

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202511008**

Release Date: 3/14/2025

Index Number: 1400Z.02-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-111769-24

Date:
December 17, 2024

LEGEND

- Taxpayer =
- Firm =
- State =
- Date 1 =
- Date 2 =
- Date 3 =
- Year 1 =
- Year 2 =
- Manager =
- Advisor =
- Entity 1 =
- Entity 2 =
- N1 =
- N2 =
- N3 =

Dear :

This responds to Taxpayer's request received by the Service on Date 3, for relief under §§ 301.9100-1 and 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 an extension of time to make an election under § 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 has represented that the facts are as follows:

Taxpayer is a limited liability company organized under the laws of State on Date 1. Taxpayer uses the calendar year as its taxable year and uses the cash method of accounting. For purposes of federal income taxation, Taxpayer is treated as a partnership. Taxpayer is owned by Entity 1 and Entity 2, who each own N1% and N2% respectively. Manager is the N3% owner of both Entity 1 and Entity 2.

Taxpayer was formed for the purpose of making investments in Qualified Opportunity Zones and operating as a QOF as defined in § 1.1400Z2(d)-(1) of the Income Tax Regulations. Pursuant to the operating agreement, entered into by Entity 1 and Entity 2 on Date 2, Taxpayer is managed by Manager. Manager, on behalf of Taxpayer, requested this ruling.

Taxpayer's submission and request for a ruling includes an affidavit from Manager. Manager indicates that, when forming Taxpayer, he was unaware that Form 8996 was required to be filed with Taxpayer's timely filed Year 1 income tax return in order to make a valid QOF election for that year.

Manager believed that Firm would assist Entity 1 and Entity 2's internal legal and accounting team with the completion of all tax compliance obligations for the Taxpayer, including filing the required returns and forms to qualify Taxpayer as a QOF.

In Year 1, Entity 1 and Entity 2 executed the operating agreement and invested eligible gains into the Taxpayer. Taxpayer then invested the funds in qualified opportunity zone property in State, with the intent for the Taxpayer to be a QOF. Shortly after the Taxpayer invested in the qualified opportunity zone property, the internal accounting team experienced a turnover in leadership.

As a result of the turnover, the internal accounting team failed to communicate to Firm that the Taxpayer was intended to be a QOF. As such, Firm failed to recognize there was a filing requirement and did not file the Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, nor attach a Form 8996, *Qualified Opportunity Fund*, to a timely filed first year return.

In Year 2, Firm reviewed the Taxpayer's records and had some questions regarding the Taxpayer's structure. Firm also asked Advisor to review the documents. At this time, the Manager learned from Firm that the Taxpayer was supposed to have timely filed a partnership return for Year 1 with an attached Form 8996 in order to self-certify as a QOF. The Taxpayer immediately engaged Advisor to prepare this private letter ruling request.

Taxpayer indicates that as of the date it submitted its private letter ruling request to this office, the Service had not discovered Taxpayer's failure to timely self-certify itself as a QOF, effective Date 2.

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) 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 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 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 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 makes a request for an extension of time before the Service discovers the taxpayer's failure to make the regulatory election, or 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. A taxpayer may alternatively demonstrate that he acted reasonably and in good faith if he relied upon a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election.

Under § 301.9100-3(b)(3), 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 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 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 § 301.9100-3.

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, and the tax professional failed to timely 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 section 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996 attached to the Taxpayer's tax return for Year 1. This letter ruling grants an extension of time to file a Form 8996.

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 section 1400Z-2 and the regulations thereunder to be a QOF. We express no opinion on whether any interest in any entity owned by Taxpayer qualifies as qualified opportunity zone property, as defined in section 1400Z-2(d)(2), or whether such entity 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 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.

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 Taxpayer's authorized representative.

Sincerely,

Kyle C. Griffin
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

CC: