

**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-108280-23

Date:

September 26, 2023

Re:

Taxpayer =

State =

Firm =

Managing Member =

Members =

Date 1 =

Date 2 =

Date 3 =

Month 1 =

Month 2 =

Year 1 =

Year 2 =

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

This letter responds to Taxpayer's request, dated Date 3. Pursuant to §§ 301.9100-1 and 301.9100-3,<sup>1</sup> Taxpayer requests that its Form 8996, *Qualified Opportunity Fund*, filed on Date 2 be treated as timely filed to (1) self-certify Taxpayer as a Qualified Opportunity Fund (QOF) as defined in § 1400Z-2(d) of the Code; and (2) treat Taxpayer as a QOF, effective as of the month Taxpayer was formed, as provided under § 1400Z-2 and § 1.1400Z2(d)-1(a).

### FACTS

According to the facts and representations provided, Taxpayer was organized as a limited liability company on Date 1 under the laws of State and is treated as a partnership for federal income tax purposes. Taxpayer has a calendar tax year and uses the cash method of accounting. Taxpayer was formed for the purpose of investing in qualified opportunity zone property as such term is defined in § 1400Z-2(d)(2). Taxpayer has two members, Members.

In Month 1 of Year 1, Managing Member, an authorized representative of Taxpayer, met with Firm to discuss forming an entity to be a QOF. Firm believed that such entity would be formed in Month 2 of Year 2. When preparing the Members' federal income tax return for Year 1, Firm learned that Taxpayer was formed in Year 1 and that contributions to Taxpayer were made in Month 1 of Year 1.

Due to Firm's misunderstanding as to when Taxpayer was formed and when the initial contributions were made, Firm did not request an extension of time to file Taxpayer's federal income tax return for Year 1. On Date 2, Taxpayer filed its federal income tax return, together with a Form 8996.

### LAW AND ANALYSIS

Section 13823(a) of Public Law 115-97, commonly known as the Tax Cuts and Jobs Act of 2017, provides for the deferral of inclusion in gross income of eligible capital gain reinvested in a QOF and the exclusion of capital gain from the sale or exchange of an investment in the QOF. 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 (Commissioner) in the forms or instructions, or in publications or guidance of the Internal Revenue Service (Service) published in the Internal Revenue Bulletin.

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<sup>1</sup> Unless otherwise specified, all "section" references are to sections of the Internal Revenue Code of 1986, 26 U.S.C. (Code), or the income Tax Regulations or Procedure and Administration Regulations, 26 C.F.R. pt. 1 or 26 C.F.R. pt. 301.

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 8996 by the due date of its income tax return (including extensions) because of a misunderstanding as to when Taxpayer would be formed.

Inasmuch as § 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 changes 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 granting 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.

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 § 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) provides the standards the Commissioner will use to determine when the interests of the Government are prejudiced.

Section 30.9100-3(c)(1) provides—

(i) 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).

(ii) 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.

Based on the 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.

#### CONCLUSION

Taxpayer has satisfied the requirements of the regulations for the granting of relief, and the Form 8996 filed on Date 2 shall be considered timely filed. Accordingly, Taxpayer has elected to self-certify as a QOF under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) as of Month 1 of Year 1. Taxpayer should submit a copy of this letter ruling to the IRS Service Center where Taxpayer files its income tax returns, together with a cover letter requesting that the Service Center associate this letter ruling with Taxpayer's Year 1 federal income tax return.

This ruling is based upon the representations made and information 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. As part of an examination process, the Service may verify the information, representations and other data submitted.

This ruling addresses the granting of relief under § 301.9100-3 as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 1.

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 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 under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. In addition, we 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. We express no opinion as to whether Taxpayer's Year 1 federal income tax return is considered timely filed.

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.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2023-1. A paper copy will not be mailed to the taxpayer.

Sincerely,

Mon L. Lam  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: