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
#267-2016

6-22-2016

KENRICH DEVELOPMENT CORPORATION
G/F Un Heng Building
M. L. Quezon Street
Casuntingan, Mandaue City

Attention : **Mr. Glenn N. Lim**
Vice President

Gentlemen:

This refers to your letter dated October 16, 2015 stating that **Kenrich Development Corporation, ("Kenrich"** for brevity) with Tax Identification No. [redacted] is a domestic corporation duly registered with the Securities and Exchange Commission (SEC) under Company Reg No. [redacted] It is registered with the Board of Investments (BOI) as Expanding Developer of a Low-Cost Mass Housing Project **(Villa Lara 2A Subdivision - Jubay, Liloan)** on a Non-Pioneer status under Certificate of Registration No. [redacted] dated June 04, 2015 in accordance with the Omnibus Investments Code of 1987 of Executive Order (EO) No. 226. Kenrich has been granted Income Tax Holiday (ITH) by the BOI for a period of three (3) years from June 2015 or actual start of commercial operations/selling, whichever is earlier but in no case earlier than the date of registration. **Kenrich's Villa Lara 2A Subdivision – Jubay, Liloan Project** is registered with Housing and Land Use Regulatory Board (HLURB) under Certificate of Registration No [redacted] and holds HLURB License to Sell No. [redacted] [1]; and under the Specific Terms and Conditions of its BOI Registration, Kenrich shall construct and sell forty-eight (48) units of low-cost mass housing for **Kenrich's Villa Lara 2A Subdivision – Jubay, Liloan Project** based on the following schedule:

Year	Volume (No. of Units)	Value (Php)
1	10	[redacted]
2	30	[redacted]
3	8	[redacted]
Total	**48**	[redacted]

On the basis of the foregoing, you now request for an opinion on the tax consequences of

[1] *Kenrich's Villa Lara 2A Subdivision – Jubay, Liloan Project's HLURB License to Sell No.* [redacted] *covers Lot 5163 for a total of 48 units and provides for maximum selling price per House and Lot Package at* [redacted]

042241

#267-2016
6-22-2016

the said ITH granted by BOI. Specifically, if Kenrich, 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 income tax provided by Republic Act No. 7916 and the Omnibus Investment Code of 1987.

Accordingly, since **Kenrich's Villa Lara 2A Subdivision - Jubay, Liloan Project** is a BOI registered project, this Office is of the opinion as it hereby holds, that income payments received by Kenrich in connection with its housing project, **Villa Lara 2A Subdivision - Jubay, Liloan Project (on the 48 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 three (3) years from June 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 its registered activity, **Kenrich's Villa Lara 2A Subdivision – Jubay, Liloan Project**involving 48 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 [illegible]). 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 **Kenrich's Villa Lara 2A Subdivision – Jubay, Liloan, 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 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 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%**

	Pre-op	Yr-1	Yr-2	Yr-3
NVA (%)	99%	-	-	-

   b. **Job Generation**

042241

	Pre-Op	Year 1	Year 2	Year 3
Number of Employees	60	18	18	18

c. **Investments and Timetable**

Activity	Schedule	Related Expenses	Cost (Php)
Land Acquisition	April 2011	Land cost	
Secure necessary license /permit/ registration from the government/training costs	October 2012 to July 2014	Pre-operating expenses	
Site preparation and development	November 2013 to March 2014	Land/Site development Cost	
Building/House construction	January 2014 to November 2014	Building/House construction Cost	
Start of Commercial Operations	June 2015	Working Capital	
TOTAL PROJECT COST			

d. **Sales Revenues**

Year	Volume (No. of Units)	Value (Php)
1	10	
2	30	
3	8	
Total	**48**	

Net income qualified for ITH entitlement shall not 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, e.g.new markets/orders, additional employment/shifts, additional investments, the Board may increase the project's ITH availment proportionately. Request/s for adjustments of projected revenue must be filed before the filing of application for ITH.

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".

042241

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 forficted.

6. In the event the enterprise fails to maintain the 75:25 debt-eqty 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 of the total subdivision area has been developed and allocated for socialized housing within one year from date of registration or prior to availment of ITH; otherwise, 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, **Kenrich's Villa Lara 2A Subdivision – Jubay, Liloan Project** was clearly granted a 3-year ITH but such terms and conditions do not provide for any exemption from other taxes that Kenrich may be subject to on its business transactions. Thus, **Kenrich's Villa Lara 2A Subdivision – Jubay, Liloan 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. Thus, only the sales by **Kenrich's Villa Lara 2A Subdivision – Jubay, Liloan Project** of housing units with selling price of not more than the aforementioned price ceilings shall be exempt from VAT.

Pursuant to Section 4 of Republic Act (RA) No. 10708, **Kenrich** 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, **Kenrich** 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.

042241

#267-2016
6-22-2016

It should be understood that **Kenrich's** 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.

Likewise, **Kenrich** is required to file on or before the 15^{th} day of the fourth month following the close of its accounting period 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, **Kenrich'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
Commisioner of Internal Revenue

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