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
#259-2016
6-22-2016

Communities Leyte, Inc.
Mezzanine Floor, Starmall Complex
EDSA cor. Shaw Blvd.
Mandaluyong City

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

Gentlemen:

This refers to your letter dated February 21, 2012 stating that Communities Leyte, Inc. (Communities Leyte 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 an Expanding Developer of Low-Cost Mass Housing Project **(Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte)** on a Non-Pioneer status under Certificate of Registration No. dated February 20, 2012. Communities Leyte has been granted Income Tax Holiday (ITH) by the BOI for a period of three (3) years from February 2012 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **Communities Leyte's Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte 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, Communites Leyte shall construct and sell one hundred sixty six (166) units of low-cost mass housing for **Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte Project** based on the following schedule:

Year	Volume (No. of Units)
1	49
2	82
3	35
Total	**166**

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 Leyte, 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

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[1] *HLURB License to Sell No. issued to Communities Leyte for Camella Leyte Phase 2 Subdivision covers 168 units of House and Lot package.*

042205

#259-2016
6-22-2016

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 Leyte's Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by Communities Leyte in connection with its housing project, **Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte Project** (on the 166 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 3 years from February 2012 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration.[2] It must be emphasized, however, that the above exemption from CWT covers only income directly attributable to revenues generated from its registered activity, **Communities Leyte's Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte Project** involving 166 low-cost mass housing units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding . 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 Leyte's Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte 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. 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 in this order of importance: (1) project's net value added, (2) job generation, (3) multiplier effect, and (4) measured capacity. In the event that the registered enterprise fails to implement the project as represented in its project application, the Board may reduce the project's ITH entitlement proportionate to the actual performance of the enterprise. The project's entitlement to incentives shall be based on the following:

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

House Construction	102,142
Raw Materials	974
NVA	99%

b. **Employment Generation**

	No. of Employees		
Direct Labor	69	112	48
Indirect Labor	2	2	2
Administrative Sales	1	1	1
Manager/Supervisors	2	2	2
Total	**74**	**117**	**53**

c. **Investments and Timetable**

042205

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

#259-2016
6-22-2016

Activity	Schedule	Related Expense/s	Cost (In Php'000)
Site acquisition	Completed	Raw Land	
Obtained appropriate license/agreement/ permit from the government agencies	On-going	Government Application fees	
Site preparation and development	March 2011 to October 2014	Building temporary facilities, surveying works, road, walkway, site preparation, drainage system, riprap, electrical, and water distribution amenities	
House construction	December 2011 to November 2014		
Start of commercial operation	February 2012	Working capital	
TOTAL PROJECT COST			

d. **Sales Revenues**

Year	Volume (No. of Units)	Value (Php'000)
1	49	
2	82	
3	35	
Total	**166**	

Income qualified for ITH availment shall not exceed by more than 10% of the projected income represented by the enterprise in its application provided the project's actual investments and employment match the enterprise's representations in its application. In cases where the project's actual revenues exceed the projections in its application by more than 10%, the Board may increase the project's ITH availment proportionately for reasons such as bust not limited to (a) additional investments; (b) new markets/orders; (c) additional employment and/or increase in number of working shifts. Request/s for adjustment of projected income may be submitted to the Board within the ITH entitlement period.

2. The enterprise shall submit a list of common cost items and cost allocation methodology for its other projects/activities (whether BOI-registered or non-registered).

042205

#259-2016
6-22-2016

3. Secure from the 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 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.

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 year without CoE shall be forfeited.

6. 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.

7. Submit proof of compliance that at least twenty percent (20%) of the total subdivision area (estimated at 4,653 sq.m.) or total subdivision project cost (estimated at Ph 1) 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 any of the following modes: (1) New Settlement; (2) Slum Upgrading; and (3) Joint Venture Projects. Otherwise, the ITH for that particular year shall be deemed forfeited.

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 Leyte's Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte Project** was clearly granted a 3-year ITH but such terms and conditions do not provide for any exemption from other taxes that Communities Leyte may be subject to on its business transactions. Thus, **Communities Leyte's Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte 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 Pesos 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 **Communities Leyte's Camella Leyte Phase 2 Subdivision – Brgy. Campetic, Palo, Leyte Project** of housing units with selling price of not more than the aforementioned price ceilings shall be exempt from VAT.

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[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.

042205

259-2016
6-22-2016

Pursuant to Section 4 of Republic Act (RA) No. 10708, **Communities Leyte** 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, **Communities Leyte** 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 **Communities Leyte** 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 Leyte** 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 Leyte'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 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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JUN 20 2016

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