

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:

In Re:

CC:ITA:B04  
PLR-122178-22

Date:  
May 09, 2023

Taxpayer =

State Z =  
Year 1 =  
Tax Year =  
Country 1 =  
Advisor  
Limited =

Firm 1 =

Firm 2 =

Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =  
Date 7 =

Dear :

This letter responds to Taxpayer’s request, dated Date 7, and supplemental correspondence. Specifically, Taxpayer requests relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer’s Form 8996, *Qualified Opportunity Fund*, filed on Date 6, to be treated as timely for the purposes of making the election: (1) to self-certify Taxpayer as a qualified opportunity fund (“QOF”),

as defined in section 1400Z-2(d) of the Internal Revenue 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 and section 1.1400Z(d)-1(a) of the Income Tax Regulations.<sup>1</sup>

## 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 and is classified as a partnership for Federal income tax purposes. Taxpayer was organized for the purpose of qualifying as a QOF and investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2). Taxpayer employs the accrual method of accounting and has a tax year-end of Tax Year.

Advisor serves as the managing director of Limited, which is based in Country 1. Limited holds a beneficial interest in Taxpayer and provides management services to Taxpayer.

Advisor and Limited struggled, due to COVID-19 travel restrictions, to hire suitable supervisory personnel to manage Taxpayer's financial and tax activities in the United States. Advisor and Limited were aware of the necessity for Taxpayer to timely file Form 1065, *U.S. Return of Partnership Income*, along with a Form 8996, for Year 1 ("Year 1 Return") and had intended to engage an accounting firm, to properly extend the due date of Taxpayer's Year 1 Return.

Advisor and Limited, however, mistakenly believed that Taxpayer's Year 1 Return and Form 8996 were due on Date 4 rather than on Date 2. Based on this mistaken belief, Advisor and Limited engaged Firm 1 on Date 3 to file, on Taxpayer's behalf, a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for Year 1.

Shortly before Date 5, Advisor learned of the missed filing deadline when engaging Firm 2 to replace Firm 1 as Taxpayer's tax preparer. On Date 5, Advisor engaged Firm 2 to prepare and file Taxpayer's Year 1 Return, along with a Form 8996, which Firm 2 did on Date 6. Shortly thereafter, Advisor engaged Firm 2 to prepare this request seeking relief under sections 301.9100-1 and 301.9100-3.

## LAW AND ANALYSIS

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) 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

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<sup>1</sup> Hereinafter, all references to sections are to the Internal Revenue Code, (Code), or the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301) as applicable.

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 timely file its Form 8996 due to the mistaken belief of Advisor and Limited as to the filing deadline for Taxpayer's Year 1 Return.

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. Section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for electing to be a QOF and electing to self-certify as a QOF. As such, these elections are regulatory elections, as defined in section 301.9100-1(b)(1).

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.

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.

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. The Form 8996, attached to Taxpayer's Year 1 Return and filed on 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 for Year 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.

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

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 1. Specifically, we have no opinion, either expressed 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) 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.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representative* on file with this office, we are sending an electronic copy of this letter to your authorized representatives.

Sincerely,

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

cc: