

# Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **202343023**

Release Date: 10/27/2023

Index Number: 1400Z.02-00, 9100.00-00

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B08

PLR-102502-23

Date:

July 25, 2023

## LEGEND

Taxpayer	=
State	=
Accounting Firm	=
Law Firm	=
Accountant	=
Member	=
Manager	=
Unrelated QOF	=
X%	=
Y%	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=

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

This ruling responds to Taxpayer's request for a letter ruling dated Date 1. Specifically, Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Income Tax Regulations, to (1) make a timely election under section 1.1400Z2(d)-1(a)(2)(i) to be certified as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code, and (2) for Taxpayer to be treated as a QOF, effective for its taxable year ended Date 3, effective as of the month Taxpayer formed, as provided by section 1400Z-2(d) and section 1.1400Z2(d)-1(a) of the Income Tax Regulations.

### FACTS

According to the affidavits and additional information provided to us, Taxpayer has represented that the facts are as follows. Taxpayer is a limited liability company organized under the laws of State and was formed on Date 2. Taxpayer is classified as a partnership for U.S. federal income tax purposes and was formed for the purpose of investing in qualified opportunity zone property and serving as a QOF.

Taxpayer has two members, Member and Manager. Member owns X% and Manager owns Y%. Taxpayer owns partnership interests in qualified opportunity zone businesses (QOZPI), which are managed by an unrelated manager. Taxpayer is managed by Manager. Accountant is an employee of Accounting Firm. Accounting Firm has prepared tax returns for Member since Year 4, and jointly for Member and Manager since Year 5. Accountant prepared Year 1 and Year 2 Federal income tax returns for Member and Manager.

Member invested in two QOFs, Unrelated QOF and Taxpayer. Unrelated QOF is not managed by Manager. In Year 2 and Year 3, Member received a Form K-1 from Unrelated QOF for its Year 1 and Year 2 tax years, respectively. In Year 2 and Year 3, Taxpayer received a Form K-1 for the QOZPIs owned by Taxpayer for the Year 1 and Year 2 tax years, respectively. Manager provided the foregoing Forms K-1 to Accounting Firm.

Accountant did not understand that Member made two separate investments, one in Unrelated QOF and one in Taxpayer. Accountant mistakenly believed that Member had only one investment in Taxpayer, and that a third party was filing Forms 1065, *U.S. Return of Partnership Income* and Form 8996, *Qualified Opportunity Fund* on behalf of Taxpayer. Accountant did not realize that that Manager was responsible for filing Taxpayer's Form 1065 and including Form 8996. Member and Manager believed that Accountant understood the investments and that all required reporting and filings had been made.

Accordingly, Accountant failed to timely file Form 1065 and Form 8996 on behalf of Taxpayer for Year 1 and Year 2. On Date 4, Member and Manager received letter 6502,

indicating that the employer identification number associated with Taxpayer was not associated with an entity that filed the QOF required self-certification on Form 8996. In consultation with Accounting Firm and Law Firm, Member and Manager determined that the required Forms 1065 and Forms 8996 had not been filed with respect to Taxpayer for Year 1 or Year 2. Member and Manager subsequently authorized Law Firm to file this ruling request pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

Accounting Firm filed Taxpayer's Forms 1065 with an attached Form 8996 for Year 1 and Year 2 on Date 5. Accounting Firm filed administrative adjustment requests with respect to those years for Taxpayer on Date 6, to correct a mistake regarding Member's and Manager's respective ownership percentages of Taxpayer.

Taxpayer represents that granting of the relief under section 301.9100-3 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 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, 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 1065 and Form 8996 by the due date of its Federal income tax return (including extensions) due to misunderstanding about who had the responsibility to file the return.

Because section 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 section 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 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, section 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 section 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. Consequently, the Form 8996

attached to Taxpayer's return for Year 1, filed Date 5, is considered timely filed, and 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.

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 section 1.1400Z2(a)–1(b)(34) or whether the 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 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,

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

PLR-102502-23

6

CC: