

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
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Person To Contact:  
, ID No.  
Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-111153-24  
Date:  
October 21, 2024

**LEGEND**

Taxpayer =  
Practitioner =  
Individual =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Year 1 =

Dear :

This letter responds to Taxpayer’s request for a letter ruling dated Date 1 and supplemental information dated Date 2. Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to make an election under section 1400Z-2 of the Internal Revenue Code and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to self-certify as a qualified opportunity fund (QOF)(as defined in section 1400Z-2(d)(1)) effective Date 3.

**FACTS**

Taxpayer has represented that the facts are as follows:

Taxpayer, a limited liability company with Individual as its sole member, has been an S corporation since Date 4. It uses the calendar year as its taxable year. Taxpayer was formed for the purpose of investing in qualified opportunity zone property and serving as a QOF.

Taxpayer engaged Practitioner, a certified public accountant, to assist it in satisfying the federal income tax requirements to be treated as a QOF. Practitioner failed to have Taxpayer file its Form 1120S, U.S. Income Tax Return for an S Corporation, for Year 1, in a timely manner. As no return for Year 1 was filed, no Form 8996, Qualified Opportunity Fund, was filed either. Consequently, Taxpayer failed to make a timely election to self-certify as a QOF.

## LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the purposes of the statute, including rules for the certification of QOFs.

Section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations 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, instructions or publications or in guidance published in the Internal Revenue Bulletin. Under § 1.1400Z2(d)-1(a)(2)(i), 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 if 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, 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 the taxpayer 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.

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 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 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. In such a situation, unless the taxpayer provides strong proof that the taxpayer's decision to seek relief did not involve hindsight, 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) 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 (considering 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 reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. Accordingly, 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 § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations. The election must be made on a completed Form 8996 attached to the Taxpayer's tax return. 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 1120S.

A copy of this letter must be attached to any tax return to which it is relevant. Alternatively, if Taxpayer files its return electronically, it may satisfy this requirement by attaching the return a statement providing the date and control number of the letter ruling.

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 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 referred to 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 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, copies of this letter are being sent to your authorized representatives.

Sincerely,

Sue-Jean Kim  
Senior Technician Reviewer, Branch 5  
Office of Associate Chief Counsel  
(Income Tax and Accounting)

Cc  
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