

**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  
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Date:  
February 22, 2023

**LEGEND**

- Taxpayer =
- Manager =
- Advisor 1 =
- Advisor 2 =
- Tax Year =
- Year 1 =
- Year 2 =
- Year 3 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Month 1 =
- Month 2 =
- Month 3 =
- State Z =

Dear :

This letter responds to Taxpayer’s request, dated Date 6, for a private letter ruling. Specifically, Taxpayer requests an extension of time, under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations,<sup>1</sup> to file Form 8996,

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

*Qualified Opportunity Fund* (QOF), for purposes of: (1) making the election, under section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations, to be certified as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d), and (2) to be treated as a QOF, effective as of the month the Taxpayer was formed, as provided under section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

## FACTS

Taxpayer has represented that the facts are as follows.

Taxpayer was organized as a limited liability company under the laws of State Z on Date 1. Taxpayer is classified as a partnership for Federal income tax purposes. Taxpayer's method of accounting is the accrual method of accounting and has a tax year end of Tax Year. Manager is the partnership representative of Taxpayer.

At the end of Year 1, Manager engaged Advisor 1 to advise Taxpayer and Advisor 2 on issues pertaining to section 1400Z-2 and related tax regulations. On Date 2, Advisor 1 informed Advisor 2 that Taxpayer must self certify as a QOF for Year 2 by filing a Form 8996 with Taxpayer's Year 2 Federal income tax return ("Year 2 Return") in order for Taxpayer to be treated as a QOF as of the month Taxpayer was formed, Month 1 of Year 2.

In Month 2 of Year 1, Manager became aware that a QOF must file a Form 8996 with its Federal income returns in order to self certify. Advisor 1 and Advisor 2 met in Year 2 to discuss the details of Taxpayer's Year 2 filing requirements and Form 8996.

Advisor 2 timely filed a Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, during Year 3 and subsequently filed Taxpayer's Year 2 Return on Date 3 but inadvertently failed to include a Form 8996 with the return.

In Month 3 of Year 3, Advisor 1 asked Advisor 2 whether Advisor 2 had filed a Form 8996 with the Taxpayer's Year 2 return. Advisor 2 reported that they had inadvertently failed to do so. Advisor 1 erroneously advised Advisor 2 that Taxpayer could rectify the failure by having Taxpayer file an amended Federal income tax return for Year 2. Pursuant to this advice from Advisor 1, Advisor 2 prepared and Taxpayer filed on Date 4 an amended Year 2 Federal income tax return, which included a Form 8996.

Taxpayer discovered around Date 5 that Taxpayer's election to be a QOF was not timely filed and promptly made this request for relief under sections 301.9100-1 and 301.9100-3.

Taxpayer represents that it relied on Advisor 2 to timely file Form 8996. Taxpayer further represents that granting of the relief under section 301.9100-3 will not result in a lower tax liability for the years affected by the election.

## LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) 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 the Taxpayer did not file a Form 8996 with its timely filed income tax return due to Advisor 2's failure to include the completed form with Taxpayer's Year 2 Return filed on Date 3.

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 301.9100-1(b) defines the term "regulatory election" as including any election, whose due date is prescribed by a regulation published in the Federal Register. Because section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for an entity to self-certify as a QOF, this election is a regulatory election within the meaning of section 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 section 301.9100-2) will be granted when 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.

However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

Under section 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 has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires 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 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) provides that the Commissioner will grant a reasonable extension of time to make a 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 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, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's late-filed Form 8996, certifying the Taxpayer as a QOF as of the month the Taxpayer was formed, will be considered timely filed provided it is received by the appropriate service center no later than 60 days from the date of this letter ruling.

This ruling is based upon facts 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 a ruling, it is subject to verification on examination.

This ruling addresses the granting of section 301.9100-3 relief as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 2. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in section 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under section 1400Z-2 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.

Pursuant to 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.

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

Sincerely,

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

cc: