August 11, 2016

BIR RULING NO. 347-16

E.O. 226; RR 16-2011; Secs. 57 (B); 106 (A) (1) (a); 196 NIRC; BIR Ruling No. 334-11

Household Development Corporation
3rd Level Starmall Las Piñas, C.V. Starr Avenue
Philamlife Village, Pamplona, Las Piñas City

Attention: *AAA*

Gentlemen :

This refers to your letter dated January 05, 2012 stating that *Household Development Corporation* (Household Development for brevity) with Tax Identification No. 000-000-000-000 is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Reg. No. 75257. It is registered with the Board of Investments (BOI) as a New Developer of Low-Cost Mass Housing Project *(Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna)* on a Non-Pioneer status under Certificate of Registration No. 2011-284 dated December 29, 2011. Household Development has been granted Income Tax Holiday (ITH) by the BOI for a period of four (4) years from December 2011 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project* is registered with Housing and Land Use Regulatory Board (HLURB) under Certificate of Registration Nos. 22464 and 22463; and holds HLURB License to Sell Nos. 23781 and 23782; [1] and that under the Specific Terms and Conditions of its BOI Registration, Household Development shall construct and sell four hundred fifteen (415) units of low-cost mass housing for *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project* based on the following schedule:

Year	*Volume (No. of Units)*	*Value (P'000)*
1	85	_____
2	112	_____

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3	111	_____
4	107	_____
	___	_____
Total	*415*	_____
	===	=======

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 Household Development, 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 *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project* is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by Household Development in connection with its housing project, *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna (on the 415 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 December 2011 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 revenues generated from the registered activity, *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project.* Furthermore, such exemption shall not cover revenues from units with selling price exceeding Two Million Five Hundred Thousand Pesos (P2,500,000.00). (BIR Ruling No. 334-11 dated September 7, 2011). 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 *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project* is not automatic as it still has to comply with the provisions of the Specific Terms and Conditions of its BOI Registration, *viz.*:

1. In the grant of incentives including the ITH Rate of Exemption shall depend on the enterprise's compliance with the following representations/commitments under this registration. In the event that the registered enterprise fails to implement the project as represented in its

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project application, the Board may reduce the project's ITH entitlement proportionate to the actual performance of the enterprise, in terms of the foregoing representations/commitments, among others:

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

NVA 99%

b. *Job Generation*

	Year 1	*Year 2*	*Year 3*	*Year 4*
Employees	237	237	237	237

c. *Investments and Timetable*

Activity	*Schedule*	*Related Expense/s*	*Cost (In Php'000)*
Site acquisition	Completed	Land cost	_____
Obtain appropriate license/permit/registration from the government	Completed	Government application fees	_____
Site preparation and development	On going November 2012	Land development	_____
House construction	April 2011 December 2015		_____
Start of commercial operation	December 2011	Working capital	_____
			_____
Total Project Cost			_____
			=======

d. *Sales Revenues*

Year	*Volume (No. of Units)*	*Value (Php'000)*
1	85	_____
2	112	_____

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3	111	_____
4	107	_____
	____	_____
Total	*415*	_____
	====	======

Net 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 but 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).

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

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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 2.31 has) 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 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.

8. The enterprise must abide by the principles of Good Governance. It must likewise accomplish the self-rating Governance Scorecard to be provided by the BOI every year as a requirement for ITH availment.

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, *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project* was clearly granted a 4-year ITH but such terms and conditions do not provide for any exemption from other taxes that Household Development may be subject to on its business transactions. Thus, *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna 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 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. [2] Thus, only the sales by *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna 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 *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project* 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 at 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.

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Likewise, *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project* 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, *Household Development's Camella La Vecina at Dos Rios-Brgy. Pittland, Cabuyao, Laguna Project'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,

(SGD.) CAESAR R. DULAY
Commissioner of Internal Revenue

Footnotes

1. License to Sell No. 23782 covers Blk. 10, lots 1-46; Blk. 11, lots 1-70; Blk. 12, lots 3-29 = 143 lots.
2. 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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