

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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[Third Party Communication:  
Date of Communication: Month DD, YYYY]

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-101265-23

Date:  
July 18, 2023

Legend:

Taxpayer =  
Date 1 =  
Date 2 =  
Date 3 =  
State =  
Investor =  
Year 1 =  
X% =  
Y% =  
CPA =  
Year 2 =  
Year 3 -  
Tax Firm =

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

This letter responds to Taxpayer's request for a letter ruling dated Date 1. Taxpayer requests an extension of time to make an election 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(d)-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 Date 2, the month Taxpayer intended to become a QOF, 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 classified as a partnership for Federal tax purposes. Taxpayer has a calendar year annual accounting period.

Taxpayer was formed for the purpose of operating as a QOF as defined in § 1.1400Z-2(d)(1). Investor invested in Taxpayer shortly after its formation in Year 1. At the time of the investment, Investor owned X% of the capital and profits of Taxpayer and Investor's sister owned the remaining Y%.

Investor met with CPA in Year 2 to prepare for the filing of his Year 1 Form 1040. Investor explained to CPA that he intended to defer certain capitals gains realized by investing them into the Taxpayer, and his intention that the Taxpayer was to be a QOF. CPA filed Investor's Form 1040 for Year 1 to report the full realized gain and the amount of eligible gain deferred through investment in the intended QOF.

On Date 3, CPA filed a Form 1065 for the Taxpayer, reporting the Investor's investment into Taxpayer. However, CPA failed to file a Form 8996 with the Taxpayer's 1065, electing to treat Taxpayer as a QOF. CPA was unaware that filing Form 8996 was necessary for Taxpayer to meet the QOF requirements. Investor was also unaware of this requirement. Investor has employed CPA for personal and business return preparation for the last 30 years and relied on the knowledge and experience of CPA to correctly file all documents relating to the intended QOF.

Upon discussion with an attorney in Year 3, Investor learned that a Form 8996 should have been included with the Taxpayer's Form 1065 for Year 1. Investor spoke with CPA after these discussions, and CPA acknowledged an election should have been made by filing Form 8996. Taxpayer promptly engaged Tax Firm to assist with this ruling request.

## 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). Taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to Taxpayer's belief that CPA, having received all necessary documents and data to perform the intended services, would make all necessary filings on time.

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 § 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 section 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 relied on a qualified tax professional who failed to attach the Form 8996 to the Taxpayer's Form 1065. 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 § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996 attached to the Taxpayer's amended tax return or administrative-adjustment request (as applicable).

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 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 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 representatives.

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,

Amy Pfalzgraf  
Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

cc: