

Republic of the Philippines
BOARD OF INVESTMENTS

Revised Rules and Regulations
In the Availment of Income Tax Holiday

The following Rules and Regulations are hereby promulgated to govern the availment of Income Tax Holiday (ITH) incentive.

Rule I
General Principles

Section 1. Legal Basis for the Grant of ITH. Article 39 (a) of E.O. 226, as amended by RA 7918, provides that for six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. It also provides that for a period of three (3) years from commercial operation, registered expanding and modernizing firms shall be entitled to an exemption from income taxes levied by the National Government proportionate to their expansion under such terms and conditions as the Board of Investments (BOI) may determine. Provided, however, that during the period within which this incentive is availed of by the registered firm, it shall not be entitled to additional deduction for incremental labor expense.

Section 2. Legal Basis for the Forfeiture of ITH. Article 7 of E.O. 226 states that the Board of Investments (BOI) shall be responsible for the regulation and promotion of investments in the Philippines. As such, the BOI is empowered to process and approve applications for registration with the Board, imposing such terms and conditions as it may deem necessary to promote the objectives of this Code, and to cancel the registration or suspend the enjoyment of incentives benefits of any registered enterprise and/or require refund of incentives including interests and monetary penalties for violation of any provision of the Code, of the rules and regulations issued pursuant thereto, of the terms and conditions of registration, or of laws for the protection of labor or of the consuming public

Rule II
Definition of Terms

Section 1. Definitions. As used in these rules and regulations, the following terms shall be construed to mean:

- a. **Registered Enterprise** - shall mean any individual, partnership, cooperative, corporation or other entity incorporated and / or organized and existing under Philippines laws and registered with the Board in accordance with Book I of E.O. 226; Provided, however, That the term "registered enterprise" shall not include commercial banks, savings and mortgage banks, rural banks, savings and loan associations, building and loan associations, development banks, trust companies, investment banks, finance companies, brokers and dealers in securities, consumer's cooperatives and credit unions, and other business organizations whose principal purpose or principal source of income is to receive deposits, lend

or borrow money, buy and sell or otherwise deal, trade or invest in common or preferred shares of stocks, debentures, bonds or other marketable instruments generally recognized as securities, or discharge of fiduciary functions.

- b. **Pioneer Enterprise** - shall mean a registered enterprise whose status of registration is reflected as such in its BOI Certificate of Registration and (1) engaged in the manufacture, processing or production, and not merely in the assembly or packaging of goods, products, commodities or raw materials that have not been or are not being produced in the Philippines on a commercial scale or (2) which uses a design, formula, scheme, method, process or system of production or transformation of any element, substance or raw materials into another raw material or finished goods which is new and untried in the Philippines or (3) engaged in the pursuit of agricultural, forestry and mining activities and/or services including the industrial aspects of food processing whenever appropriate, pre-determined by the Board, in consultation with the appropriate Department, to be feasible and highly essential to the attainments of the national goal in relation to the declared specific national food and agricultural program for self sufficiency and other social benefits of the project or (4) which produces non-conventional fuels or manufactures equipment which utilize non-conventional fuels or sources of energy or uses or converts to coal or other non-conventional fuels or sources of energy in its production, manufacturing or processing operations: Provided, That the foregoing definitions shall not in any way limit the rights and incentives granted to less-developed-area enterprises provided under Title V, Book I of E.O. 226.
- c. **Non-pioneer Enterprise** - shall include all registered producer enterprises other than pioneer enterprises whose status of registration are classified as such in their BOI Certificate of Registration
- d. **New Firm** - shall mean a BOI registered newly formed/incorporated enterprise or any firm classified as such in its BOI Certificate of Registration.
- e. **Expanding firm** - shall mean a BOI-registered firm involved in an activity that results in an increase of its existing volume or value of production and classified as such in its BOI Certificate of Registration.
- f. **Modernizing Firm** - shall mean a BOI-registered firm involved in retrofitting or upgrading of existing facilities to attain optimum capacities, better product quality and improved operating efficiencies and classified as such in its BOI Certificate of Registration.
- g. **Income** - refers to income earned by enterprises engaged in activities duly registered with the BOI.
- h. **Taxable Income** - refers to taxable income derived from the activities of firms duly registered with the BOI.
- i. **Date of Commercial Operation** - shall mean the date of scheduled start of commercial operation which is indicated in the firm's specific registration terms and conditions.

- j. **Date of Official Filing** – shall mean the date stamped on the application by the BOI's Record Section as recorded in its Record / Log Book for applications for incentives.

Rule III

Rules in The Availment of Income Tax Holiday

Section 1. Period of Availment. In accordance with Rule VI of the Rules and Regulations to Implement E.O. 226, new, expanding modernizing projects duly registered with BOI may avail of the ITH incentive. Period of availment shall be as follows:

1. New registered pioneer firms - 6 years from commercial operations.
2. Registered projects locating in Less Developed Areas (LDA) - 6 years from commercial operation regardless of status (pioneer or non-pioneer) or type of project (new or expansion).
3. New registered non-pioneer firms - 4 years from commercial operations.
4. Expanding firms - 3 years from commercial operations of the expansion.
5. Modernizing firms - 3 years from commercial operations of the modernization.

Section 2. Criteria for Additional Period for Availment. For new registered enterprises, the ITH incentive may be extended for an extra year for each of the following cases, but in no case to exceed the total period of eight (8) years for pioneer registered enterprises:

1. If the ratio of the total imported and domestic capital equipment to the number of workers for the project does not exceed US\$10,000 to one (1) worker.
2. If the average cost of indigenous raw materials used in the manufacture of the registered product is at least fifty (50%) percent of the total cost of raw materials for the preceding years prior to the extension unless the Board (BOI) prescribes a higher percentage.
3. If the net foreign exchange savings or earnings amount to at least US\$500,000.00 annually during the first three (3) years of operation to be determined by the Board (BOI) at the end of such three-year period: Provided, That the foreign exchange savings criterion shall apply as a general rule, to registered firms whose products are totally imported into the country at the time of registration and duly indicated as imports substituting in the firm's certificate of registration.

For purposes of availment of the bonus year/s, the registered firm shall file a letter-request to the Board (BOI) applying for the additional period and shall submit proof/s of compliance of the criterion/a above-indicated.

Section 3. Who are Required to File Application. All new and expanding enterprises registered under E.O. 226, as amended by RA 7918, that were issued Certificates of Entitlement by the BOI and claimed income tax exemptions in their Income Tax Returns (ITR) are required

to file their applications for ITH incentive with the Board.

Section 4. When Application Should Be Filed. Applications for ITH shall be filed in the prescribed form within thirty (30) days from the date of filing of the annual ITR with the BIR or from the last day prescribed by law for the filing of the ITR, whichever comes later.

For enterprises which filed tentative ITRs, the application shall be filed within thirty (30) days from the filing of the final ITR or within thirty (30) days after the lapse of the three (3) year period within which to file the final ITR.

Section 5. Conditions for the Availment of Income Tax Holiday.

1. In general, new, expanding and modernizing enterprises registered under E.O. 226, as amended by RA 7918, are entitled to ITH incentives unless expressly withheld from the firm under the terms and conditions of its registration with the BOI.
2. In accordance with the locational restriction policy of the Board, only firms located outside the National Capital Region (NCR) are entitled to ITH.

Exemption from the locational restriction however may be given to the following:

- a. Projects locating in the following government industrial estates declared as such by national law or by presidential proclamation prior to 1 January 1989:
 - Dagat-Dagatan (PD 569 dated 30 Oct. 1974)
 - Vitas Industrial Estate, Tondo (EO 1086 dated 31 January 1986, as amended/expanded through Presidential proclamation No. 39 dated 9 September 1992 and Proclamation No 465 dated 1 August 1994) (Vitas Industrial Estate/Smokey Mountain)
 - Bagong Silang Industrial Estate, Caloocan City (Presidential Proc. No. 843 dated 26 July 1971)
 - FTI, Taguig (LOI 900 dated 25 July 1979)
 - Navotas Fishing Port complex (EO 772 dated 8 Feb. 1982)
- b. Projects that will engage in service-type activities.
- c. Export-oriented projects; and
- d. Other projects listed in the IPP as exempt from locational restriction

Section 6. Rate of Exemption. New enterprises shall be entitled to 100% income tax exemption on their income derived from their registered operation.

a. New firms shall be entitled to 100% income tax exemption on their income derived from their registered operation.

b. Expanding firms shall be entitled to the income tax holiday incentive only to the extent of their actual increase in production. The rate of exemption from income tax shall be computed as follows:

$$\text{Rate of Exemption} = \frac{\text{Incremental Sales of the Registered Product/Activity}}{\text{Total Sales of the Registered Product/Activity}}$$

The term "sales" as indicated in the above formula shall be expressed in volume in cases of homogeneous products and value in case of heterogeneous products.

1. **Homogeneous products** shall refer to products of the same kind or category using a common unit of measurement
2. **Heterogeneous products** shall refer to products of different kinds and characteristics as well as those of the same kind but with various categories using different units of measurement.

c. For projects without increase in capacity, the ITH rate of exemption shall be computed as follows:

1. for single product/activity

$$\text{Rate of Exemption (ROE)} = \frac{\text{New Investment (in US\$)}}{\text{Total Investments (existing + new) relative to the concerned plant (in US\$)}} \times 100$$

2. for multiple products/activities or when ITH entitlement of other products/activities has lapsed

$$\% \text{ Share to Total Sales} = \frac{\text{Sales of the Product subject of retooling}}{\text{Total Sales}} \times 100$$

$$\text{Rate of Exemption (ROE)} = \frac{\text{New Investment (in US\$)}}{\text{Total Investments (existing + new) relative to the concerned plant (in US\$)}} \times 100$$

Where:

- The ROE shall be fixed for the ITH entitlement period.
- The exchange rate shall be the existing rate at the time of actual investment
- For purposes of determining existing investments, the Total Fixed Assets relative to the concerned plant including the land on which the project is situated shall be based on the latest audited financial statements at the time of application for registration.
- The % share in Total Sales shall be based on actual sales value for the year of availment.

d. The rate of exemption of those with less than a year availment including for those with multiple registrations with the same product/activity where the period of entitlement to ITH of one registration expires within the availment year and for those whose operation ceased

during the last year of availment shall be based on audited segregated income statement subject to the condition that registered enterprises availing of ITH for less-than-a-year shall be required to submit certified true copies of the quarterly corporate income tax returns preceding the period covered by ITH.

Section 7. Penalty Provision. All applications for ITH covering the taxable year 2006 onwards, which are filed beyond the prescribed period provided in Section 4, Rule III hereof shall be meted a penalty to be computed as follows:

- a. Within the 31st and 180th day from the date of filing of the annual ITR with the BIR or from the last day prescribed by law for the filing of the ITR, whichever comes later -

Penalty = Amount of ITH x 1% but not less than ₱500.00 nor more than ₱2Million

- b. After 6 months (180 days) from the date of filing of the annual ITR with the BIR or from the last day prescribed by law for the filing of the ITR, whichever comes later

Penalty = Forfeiture of ITH for the taxable year

Rule IV

Procedural Steps in the Availment of ITH

Section 1. Documentary Requirements. Enterprises availing of the ITH incentive shall file the following documents with the Incentives Department of the BOI:

1. Two (2) sets of duly accomplished and notarized BOI application form.
2. Supporting documents:
 - a. Certificate of Entitlement
 - b. Secretary's Certificate stating the authorized signatory of the application for ITH incentive.
 - c. BOI Certificate of Registration showing ITH entitlement per terms and conditions thereof.
 - d. Income Tax Return with the following:
 - Computation of taxable income per ITR/application in case there is no detail of the reconciling items to arrive at taxable income
 - Gross interest income subjected to final tax for purposes of computing non-deductible interest expense
 - Breakdown of miscellaneous income, if any
 - e. Audited Financial Statements supported by the following schedules:
 - Audited Segregated Income Statement of registered and non-registered activity certified by external auditor
 - In case of multi-registered activities, Audited Segregated Income Statement for each of the registered activity
 - Breakdown of Miscellaneous/Other/Various Income, if different in amount per ITR
 - Details of scrap sales, if any
 - f. Duly accomplished Cost Benefit Analysis Data form
 - g. Summary of sales, in volume and value, made during the taxable year.

Export sales should include values in US\$ and in Pesos and the exchange rates used

- h. List of stockholders
- i. Statement of Management Responsibility
- j. SSS Certificate of Good Standing (if required)
- k. Compliance with other conditions for entitlement to ITH under general/specific terms and conditions of registration
- l. For Less Than A Year Availment – in addition to requirements (a) to (g)
 - Audited Segregated Income Statement segregating period still entitled to ITH from period no longer entitled to ITH
 - Certified true copies of Quarterly Corporate Income Tax Returns for Period Covered by ITH
- m. For First Time Availors – In addition to requirements (a) to (k)
 - BOI Certificate of Registration with terms and conditions
 - Certificate of Registration with BIR
 - Sworn Statement as to actual start of commercial operation of registered activity to be signed by the President/Owner.

Section 2. Procedural Steps. Enterprises availing of the ITH incentive shall observe the following procedural steps:

1. The applicant enterprise shall secure a Certificate of ITH Entitlement (CE) from the BOI before filing the ITR with the BIR.
2. The applicant enterprise shall file the ITR with BOI-issued CE and ITH claim to the BIR. For large taxpayers filing on-line, submission of CE shall be done manually. Date of filing of ITR if done on-line shall be the date of e-filing.
3. Within thirty (30) days from the date of filing of the annual ITR with the BIR or from the last day prescribed by law for the filing of the ITR, whichever comes later, applicant enterprise shall file with the BOI duly-accomplished application form together with all the supporting documents enumerated under the preceding Section.
4. The staff of the Incentives Department of the BOI checklists and/or pre-evaluates the application as to the applicant's eligibility and completeness of documents. Application being filed after six (6) months (180 days) from the date of filing of the annual ITR with the BIR or from the last day prescribed by law for the filing of the ITR, whichever comes later, or without the Certificate of Entitlement shall not be accepted and the BIR shall be informed of the forfeiture of the ITH incentive for the taxable year.
5. Stamping shall be done by the Incentives Department (ID) of the BOI with "OK FOR ACCEPTANCE" for applications with complete documents or with "FOR PROVISIONAL ACCEPTANCE" for applications with incomplete documents that have submitted at least a basic application with ITR, CE and AFS and a notarized undertaking to submit deficiencies within fifteen (15) working days from date of provisional acceptance. Deficiencies not submitted within six (6) months (180 days) from the date of filing of the annual ITR with the BIR or from the last day prescribed by law for the filing of the ITR, whichever comes later, shall mean the

forfeiture of the ITH incentive for the taxable year.

6. The staff of the Incentives Department's Director shall issue the Order of Payment for the filing fee. The official filing of the application shall be done at the Records Section of the BOI after paying the corresponding filing fee. BOI's Record Section stamps the Date of Official Filing and the Application Number on the application and transmits it to the BOI's Incentives Department.
7. Within one year from receipt of the application/s, the BOI shall process, review and endorse to the Assessment Service of the BIR National Office, copy furnished the concerned Revenue District Office, all applications for ITH incentive, including dockets bearing on the evaluation thereof, financial statements, schedules and supporting documents attached thereto.
8. The staff of the Incentives Department of the BOI shall evaluate the application and notify applicant of any problems/issues encountered during evaluation process. The applicant shall be given a deadline to comply with the additional requirements, if any. In the event an ITH application cannot be processed and evaluated within the prescribed one-year period due to policy and/or legal issues, the BOI shall immediately inform the BIR within one (1) month after the end of the said one-year period so as not to prejudice the duty of the latter to make an assessment within the three (3)-year period prescribed under Section 203 of the Tax Reform Act of 1997.
9. The staff shall prepare an evaluation report showing the firm's eligibility to avail of the ITH incentive, its rate of exemption and the actual amount of income tax exemption for approval and signature of the Incentives Department Director.
10. The evaluation report shall be presented to the TSG Executive Director for approval and then to the Board of Governors for confirmation.
11. The Incentives Department shall prepare an endorsement to the Assessment Service (Main Office) of the BIR signed by the BOI Executive Director and a letter of advice to the registered enterprise signed by the BOI Incentives Department Director informing them of the BOI's action on the firm's ITH application.
12. The letter of advice to the registered enterprises shall be released to the Records Section for mailing or for pick-up by the proponent while the endorsement to the BIR including a complete set of application and evaluation report shall only be released to the Records Section of the BOI for delivery/ mailing to the BIR Office after compliance with prior release requirements such as submission of reports, proof of payment of issuance fee, etc. The firm shall be furnished a copy of such endorsement.
13. Prior to the end of the prescriptive period provided under Section 203 of RA No. 8424, the BIR, through the Assessment Service in the BIR National Office, shall post-audit/review the dockets bearing on ITH incentive availment endorsed by the BOI.
14. If any deficiency tax assessment arises from the post-audit/review, the Assessment Service shall transmit its findings and the corresponding dockets to

the concerned RDOs who shall enforce the immediate collection thereof, including increments accruing thereon.

15. The BIR shall defer issuance of Letter of Authority (LOA)/ Letter Notice (LN)/ Tax Verification Notice (TVN) to applicant enterprises whose operations are 100% registered with the BOI/BOI-ARMM, until after the completion of BOI evaluation of ITH application but not to exceed one and a half (1 1/2) years from the last day prescribed by law for the filing of the annual ITR.

However, for applicant enterprises, with mixed operations (i.e., registered and unregistered activities), the above deferment shall only be for one (1) year from the last day prescribed by law for the filing of the annual ITR.

Applicant enterprises described above may be entitled to the above deferment, except those falling under any of the following instances:

- a. Cases handled by the BIR under the Run After Tax Evader (RATE) Program;
- b. Persons under investigation as a result of verified information filed by a Tax Informer under Section 282 of the NIRC, duly processed and recorded in the BIR Official Registry Book;
- c. Cases involving claims for tax refund; and
- d. Cases in which Letter Notices (LNs) were issued, where the discrepancy in sales exceeds 30% of sales of base year or the discrepancy in purchases exceeds 30% of the purchases of the base year.

Rule V

Repeal/Effectivity Clause

Section 1. Amendment, Modification and/or Repeal. The BOI has the power and authority to amend, modify and/or repeal any of the provisions of the Rules and Regulations on the Availment of Income Tax Holiday Incentive.

Section 2. Effectivity. The foregoing Rules and Regulations shall take effect immediately.