

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Person To Contact:

Telephone Number:

Refer Reply To:  
CC:ITA:B05  
PLR-112564-24

Date:  
November 05, 2024

Legend

Taxpayer	=
Member A	=
Member B	=
Individual C	=
Operating Agreement	=
Restated Operating Agreement	=
Accountant	=
Accounting Firm 1	=
Accounting Firm 2	=
State	=
Date 1	=
Date 2	=
Date 3	=
Month 1	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
N1	=

Dear :

This responds to the request by Taxpayer, dated Date 1, for relief under §§ 301.9100-1 - 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 as a Qualified Opportunity Fund (QOF), effective as of Date 2.

### FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer is a limited liability company which was formed under the laws of State on Date 2. Taxpayer uses the cash method of accounting and reports income on a calendar year basis. The Operating Agreement and Restated Operating Agreement governing Taxpayer expressly provide that Taxpayer was organized to invest in qualified opportunity zone property.

The recitals and the provisions of Operating Agreement and Restated Operating Agreement indicate that Taxpayer intends to meet the legal requirements to be a QOF. For example, one of the recitals of Operating Agreement states that Taxpayer "intends to invest in a qualified opportunity zone business that will own, operate, and/or improve qualified opportunity zone property located in a qualified opportunity zone as described in Internal Revenue Service Notice 2018-48, 2018-28 IRB 9."

Under the terms of Operating Agreement, Taxpayer's manager was Individual C. Section N1 of the Restated Operating Agreement, adopted on or about Date 3, effective Date 2, lists Member A as Taxpayer's manager. Individual C is the manager of Member A.

On Date 2, Member A and Member B, made contributions to Taxpayer. Apart from receiving contributions, Taxpayer engaged in no economic activity and had no income, deductions, or credits in Year 2.

Individual C is a real estate investor and developer who had not previously formed a QOF. Since Year 1, Individual C engaged Accountant and Accounting Firm 1 to provide accounting and tax preparation services for a number of his real estate entities. In the spring of Year 3 Individual C consulted Accounting Firm 1 about filing the required federal and state tax returns for Taxpayer for Year 2. Individual C informed Accountant that Taxpayer was organized for the purpose of being a QOF from the date of its formation and he summarized for Accountant the capital contributions made into Taxpayer. Accountant informed Individual C that because Taxpayer engaged in no activity during Year 2 other than receiving capital contributions from Member A and Member B, no tax filings were needed for Year 2.

Individual C switched the accounting and tax preparation work for Taxpayer to Accounting Firm 2 in Year 4. Accounting Firm 2, upon reviewing Taxpayer's files, noticed that no Form 1065, *U.S. Partnership Return of Income*, or Form 8996 had been filed with the Service for Year 2. Consequently, Taxpayer made no self-certification as a

QOF for Year 2 by including a completed Form 8996 with a filed Form 1065 for that taxable year.

Taxpayer thereafter filed this request for a ruling seeking additional time, pursuant to Procedure and Administration Regulations, to make the self-certification as a QOF under § 1.1400Z2(d)-1(a)(2) of the Income Tax 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 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 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 a request 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 he 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), was unaware of the necessity for an election. A taxpayer may alternatively demonstrate that he acted reasonably and in good faith if he reasonably relied on the services of a qualified tax professional and the professional failed to make, or failed to advise the taxpayer to make, the election. See § 301.9100-3(b)(1)(i), (iii), (v).

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the

provision 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 are closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under that 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. Taxpayer reasonably relied on a qualified tax professional for services that included complying with the tax laws and meeting the Code's requirements to be a QOF. 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 § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i), effective Date 2. The election must be made on a completed Form 8996 attached to the Taxpayer's tax return for Year 2. 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 Year 2 Form 1065.

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 § 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. 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.

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.

Sincerely,

Gerald Semasek  
Assistant to the Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: