

**Internal Revenue Service**

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04

PLR-101321-23

Date:

June 28, 2023

**LEGEND**

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Year 1 =

X =

Y =

Z =

Member A =

Member B =

Member C =

Advisor =

Dear :

This letter responds to Taxpayer's request dated Date 7. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3<sup>1</sup> for Taxpayer's Form 8996, *Qualified Opportunity Fund*, as filed before Date 5, to be treated as timely for purposes of the election: (1) to self-certify the Taxpayer as a qualified opportunity fund (QOF), as defined in § 1400Z-2(d); and (2) for the Taxpayer to be treated as a QOF, effective as of Date 2, as provided under § 1400Z-2 and § 1.1400Z2(d)-1(a).

## FACTS

According to the information and representations provided, Member A, Member B, and Member C (collectively, Members) formed Taxpayer, a limited liability company classified as a partnership for federal tax purposes, on Date 1 for the purposes of being a QOF and to make investments in qualified opportunity zone property. At the end of Year 1, Member A owned a X percent interest, Member B owned a Y percent interest, and Member C owned a Z percent interest in Taxpayer.

Taxpayer represents that it intended to self-certify as a QOF by filing Form 8996 with its first tax return for the Year 1 tax year. Taxpayer, a calendar year taxpayer, was required to file its Form 1065, *U.S. Return of Partnership Income*, for the Year 1 tax year on Date 4. On Date 3, Members engaged Advisor to provide services related to the structure of Taxpayer as a QOF and to handle the tax filings for Taxpayer. Based on previous communications between Members and Advisor, Member A relied on Advisor to file a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*, for its Year 1 tax year. However, Advisor failed to input Taxpayer into Advisor's internal system used to track all tax return filings. As such, Advisor did not file Taxpayer's Year 1 return, nor did it request an extension to file, by Date 4. Despite this, Taxpayer filed its Year 1 return with Form 8996 attached before Date 5, the date that Taxpayer's Year 1 return would have been due if a Form 7004 had been properly filed.

On Date 6, Member A received notice from the Internal Revenue Service that Taxpayer's Form 1065 for its Year 1 tax year had not been filed on time. Member A then contacted Advisor to inquire about the status of its Year 1 return. Advisor

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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).

discovered that it had not filed an extension to file Taxpayer's Year 1 return. Member A proceeded to engage Advisor to prepare this private letter ruling request.

### 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)(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 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 its Form 8996 by the due date of its Year 1 income tax return due to Member A's reliance on and Advisor's failure to request an automatic extension.

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 § 301.9100-1(b).

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (automatic extensions) must be made under the rules of § 301.9100-3.

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 301.9100-3(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.

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.

## CONCLUSION

Based on the facts and information submitted and the representations made, we conclude that Taxpayer's request for an extension of time to elect to be a QOF and to self-certify as a QOF is a regulatory election governed by § 301.9100-3. We further conclude that, based on the facts and information submitted in connection with this request, 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 Form 8996, filed before Date 5, certifying the Taxpayer as a QOF as of Date 2 is considered timely filed. 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.

## CAVEATS

This ruling is based upon facts and representations submitted by the Taxpayer and accompanied by penalty of perjury statements executed by the appropriate parties. 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 § 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 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 and structure under § 1400Z-2 and the regulations thereunder to be a QOF. In addition, we also express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in § 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 Internal Revenue 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. 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 § 6110.

Pursuant to the Form 2848, Power of Attorney and Declaration of Representation, on file, we are sending a copy of this letter to Taxpayer's authorized representatives.

Sincerely,

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James Yu  
Senior Counsel, Branch 4  
Office of Chief Counsel  
(Income Tax & Accounting)

cc: