

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

Person To Contact:  
, ID No.

Telephone Number:

Refer Reply To:  
CC:ITA:B08  
PLR-108640-23

Date:  
October 19, 2023

Taxpayer =  
Submission Date =  
Date 1 =  
Date 2 =  
State Z =  
Year 1 =  
Amount 1 =  
Date 3 =  
Firm =  
Year 2 =  
Year 3 =  
Year 4 =

Dear :

This letter responds to Taxpayer’s request for a letter ruling requested on Submission Date. Taxpayer requests relief under section 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file a self-certifying election on Form 8996, *Qualified Opportunity Fund*, (Form 8996) for Taxpayer to be treated as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations effective as of Date 1.

**FACTS**

Based on the affidavits and additional information provided, Taxpayer has represented the facts are as follows: Taxpayer is a limited liability company, formed on Date 2 under the laws of the State Z, and taxed under Federal law as a partnership. Taxpayer’s overall method of accounting is an accrual method of accounting, and Taxpayer has a

December 31 tax year end. According to its operating agreement, the Taxpayer's purpose was to qualify as a QOF, invest generally in qualified opportunity zone property, and acquire an interest in a particular opportunity zone property.

During Year 1, investors made cash contributions totaling Amount 1 to Taxpayer in exchange for membership interests. No other activity occurred during Year 1.

According to the affidavits and information provided to us, Firm was engaged to handle the tax filings for Taxpayer. Firm, despite agreeing to handle the tax filings of Taxpayer, mistakenly believed that Taxpayer had no filing obligation for Year 1 due to Taxpayer not having any income or loss activity for Year 1. As a result, Firm failed to file the Form 1065, *U.S. Return of Partnership Income*, and Form 8996 for Year 1 (due March 15, Year 2, unless on extension).

Firm did, however, timely file Taxpayer's Form 1065 for the Year 2 tax year (on extension in Year 3), along with the self-certification Form 8996.

During Year 4, Firm realized that Forms 1065 and 8996 should have been filed for Year 1. Firm immediately notified Taxpayer and the two promptly worked to rectify the error.

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) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) provides the rules for an entity to self-certify as a QOF. 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 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 Federal income tax return (including extensions). The information provided indicates that Firm did not file Taxpayer's Form 8996 because Firm mistakenly believed that Taxpayer had no filing obligation for Year 1.

Section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for electing to be a QOF and electing to self-certify as a QOF. As such, 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; failed to make the election, because after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election; 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 § 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 has satisfied the requirements for the granting of relief under section 301.9100-3(b). 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 amended tax return or administrative-adjustment request (as applicable) for Year 1. 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. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns along with a cover letter requesting 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 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 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. Further, we also express no opinion on whether any interest(s) owned by Taxpayer qualify as qualified opportunity zone property, as defined in section 1400Z-2(d)(2), or whether such interest(s) would be treated as a qualified opportunity zone business, as defined in section 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,

MARTIN L. OSBORNE  
Senior Counsel, Branch 8  
Office of Chief Counsel  
(Income Tax & Accounting)

cc: