

taxpayer and reports income on a calendar year basis. Taxpayer is comprised of Member 1 and Member 2. Taxpayer is managed by Member 1.

Member 1 and Member 2 engaged legal counsel to assist with the formation of Taxpayer and prepare Taxpayer's operating agreement. Member 1 and Member 2 had never previously attempted to certify a QOF and were unaware that the Form 8996 had to be filed as part of a Form 1065 and not simply included as part of their personal filings as sole owners of Taxpayer. Taxpayer was required to file its initial Federal income tax return, including the Form 8996, on or before Date 3. While Member 1 and Member 2 had engaged Firm for tax compliance purposes for their personal filings, they did not consult with Firm regarding the formation of Taxpayer.

Taxpayer failed to file its Federal income tax return and Form 8996, *Qualified Opportunity Fund*, by the due date, and consequently, the election to self-certify as a QOF on the Form 8996 was not timely made. In Year 2, Member 1 and Member 2 notified Firm of their contribution into Taxpayer. Firm subsequently requested documents related to Taxpayer and discovered that Taxpayer had failed to timely file its Federal income tax return and Form 8996 by the due date.

Upon discovering that Taxpayer's Year 1 Federal income tax return and accompanying election had not been timely filed, Firm advised Taxpayer to pursue relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

Taxpayer represents that granting of the relief under § 301.9100-3 of the Procedure and Administration Regulations will not prejudice the interests of the government and will not result in a lower tax liability for the years affected by the election.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations 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 field return in 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 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 Federal income tax return (including extensions).

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 section § 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if, among other things not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or the taxpayer failed to make the election because, after exercising due diligence (taking into account the taxpayer's experience and the complexity of the issue or return), the taxpayer was unaware of the necessity for the election.

In addition, section provides that a taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) 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) 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) of the Code 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. 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 Form 8996. This letter ruling does not grant an extension of time to file Taxpayer's Form 1065.

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by all 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.

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. Further, we also express no opinion on whether any interest in any QOZB owned by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether any business 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 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,

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

cc: