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Dear :

This letter responds to Taxpayer's request for a letter ruling dated Date 1. Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3<sup>1</sup> for an extension of time to self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d), effective as of Month 1, the first month in which Taxpayer intended to be a QOF.

### FACTS

According to the information and representations provided, Taxpayer is a limited liability company organized under the laws of State on Date 2. Taxpayer is classified as a partnership for U.S. Federal income tax purposes. Taxpayer has provisions in its operating agreement that state that the purpose of Taxpayer is to invest exclusively in equity investments in qualified opportunity zone property as a QOF and to meet all the requirements for self-certification as a QOF on or before the first QOF testing date and to maintain that status for so long as is necessary to allow the members to obtain the federal income tax benefits of investing in a QOF. Taxpayer's annual accounting period is the calendar year and uses the overall cash method of accounting.

Taxpayer represents that LLC was organized under the laws of State on Date 2, as a limited liability company for the purposes of being a qualified opportunity zone business and is treated as a partnership for U.S. Federal income tax purposes. Taxpayer represents that on Date 3, Taxpayer contributed cash to LLC in exchange for a Y percent membership interest in LLC.

Manager is the fund manager of the managing member of Taxpayer. Taxpayer represents that Tax Return Preparer has had a business relationship with Manager for X years and prepared returns for entities related to Taxpayer for several years. Taxpayer represents that in late Year 1 or early Year 2, CFO, Taxpayer's chief financial officer and chief compliance officer, informed Tax Return Preparer that Taxpayer had been formed in Year 1 but that there would be no activity or investments until Year 2, so Tax Return Preparer believed that Taxpayer would not be required to file Form 1065, *U.S. Return of Partnership Income*, for the Year 1 tax year. However, Taxpayer represents that after the due date for its Year 1 Form 1065, Date 4, Taxpayer's accounting department discovered and promptly informed Tax Return Preparer that eligible gains had been contributed into Taxpayer in Month 1. Taxpayer represents that Tax Return Preparer then promptly informed Taxpayer that it was required to file a Year

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<sup>1</sup> Unless otherwise specified, all "section" references are to sections of the Internal Revenue Code (Code) and all "§" references to sections of the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301).

1 Form 1065 and attach Form 8996, *Qualified Opportunity Fund*, to be certified as a QOF effective Month 1. Taxpayer represents that upon learning of the filing requirements, Taxpayer immediately engaged Tax Return Preparer to prepare and file the forms. Taxpayer represents that its Year 1 Form 1065 was filed late approximately on Date 5, with Form 8996 attached indicating that Taxpayer was self-certifying as a QOF beginning with Month 1.

Taxpayer represents that to the best of its knowledge, this request for relief under § 301.9100-3 was submitted before the failure to timely make the election to self-certify as a QOF was discovered by the Service. Taxpayer further represents that the granting of the relief under § 301.9100-3 will not prejudice the interests of the Government under § 301.9100-3(c)(1) because the tax liability of Taxpayer will be the same if the relief is granted as if the election had been timely made.

#### LAW

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2)(i) of the regulations 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. The Form 8996 Instructions published pursuant to these regulations specify that to self-certify as a QOF, a taxpayer must file Form 8996 with its tax return for the year to which the certification applies by the due date of the tax return (including extensions).

Section 301.9100-3(a) of the regulations 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.

Section 301.9100-3(b)(1) of the regulations 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 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) of the 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 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).

#### CONCLUSION

Based on the facts and information submitted, including the affidavits and representations made under penalties of perjury, 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. Consequently, the Form 8996 attached to Taxpayer's return for Year 1, filed approximately on Date 5, is considered timely filed, and Taxpayer has thereby made the election under section 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF as of Month 1. 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.

#### CAVEATS

The granting of an extension of time in this ruling letter is not a determination that Taxpayer is otherwise eligible to self-certify as a QOF. See § 301.9100-1(a).

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by the appropriate parties. 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 factual information, representations, and other data submitted.

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) or whether Taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. Furthermore, we also express no opinion on whether any interest owned by Taxpayer qualifies as qualified opportunity zone property, as defined in section 1400Z(d)(2), or whether such interest would be treated as a qualified opportunity zone business, as defined in section 1400Z-2(d)(3). 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) 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 section 6110.

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. Taxpayers that have previously filed a return or administrative adjustment requests attaching Form 8996 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 previous filing(s).

Pursuant to the Form 2848, *Power of Attorney and Declaration of Representative*, on file, we are sending a copy of this letter to Taxpayer's authorized representatives.

Sincerely,

Dominic DiMattia  
Senior Technician Reviewer, Branch 8  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

cc: