

**Internal Revenue Service**

Department of the Treasury  
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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:ITA:B05  
PLR-100330-23

Date:  
June 28, 2023

Legend:

- Taxpayer =
- Date 1 =
- State =
- Date 2 =
- Month =
- Investor 1 =
- Investor 2 =
- Date 3 =
- Year 1 =
- Year 2 =
- Year 3 =
- Accounting Firm =
- Year 4 =

Dear \_\_\_\_\_ :

This ruling responds to Taxpayer’s request dated Date 1. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, granting an extension of time to make a timely election under § 1.1400Z2(a)-1(a)(2)(i) of the Income Tax Regulations to self-certify as a Qualified Opportunity Fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code). Taxpayer also requests to be treated as a QOF, effective as of Month Year 1 when Taxpayer was formed and subsequently funded, as provided under § 1400Z-2(d) of the Code and § 1.1400Z2(d)-1(a) of the Income Tax Regulations.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859.

## FACTS

Taxpayer is a limited liability company organized under the laws of State on Date 2. Taxpayer is treated as a partnership for Federal income tax purposes. Taxpayer is on the cash method of accounting and has a tax year end of Month.

Taxpayer was formed for the purpose of operating as a Qualified Opportunity Fund as defined in § 1400Z-2(d)(1). Investor 1 and Investor 2 invested capital gains into Taxpayer on Date 3. They indicated the investment on a Forms 8997, *Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments*, filed for Year 1, Year 2, and Year 3.

Taxpayer engaged Accounting Firm to prepare and file its income tax returns. Accounting Firm had provided services for the owners and affiliates of Taxpayer since at least Year 4. Taxpayer considered Accounting Firm to be competent in handling Federal income tax matters, including the preparing and filing of Federal income tax returns and QOF self-certifications. However, Accounting Firm failed to file Taxpayer's Year 1 Federal income tax return with an attached Form 8996, *Qualified Opportunity Fund*. Taxpayer had no activity in Year 1 and was funded at the end of the year. Accounting Firm thought Form 8996 for Taxpayer would only be required with a tax return filing, based on § 1.6031(a)-1(a)(3) and their reading of the instructions to Form 8996. Accordingly, Taxpayer failed to file Form 8996 and Form 1065, *U.S. Return of Partnership Income*, for Year 1.

## LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Internal Revenue Code directs the Secretary to prescribe regulations for 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 the 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 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 income tax return due to the Accounting Firm's mistaken understanding that filing a Form 8996 was not necessary for the short period in Year 1 during which Taxpayer was formed and funded, with no activity taking place.

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 section 301.9100-1(b).

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 301.9100-3(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) a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax 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.

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 § 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) 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. Taxpayer reasonably relied on a qualified tax professional who failed to file Taxpayer's Year 1 Form 8996 or advise Taxpayer to file the Form 8996. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make the election to self-certify as a QOF under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996 attached to the Taxpayer's tax return. This letter ruling grants an extension of time to file a Year 1 Form 8996. This letter ruling does not grant an extension of time to file Taxpayer's Year 1 Form 1065.

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.

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 § 1400Z-2 and the regulations thereunder to be a QOF.

Further, we express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in section 1400Z-2(d)(2), or whether such entity 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) of the Code provides that it may not be used or cited as precedent.

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.

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

Sincerely,

Amy J. Pfalzgraf  
Branch Chief, Branch 5  
(Income Tax & Accounting)

cc: