



Month 2 =

Year 1 =

Dear :

This letter responds to Taxpayer's request dated Date 4, seeking relief to make a late regulatory election pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to make an election to: (1) self-certify Taxpayer as a Qualified Opportunity Fund ("QOF") as defined in section 1400Z-2(d) of the Internal Revenue Code ("Code"); and (2) for Taxpayer to be treated as a QOF, effective as of the month Taxpayer was formed, as provided under section 1400Z-2 of the Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations.<sup>1</sup>

#### FACTS

According to the representations and information provided, Taxpayer was organized as a limited liability company on Date 1 under the laws of State and is classified as a partnership for Federal income tax purposes. Taxpayer employs the cash method of accounting and uses a calendar yearend. Taxpayer was organized for the purpose of being a QOF and to invest in qualified opportunity zone property as defined in § 1400Z-2(d)(2). Taxpayer is owned by Member A and Member B (collectively referred to as "Members").

During Month 1 of Year 1, Members approached Advisor about forming and investing in a QOF. Advisor discussed various requirements for a partnership to be a QOF. Shortly thereafter, Taxpayer was formed. During Month 2 of Year 1, Taxpayer purchased property within a qualified opportunity zone, which is Taxpayer's only asset.

The Members were responsible for preparing and filing Taxpayer's Federal income tax returns. Due to intervening events beyond Members' control, Member did not timely file Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, nor did Members timely request an extension on Form 7004, *Application for Automatic Extension of Time to File Certain Business, Income Tax, Information, and Other Returns*, for the year. As a result, Members failed to file a timely Form 8996, *Qualified Opportunity Fund*, to self-certify Taxpayer as a QOF for Year 1.

On Date 3, Members consulted with Advisor regarding the late filing of Taxpayer's Year 1 Form 1065. Advisor informed Members that in order for Taxpayer to have self-certified as a QOF for Year 1, a completed Form 8996 should have been attached to Taxpayer's Year 1 Form 1065 and filed by Date 2, or a timely extension should have been obtained.

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<sup>1</sup> Unless otherwise specified, all "section" references are to sections of the Internal Revenue Code, 26 U.S.C., or the Treasury Regulations, 26 C.F.R. pt. 1 or 26 C.F.R. pt. 301.

As recommended by Advisor, Members promptly engaged Firm to prepare Taxpayer's late Year 1 Form 1065 and a private letter ruling request seeking an extension to self-certify Taxpayer as a QOF.

## LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treas. Reg. § 1.1400Z2(d)-1(a)(2)(i) provides that the self-certification of a QOF must be timely-filed and effectuated annually in such form and manner as may be prescribed by the Commissioner of Internal Revenue in the Internal Revenue Service forms or instructions, or in publications or guidance 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). The information provided indicates that Taxpayer did not file its Form 8996 by the due date of its Year 1 income tax return due to intervening events beyond Members' control.

Sections 301.9100-1 through 301.9100-3 provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for an entity to self-certify as a QOF. As such these elections are regulatory elections, as defined in § 301.9100-1(b).

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes 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 granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

- (i) requests relief before the failure to make the regulatory election is discovered by the Internal Revenue Service (Service);
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Service; or

(v) reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

In addition, § 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonably and in good faith if the taxpayer—

(i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;

(ii) was fully 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) 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) 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) 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

## CONCLUSION

Based on the information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make the election to self-certify as a QOF under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996 and attached to Taxpayer's Year 1 original or amended tax return or to Taxpayer's administrative-adjustment request (as applicable).

This ruling is based upon the representations made and information submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. However, as part of an examination process, the Service may verify the information, representations, and other data submitted.

This ruling addresses the granting of relief under § 301.9100-3 as applied to the election to self-certify Taxpayer as a QOF by filing Form 8996 for Year 1. Specifically, we have no opinion, either expressed or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z2(a)-1(b)(34) or whether, at any time, Taxpayer met or meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. In addition, 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. Further, we have no opinion, either expressed or implied, as to the tax consequences of the late filing of Taxpayer's Form 1065 for Year 1.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representation*, on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Alexa T. Dubert  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: