing project, **Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas**, 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 **Sr. Sto. Niño De Cebu**, 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 **Sr. Sto. Niño De Cebu** is duly registered with the Board of Investments (BOI) under the Omnibus Investments Code of 1987 (E.O. 226) as New Developer of Economic and Low-cost Housing for Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas, under BOI Certificate of Registration No that the Corporation shall be entitled to income tax holiday (ITH) for the aforesaid project for a period of four (4) years beginning from November 2015 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, **Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas**.

It is further shown that **Sr. Sto. Niño De Cebu**, under the Specific Terms and Conditions of its BOI Registration for the project, **Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas**, is obligated to construct and sell Ninety Eight (98) housing units based on the following sales revenues:

Year	Volume (No. of Units)	Value (P'000)
1	24	
2	24	
3	25	
4	25	
Total	**98**	

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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. (*BIR Ruling No. 412-2013* dated November 11, 2013)

Accordingly, since **Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas**, 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 **Sr. Sto. Niño De Cebu** in connection with the aforementioned housing project, consisting of **Ninety Eight (98)** 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 four (4) years beginning from **November 2015** 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, **Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas**, consisting of **Ninety Eight (98)** units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding (*BIR Ruling No. 412-2013* dated November 11, 2013)

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, **Sr. Sto. Niño De Cebu's** entitlement to ITH for its BOI-registered housing project, **Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas**, 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 an amended License to Sell reflecting its compliance with the socialized housing requirement to be undertaken in Residenza de Sta Cruz located at Brgy. Bubukal, Sta. Cruz, Laguna prior to availment of ITH.

(2) The enterprise shall be required to increase its Stockholders' Equity from , to and shall submit proof of compliance before availment of ITH.

(3) 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

[1] Per HLURB License to Sell No. issued for the project, Avant Garde Residences, the maximum selling price per house and lot shall be

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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%

	Y1	Y2	Y3
NVA	99%	99%	99%

b. Job Generation

	Number of Employees			
	Y1	Y2	Y3	Y4
Total Employees	83	83	83	83

c. Investments and Timetable

Activity	Schedule	Related Expenses	Cost (In Php'000)
Land Acquisition	October 2011	Land Cost	
Secure necessary license/permit/ registration from the government/training costs	June 2013-April 2014	Pre-Operating Expenses	
Site Preparation and Development	June 2013-June 2014	Land/Site Development Cost	
Building/House Construction	June 2013-November 2016	Building/House Construction Cost	
Start of Commercial Operations	November 2015	Working Capital (3 months)	
Total Project Cost			

d. Sales Revenues

Year	Volume (No. of Units)	Value (P'000)
1	24	
2	24	
3	25	
4	25	
Total	**98**	

(4) 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";

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(5) File an application with the BOI Incentives 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 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 taxable year without CoE shall be forfeited;

(7) 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;

(8) The enterprise shall submit proof of compliance that, at least twenty percent (20%) of the total subdivision area (estimated at 2,543 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;

(9) 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 costs, 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; and

(10) The enterprise must commit to the tenets of Good Corporate Governance.

Pursuant to Section 4 of Republic Act (RA) No. 10708[2], Sr. Sto. Niño De Cebu 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, Sr. Sto. Niño De Cebu 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.

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, **Sr. Sto. Niño De Cebu** was clearly granted a 4-year ITH for its project, **Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas,** consisting of **Ninety Eight (98)** units, but such terms and conditions do not provide for

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

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any exemption from other taxes that the Corporation may be subject to on its business transactions. Thus, **Sr. Sto. Niño De Cebu- Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas** 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. 412-2013* dated November 11, 2013)

In relation thereto, Section 109(1)(P) of the Tax Code of 1997 provides, that the sale of residential lot valued at

) 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 **Sr. Sto. Niño De Cebu- Avant Garde Residences- Brgy. San Roque, Sto. Tomas, Batangas** of housing units with selling price of not more than the aforementioned price ceiling shall be exempt from VAT.

It should be understood that **Sr. Sto. Niño De Cebu** 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, **Sr. Sto. Niño De Cebu** 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, **Sr. Sto. Niño De Cebu'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 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.