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Dear :

This responds to the request by Taxpayer, dated Date 1 for relief under § 301.9100-3 of the Procedure and Administration Regulations to file Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Internal Revenue Service (Service) grant to Taxpayer an extension of time to make an election under § 1400Z-2 of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to self-certify Taxpayer as a Qualified Opportunity Fund (QOF), effective as of Date 2.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer is a limited partnership that was formed under the law of State A on Date 3. GP is Taxpayer's general partner and there are N1 limited partners who hold ownership interests in Taxpayer proportionate to their contributions to Taxpayer. Individual Manager is the manager of GP.

Section N2 of Taxpayer's operating agreement provides that Taxpayer was formed in order to invest in and hold at least N3% of its assets in qualified opportunity zone property, as required by § 1400Z-2(d)(1) & (2) and the implementing regulations. Section N4 of Taxpayer's operating agreement states that each partner acknowledges and agrees that the partnership is intended to meet the requirements to be a QOF pursuant to § 1400Z-2 and related regulations. The operating agreement further authorizes Taxpayer to hold limited partnership interests in qualified opportunity zone business interests, and manage, supervise and dispose of the qualified opportunity zone business interests.

Taxpayer's sole asset is an interest in QOZB LP which was formed to acquire land and develop real estate in a qualified opportunity zone in City, State B. Beginning on Date 4, the partners of Taxpayer began investing eligible gains into Taxpayer and, as of the end of Year 1, partners invested \$N5 in Taxpayer. Taxpayer invested the monies in QOZB LP, which in turn developed real property located in a qualified opportunity zone.

The partners of Taxpayer retained Accounting Firm to assist in the structuring of Taxpayer. Accounting Firm was also retained to handle the tax filings of a number of business entities related to Taxpayer, including GP and QOZB, all of which have names that begin with ABBR (the "ABBR Entities"). At the time of Taxpayer's formation and funding, Individual Manager had conversations with AP1, an accountant-partner at Accounting Firm, about two qualified opportunity funds, including Taxpayer. AP1 may have informed Individual Manager that Accounting Firm would be handling the tax filing for Taxpayer. Individual manager relied upon Accounting Firm and the representations

of AP1 respecting the filings required to be made with the Service so that Taxpayer would meet the requirements to be a QOF. Taxpayer, GP and QOZB did not employ any accountant, law firm or preparer other than Accounting Firm to perform tax filings.

AP1 terminated his relationship with Accounting Firm in Month 1, Year 2 and began working for a different firm. AP2, an accountant-partner from Accounting Firm, was assigned to assist with the tax filings of the ABBR Entities in late Month 2, Year 2, which was after the deadline for filing partnership returns for Year 1. C1, the controller of H and acting on behalf of Taxpayer and other ABBR Entities, sent to AP2 a list of the business entities for which tax returns would need to be filed. Subsequently, during Month 3, Year 2 when preparing to perform tax filings for a number of entities, AP2 learned of Taxpayer's existence.

On or about Date 5, AP2 realized that Taxpayer had not requested an extension of time to file a Form 1065, *U.S. Partnership Return of Income*, for Year 1. As a result, no Form 8996 was filed for Taxpayer for Year 1, with the result that Taxpayer was not self-certified as a QOF for the month and year during which partners began investing gains into Taxpayer. AP2 promptly notified Individual Manager of the error. During Month 3, Year 2 Individual Manager was advised that a timely filed Form 1065 was required in order for Taxpayer to be self-certified as a QOF. Individual Manager consulted with Accounting Firm respecting the remedial measures available for self-certifying Taxpayer as a QOF and was advised to file a request for a private letter ruling and request relief pursuant to § 9100 of the Procedure and Administration Regulations.

On Date 6 Taxpayer filed with the Service a Form 1065 to which a Form 8996 was attached for Year 1. Taxpayer represents that the Service has not notified Taxpayer of its failure to self-certify itself as a QOF for Year 1.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations provides the rules for an entity to self-certify as a QOF. Section 1.1400Z2(d)-1(a)(2)(i) provides that the entity electing to be certified as a QOF must do so annually on a timely filed return in such form and manner as may be prescribed by the Commissioner of Internal Revenue in the forms or instructions, or in publications or guidance of the Service, published in the Internal Revenue Bulletin.

To self-certify as a QOF, a taxpayer must file Form 8996 with its tax return for the year to which the certification applies. The Form 8996 must be filed by the due date of the tax return (including extensions).

Because § 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for an entity to self-certify as a QOF, these elections are regulatory elections, as defined in § 301.9100-1(b)

of the Procedure and Administration Regulations.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections, other than automatic extensions covered in § 301.9100-2, will be granted when the taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and the grant of relief will not prejudice the interests of the Government.

Under § 301.9100-3(b) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for an election. A taxpayer may alternatively demonstrate good faith actions if he reasonably relies on a qualified tax professional and the professional failed to make, or advise the taxpayer to make, the election.

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was informed in all material respects of the required election and related tax consequences but chose not to make the election; or
- (iii) uses hindsight in requesting relief. If specific facts have changed since the original deadline that make the election advantageous to a taxpayer, the Service will not ordinarily grant relief.

Section 301.9100-3(c)(1) of the Procedure and Administration Regulations provides that the Commissioner will grant a reasonable extension of time to make the regulatory election only when the interests of the Government will not be prejudiced by the granting of relief.

Section 301.9100-3(c)(1)(i) of the Procedure and Administration Regulations provides that the interests of the Government are prejudiced if granting relief would result in a taxpayer having a lower tax liability in the aggregate for all taxable years affected by the election than the taxpayer would have had if the election had been timely made (taking

into account the time value of money).

Section 301.9100-3(c)(1)(ii) of the Procedure and Administration Regulations provides that the interests of the Government are ordinarily prejudiced if the taxable year in which the regulatory election should have been made or any taxable year that would have been affected by the election had it been timely made are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the facts and information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief. Consequently, the Form 8996 attached to Taxpayer's return for Year 1, filed with the Service on or about Date 6 is considered timely filed and Taxpayer has thereby made the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF as of Date 2. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns along with a cover letter requesting that the Service associate this ruling with the Year 1 return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z2(a)-1(b)(34) of the Income Tax Regulations or whether Taxpayer meets the requirements under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. We express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or regulations that may be applicable, or regarding the tax treatment of any conditions existing at the time of, or effects resulting from, the instant transaction.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by

an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: