

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B04  
PLR-107131-22

Date:  
September 29, 2022

Taxpayer =  
Manager =  
CPA Firm =  
State =  
Date 1 =  
Date 2 =  
Date 3 =  
Year 1 =  
Year 2 =

Dear :

This responds to Taxpayer’s request dated Date 1, seeking a private letter ruling granting relief to make a late regulatory election pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 8996, *Qualified Opportunity Fund*, to (1) self-certify the Taxpayer as a Qualified Opportunity Fund (QOF) defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) for the Taxpayer to be treated as a QOF, effective as of the month the Taxpayer was formed, as provided under Code § 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a).

**FACTS**

Taxpayer was organized as a limited liability company on Date 2 under the laws of State and is classified as a partnership for federal income tax purposes. As stated in Taxpayer’s LLC agreement, Taxpayer was organized for the purpose of investing in qualified opportunity zone property as defined in § 1400Z-2(d)(2). Taxpayer is owned by two members. One of the members is Manager.

Taxpayer uses CPA Firm for financial advisory and tax services. CPA Firm was engaged by Manager to provide advice regarding Taxpayer's investments and the possibility of investing into a QOF, as well as tax compliance services for Taxpayer for Year 1. The scope of the engagement included the preparation and filing of Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, as well as Form 8996, *Qualified Opportunity Fund*, to self-certify Taxpayer as a QOF. Due to CPA Firm's miscommunication and beyond Taxpayer's control, CPA Firm failed to include Form 8996 with Taxpayer's Year 1 Form 1065 filed before Date 3.

CPA Firm identified the omission of Taxpayer's Year 1 Form 8996 during the initial preparation of Taxpayer's Year 2 Form 1065. Upon discovering the omission, CPA Firm notified Taxpayer, and advised them to seek this ruling, submitted on Date 1.

### LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treasury Regulation § 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, *Qualified Opportunity Fund*, 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 CPA Firm's miscommunication.

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).

Treas. Reg. §§ 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. Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treas. Reg. § 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 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.

Under Treasury Regulation § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) was fully informed of the required election and related tax consequences, but chose not to file 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 § 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 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, Taxpayer is granted 45 days from the date of this letter to file an amended Year 1 Form 1065 and accompanying Form 8996 to make an election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i) self-certifying the Taxpayer as a QOF as of the month the Taxpayer was formed.

CAVEATS

This ruling is based upon facts and representations submitted by the 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 factual information, representations, and other data submitted.

This ruling addresses the granting of Treasury Regulation § 301.9100-3 relief as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996, *Qualified Opportunity Fund*, for Year 1. Specifically, we have 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 § 1400Z-2 and the regulations thereunder to be a QOF. We also 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.

A copy of this letter must be attached to any 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. Code § 6110(k)(3) 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 Applicants' authorized representative.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859 and Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

Sincerely,

Lisa Mojiri-Azad  
Senior Technician Reviewer, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: