

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:  
, ID No.

Telephone Number:

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CC:ITA:B04  
PLR-102154-23

Date:  
July 10, 2023

Legend

Taxpayer =  
Financial Advisor =  
Tax Advisor =  
Shareholder =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Month 1 =  
Month 2 =  
Year 1 =  
State Z =

Dear :

This letter responds to Taxpayer's request dated Date 5, seeking a private letter ruling granting relief to make a late regulatory election pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 8996, *Qualified Opportunity Fund*, to (1) self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) to be treated as a QOF, effective as of the month Taxpayer was formed, as provided under section 1400Z-2(d) and Treas. Reg. § 1.1400Z2(d)-1(a).

This letter ruling is being issued electronically in accordance with Rev. Proc. 2023-1, 2023-1 I.R.B.1. A paper copy will not be mailed to Taxpayer.

## FACTS

Taxpayer, a subchapter S corporation organized as a limited liability company under the laws of State Z, was formed to be a QOF effective on Date 1 for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2). Taxpayer's shareholder, Shareholder, and Taxpayer's spouse (Spouse) engaged Financial Advisor in Month 1 to provide Shareholder and Spouse with personal financial and tax advice. Financial Advisor advised Shareholder with regard to the formation of a QOF to invest Shareholder's eligible gains. Based on this advice, Shareholder formed Taxpayer and invested a portion of his eligible gains into Taxpayer on Date 2 that Taxpayer used to purchase an interest in a partnership intended to be treated as qualified opportunity zone property.

In Month 2, Shareholder and Spouse hired Tax Advisor for the first time to prepare their jointly filed Form 1040, *U.S. Individual Income Tax Return*, for Year 1. Financial Advisor expected that Tax Advisor would handle the preparation of Taxpayer's initial Federal income tax returns, including tax elections and all related forms (including the election to self-certify Taxpayer as a QOF, and to treat Taxpayer as a QOF as of the month Taxpayer was formed).

Financial Advisor and Taxpayer provided Tax Advisor with organizational documents of Taxpayer and a Schedule K-1 issued to Taxpayer, but Tax Advisor inadvertently overlooked these documents in the process of preparing Shareholder's individual income tax returns. As a result of Tax Advisor being unaware of the existence of Taxpayer, Taxpayer timely filed neither a Form 1120-S, *U.S. Income Tax Return for an S Corporation*, nor a Form 8996, for Year 1.

On Date 3, Tax Advisor became aware of the existence of Taxpayer, and as a result, of Taxpayer's failure to timely file Form 1120-S and Form 8996 for Year 1. On Date 4, Tax Advisor late-filed Taxpayer's Year 1 Form 1120-S and Form 8996.

## LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for the certification of QOFs. Treas. Reg. § 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 Taxpayer intended to self-certify as a QOF as of the month Taxpayer was formed but did not file its Form 8996 by the due date of its income tax return.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards that the Service will use to determine whether to grant an extension of time to make a regulatory election. Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treas. Reg. § 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.

Treas. Reg. § 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.

Under Treas. Reg. § 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 could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) Was fully informed 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.

Treas. Reg. § 301.9100-3(c) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. 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.

## 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 Taxpayer as a QOF as of the month Taxpayer was formed, is considered timely filed.

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 Treas. Reg. § 301.9100-3 relief as applied to the election to self-certify Taxpayer as a QOF by filing Forms 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 Treas. Reg. § 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.

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.

Sincerely,

Stephen J. Toomey  
Senior Counsel, Branch 4  
(Income Tax & Accounting)

cc: