

**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:B08  
PLR-122976-22

Date:  
May 16, 2023

TY:

Taxpayer	=
Individual Manager	=
Tax Advisor	=
GP	=
LP	=
Tax Advisor Firm	=
State	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Month 1	=
Year 1	=
Year 2	=

Dear :

This responds to the request dated Date 1 by Taxpayer for relief pursuant to § 301.9100-3 of the Procedure and Administration Regulations to file Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Internal Revenue Service (Service) grant to Taxpayer an extension of time to make an election under § 1400Z-2 of the Internal Revenue Code (Code) and §1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to self-certify Taxpayer as a Qualified Opportunity Fund (QOF) and for Taxpayer to be treated as a QOF, effective as of Month 1 in Year 1.

**FACTS**

The submission, which includes affidavits, reflects the following facts.

Taxpayer, a limited partnership treated as a partnership for federal income tax purposes, was formed on Date 2 pursuant to the laws of State. Taxpayer employs the cash basis method of accounting and has a calendar year-end. Individual Manager is the manager of GP, the general partner of Taxpayer and the partnership tax representative of Taxpayer. LP is a limited partner in Taxpayer.

Individual Manager engaged the services of Tax Advisor Firm, which was responsible for the tax filings of Taxpayer from its formation and ending after Year 1. Individual Manager retained Tax Advisor Firm because of the qualifications of the professionals at the firm and their exhibited competence in tax, accounting and advisory services. Individual Manager relied upon Tax Advisor Firm to make or file the election required in order that Taxpayer be classified as a QOF.

The submission also includes an affidavit from Tax Advisor, a partner at Tax Advisor Firm, who served as Taxpayer's certified public accountant and tax advisor for Year 1 and Year 2. Tax Advisor was informed that Taxpayer was intended to be certified as a QOF. Tax Advisor learned of such intention through discussions, the filings of members of Taxpayer for Year 1, and email correspondence.

Taxpayer's submission to this office includes a copy of an email dated Date 3, in which Tax Advisor asked Individual Manager if an investment was made in a QOF. On the same date Individual Manager responded to Tax Advisor via email, noting that a number of new business entities were created and ". . . this QOF needed to be a regarded entity."

Tax Advisor relied upon § 1.6031(a)-1(a)(3) of the Income Tax Regulations, which states that a partnership that has no income, deductions, or credits for federal income tax purposes for a year need not file a return, as the basis for not filing a Form 1065 and Form 8996 to self-certify Taxpayer as a QOF for Year 1. Tax Advisor's decision to not file, or recommend that Taxpayer file, a Form 1065 for Year 1 ignored the Service's *Instructions for Form 1065* for Year 1, which indicate that a partnership self-certifying itself as a QOF is required to file a Form 1065 and attach Form 8996, even if the entity had no income or deductions for the year.

On Date 4 the Service sent to LP a notice, specifically Letter 6502, indicating that the taxpayer identification number (TIN) of the entity listed in LP's Form 8997, *Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments*, for Year 1 was not associated with a self-certified QOF in the Service's records.

Taxpayer represents that it is subject to the centralized partnership audit regime under sections 6221-35 of the Code for Taxpayer's taxable year ending Year 1.

#### LAW AND ANALYSIS

Section 1400Z2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to

carry out the statute's purposes, including rules for the certification of QOFs. Section 1.1400Z2(d)1(a)(2) of the Income Tax Regulations provides the rules for an entity to self-certify as a QOF. Section 1.1400Z2(d)-1(a)(2)(i) provides that an entity electing to be certified as a QOF must do so annually on a timely filed return in such form and manner as may be prescribed by the Commissioner of Internal Revenue in the forms or instructions, or in publications or guidance of the Service, 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 Tax Advisor did not file Taxpayer's Form 1065 or Form 8996 due to a mistaken belief that a return was not necessary for Taxpayer's initial year if the partnership had no economic activity.

Because § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations 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) of the Procedure and Administration Regulations.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations provide the standards that the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-3(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.

Under § 301.9100-3(b)(1)(v) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if he reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election.

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits 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 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 Procedure and Administration 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 Procedure and Administration 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).

Section 301.9100-3(c)(1)(ii) of the Procedure and Administration Regulations 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 will not prejudice the interests of the Government. Taxpayer reasonably relied on a qualified tax professional who failed to prepare and include a Form 8996 for filing with the Taxpayer's Year 1 Form 1065. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief.

Consequently, Taxpayer is afforded a period of sixty (60) days from the date of this letter to file a return for Year 1 and attach to it a completed Form 8996, such that the Taxpayer can make the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Month 1 of Year 1. Taxpayer should include a copy of this letter ruling with the return filed at the Service Center where Taxpayer files its returns.

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) of the Income Tax Regulations or whether Taxpayer meets the requirements under § 1400Z-2 of the Code 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

The rulings contained in this letter are based upon information 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 rulings, it is subject to verification on examination.

Sincerely,

Erika C. Reigle  
Senior Technician Reviewer, Branch 8  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: