

**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  
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Date:  
October 21, 2024

Legend:

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
State 1	=
State 2	=
Manager	=
Party	=
Accounting Firm 1	=
Partner	=
Accounting Firm 2	=
Law Firm 1	=
Law Firm 2	=
Year 1	=
Year 2	=
Year 3	=

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

This letter ruling responds to Taxpayer's request dated Date 1 for an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file a Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Internal Revenue Service (Service) grant an extension of time to make an election under section 1400Z-2 of the Internal Revenue Code and § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to self-certify as a qualified opportunity fund (QOF) effective as of Date 2.

## FACTS

Taxpayer represents the facts as follows:

Taxpayer is a limited liability company organized under the laws of State 1 on Date 3. Taxpayer has a calendar year annual accounting period and Taxpayer's overall method of accounting is the accrual method of accounting. Taxpayer is a partnership for Federal tax purposes.

From its inception, Taxpayer intended to be treated as a QOF, and relied upon its tax advisors to complete and file the forms necessary for Taxpayer to obtain QOF status. Taxpayer was not aware of the requirement to file Form 8996 with Taxpayer's timely-filed initial return and believed Accounting Firm 1 was engaged to prepare and file its Year 1 tax return. For many years prior to the formation of Taxpayer, Accounting Firm 1 worked with Taxpayer's owners including Party, Taxpayer's manager, Manager, and several affiliated companies in State 2. Partner from Accounting Firm 1 was the partner in charge of that work. Partner has been a certified tax professional since Year 2, and a principal with Accounting Firm 1 in tax, tax compliance and accounting matters since Year 3.

In Year 1, Party and Manager advised Accounting Firm 1 that they were investing in partnerships structured to be QOFs. Party and Manager sought assistance from Law Firm 1 and Accounting Firm 2 to advise in the formation of these entities. Manager included Accounting Firm 1 in meetings with Law Firm 1 and Accounting Firm 2 concerning the formation of Taxpayer. Accounting Firm 1 thought Accounting Firm 2 was to prepare the QOF-related tax returns for Taxpayer. However, in Date 4, while preparing tax returns for Party and Manager, Accounting Firm 1 discovered Accounting Firm 2 had not prepared Taxpayer's Year 1, 1065, *U.S. Return of Partnership Income*, or Form 8996. Accounting Firm 2's understanding was that Accounting Firm 1 was to prepare all tax returns for Taxpayer.

Once it was discovered that the Year 1 tax return had not been prepared or filed, Taxpayer engaged Accounting Firm 2 to complete its tax returns. Accounting Firm 2 completed and filed the Year 1 tax return and Form 8996 on Date 5. Accounting Firm 2 also retained Law Firm 2 to assist with preparing the instant private letter ruling request for an extension of time to make a timely QOF 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, *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 partnership return because Manager was unaware of the filing deadline and requirements, and due to confusion between the two accounting firms.

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 § 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. Manager was unaware of the filing deadlines and requirements for self-certifying as a QOF and believed Accounting Firm 1 would initiate the process. Taxpayer reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election. 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 § 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 J. Pfalzgraf  
Branch Chief, Branch 5  
(Income Tax and Accounting)

cc: