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
#278-2016

6-22-2016

PROPERTY COMPANY OF FRIENDS, INC.
PROFRIENDS CENTER, 55 Tinio St.
Brgy. Addition Hills, Mandaluyong City

Attention: **<u>Marilyn T. Santos-Oblena</u>**
VP-Financial Control Group

Gentlemen:

This refers to your letter dated May 25, 2015 requesting on behalf of **Property Company of Friends, Inc.** (**"Pro-Friends"**), certificate of tax exemption from income and expanded withholding taxes on its income derived from the mass housing project, **Kensington Phase 27- Brgy. Navarro, General Trias, Cavite**, 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 **Pro-Friends**, with Tax Identification No. (TIN) [redacted] is a domestic corporation duly organized under the Philippine laws; that it is registered with the Securities and Exchange Commission (SEC) with SEC Certificate of Registration No. [redacted]; that **Pro-Friends,** as an Expanding Developer of a Mass Housing Project (Horizontal), **Kensington Phase 27-Brgy. Navarro, General Trias, Cavite**, is duly registered with the Board of Investments (BOI) under the Omnibus Investments Code of 1987 (E.O. 226), under BOI Certificate of Registration No. [redacted]; that pursuant to said BOI Registration, **Pro-Friends** shall be entitled to income tax holiday (ITH) for the above project for a period of three (3) years beginning from March 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. [redacted] and License to Sell No. [redacted] 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, **Kensington Phase 27- Brgy. Navarro, General Trias, Cavite.**

It is further shown that **Pro-Friends,** under the Specific Terms and Conditions of its BOI Registration for the project, **Kensington Phase 27- Brgy. Navarro, General Trias, Cavite**, is obligated to construct and sell Six Hundred Thirty One (631) mass housing units based on the following sales revenues:

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Unit Type	Year	Volume			Value (PhP)		
		Typical Inner Units	Typical Corner Units	Total Units	Typical Inner Units	Typical Corner Units	Total
Catherine House Model	1	169	20	189	[illegible]	[illegible]	[illegible]
	2	228	25	253	[illegible]	[illegible]	[illegible]
	3	169	20	189	[illegible]	[illegible]	[illegible]
	Total	**566**	**65**	**631**	[illegible]	[illegible]	[illegible]

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 **Pro-Friends- Kensington Phase 27- Brgy. Navarro, General Trias, Cavite,** 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 **Pro-Friends** directly in connection with the aforementioned housing project, consisting of **Six Hundred Thirty One (631)** 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 three (3) years beginning from **March 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, **Pro-Friends- Kensington Phase 27- Brgy. Navarro, General Trias, Cavite,** consisting of **Six Hundred Thirty One (631)** units. Furthermore, such exemption shall not cover revenues from units with selling price exceeding One Million Two Hundred Fifty Pesos (Php1,250,000.00)[1]. (*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, **Pro-Friends- Kensington Phase 27- Brgy. Navarro, General Trias, Cavite's** entitlement to ITH for its BOI-registered housing project 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 firm shall submit proof of verified compliance with the 20% socialized housing requirement for its existing projects registered before 2011 prior to availment of ITH;

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[1] Per HLURB License to Sell issued for the Project, the maximum selling price shall be P1,250,000.00.

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(2) The firm shall submit a Notarized Affidavit executed by the licensed engineer or architect indicating the area or the number of lots and actual units built and the construction costs on the development of the compliance project for its BOI registered housing projects prior to availment of ITH. The following documents relevant to the compliance project shall be attached to the Affidavit:

a) License to Sell
b) Project Development Plan
c) Development Permit; and
d) Verified Survey Return

(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 represented by the proponent at the time of its application. The enterprise shall comply with the following representations:

a. Net Value Added should be at least 25%

	Year 1	Year 2	Year 3
NVA (%)	97%	97%	97%

b. Job Generation

	Pre-Op	Year 1	Year 2	Year 3
Number of Employees	38	128	128	128

c. Investments and Timetable

Activity	Schedule (Month/Year)	Related Expense/s	Cost (Php)
Land Acquisition	April 2011	Land Cost	
Secure necessary license/permit/ registration from the government/training costs	July 2012-October 2013	Pre-Operating Expenses	
Site Preparation and Development	October 2013-January 2017	Land/Site Development Cost	
Building Construction	March 2014-February 2017	Building Construction	
Start of Commercial Operations	March 2015	Working Capital	
Total Project Cost			

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d. Sales Revenues

Unit Type	Year	Volume			Value (PhP)		
		Typical Inner Units	Typical Corner Units	Total Units	Typical Inner Units	Typical Corner Units	Total
Catherine House Model	1	169	20	189	[redacted]	[redacted]	[redacted]
	2	228	25	253	[redacted]	[redacted]	[redacted]
	3	169	20	189	[redacted]	[redacted]	[redacted]
	Total	**566**	**65**	**631**	[redacted]	[redacted]	[redacted]

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, 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;

(4) The enterprise should endeavor to undertake meaningful and sustainable Corporate Social Responsibility (CSR) activities in the locality where the project is implemented;

(5) Only income directly attributable to revenue generated from the registered project (**Kensington Phase 27- Brgy. Navarro, General Trias, Cavite**) and its housing units used solely for family home or dwelling purposes and not for commercial purposes such as leasing, retail stores, offices, etc. shall be qualified for ITH;

(6) 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";

(7) File an application with the BOI Incentives Administration 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;

(8) 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;

(9) 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;

(10) The enterprise shall submit proof of compliance that, at least twenty percent (20%) of the total subdivision area (estimated at 10,563 sq. m.) or total subdivision project cost (estimated at Php [redacted] M) has been

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developed and allocated for socialized housing within one year from date of registration or prior to availment of ITH, whichever is earlier;

(11) 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

(12) 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, **Pro-friends** was clearly granted a 3-year ITH for its project, **Kensington Phase 27- Brgy. Navarro, General Trias, Cavite,** consisting of **Six Hundred Thirty One (631)** units, but such terms and conditions do not provide for any exemption from other taxes that the Corporation may be subject to on its business transactions. Thus, **Pro-Friends- Kensington Phase 27- Brgy. Navarro, General Trias, Cavite** 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 One Million Nine Hundred Nineteen Thousand Five Hundred Pesos (P1,919,500) 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 **Pro-Friends- Kensington Phase 27- Brgy. Navarro, General Trias, Cavite** of housing units with selling price of not more than the aforementioned price ceiling shall be exempt from VAT.

Pursuant to Section 4 of Republic Act (RA) No. 10708[3], Pro-Friends 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, Pro-Friends 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.

It should be understood that **Pro-Friends** 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

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

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, **Pro-Friends** 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, **Pro-Friends**' 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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