

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-112941-23

Date:
November 17, 2023

TY:

Legend

Taxpayer	=
Manager-Member	=
Minority Member	=
Accountant 1	=
Accountant 2	=
Accounting Firm	=
Operating Agreement	=

State	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Month 1	=
Month 2	=
Month 3	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Dear :

This responds to the request by Taxpayer, dated Date 1, for relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Internal Revenue

Service (Service) grant to Taxpayer an extension of time to make an election under § 1400Z-2 of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to self-certify Taxpayer as a Qualified Opportunity Fund (QOF), effective Month 1, Year 3.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer, a limited liability company treated as a partnership for federal income tax purposes, was formed under the laws of State on Date 2. Upon the formation of Taxpayer, Manager-Member was appointed as the manager of Taxpayer and was also the named partnership representative. The Operating Agreement, dated Date 2, reflects that Taxpayer is intended to: (i) qualify as a QOF and invest in one or more businesses located in a qualified opportunity zone, including any asset that constitutes qualified opportunity zone property; (ii) acquire, hold and dispose of interests in any corporation, partnership, trust or other entity in connection therewith and exercise the rights and powers conferred upon the entity; and (iii) conduct all of the activities related or incidental to the foregoing purposes.

In Month 1, Year 3, Manager-Member and Minority Member made contributions of capital gain to Taxpayer that Manager-Member and Minority Member received in unrelated transactions.

Accounting Firm has prepared and filed individual income tax returns for Manager-Member since Year 2. Manager-Member also retained Accounting Firm to prepare and file a Form 1065, *U.S. Return of Partnership Income* for Taxpayer. Accountant 1, a shareholder in Accounting Firm, has been a certified public accountant since Year 1 and has experience in preparing individual, partnership, and corporate tax returns. Accountant 1 was responsible for preparing and filing a Form 1065 for Year 3 on behalf of Taxpayer.

Accountant 1 prepared Taxpayer's Form 1065 for Year 3 and thereafter timely filed it with the Service on Date 3. Accountant 1, however, inadvertently failed to complete a Form 8996 and attach it to Taxpayer's return (Form 1065) in order that Taxpayer could self-certify as a QOF, effective as of Month 1, Year 3.

During Month 2, Year 4, Accountant 1 prepared the Year 3 individual income tax return for Manager-Member, which included a Form 8997, *Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments*. While in the process of preparing such return, Accountant 1 discovered that a Form 8996 was not prepared and included as an attachment with Taxpayer's Form 1065 for Year 3. Accountant 1 thereafter informed Manager-Member of the failure and began preparing Taxpayer's Year 3 Form 8996. On Date 4, Accountant 1 filed with the Service an amended Year 3 Form 1065, which included a completed Form 8996, on behalf of Taxpayer. The Form 8996 attached to

Taxpayer's return indicated that Taxpayer elected to self-certify as a QOF, effective as of Month 1, Year 3. Accountant 1 believed in good faith that by including a completed Form 8996 with Taxpayer's amended return (Form 1065), a valid election was perfected to self-certify Taxpayer as a QOF.

On Date 5, Accountant 1 was contacted by Accountant 2, the return preparer retained by Minority Member to prepare and file his individual return for Year 3. Accountant 2 informed Accountant 1 that Minority Member received a written notification from the Service (Letter 6502) that the tax identification number of the entity listed on the Form 8997 attached to Minority Member's return for Year 3 was not associated with a certified QOF.

During Month 3, Year 5, an employee of the Service notified Accountant 2 that Taxpayer did not make a valid election to self-certify as a QOF, effective Month 1, Year 3, because such election could not be made late through the filing of an amended return. Accountant 2 informed Accountant 1 of the information she received from the Service about Taxpayer's failure to timely self-certify as a QOF. Accountant 1 thereafter consulted with a tax attorney, who recommended that Manager-Member, on behalf of Taxpayer, make a request to the Service for relief pursuant to § 9100 of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including 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 an 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 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 tax return (including extensions).

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) 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 § 301.9100-3(b) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although 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 an election. A taxpayer may alternatively demonstrate good faith actions if he reasonably relies on a qualified tax professional and the professional failed to make, or advise the taxpayer to make, the election.

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provisions in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was 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 is 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 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 will not prejudice the interests of the Government. Manager-Member reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer to make, the election. Consequently, the Form 8996 attached to Taxpayer's amended return for Year 3, filed Date 4, 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 effective as of Month 1, Year 3. 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 3 return.

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. 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.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Amy J. Pfalzgraf
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

CC: