

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-107191-25

Date:

July 11, 2025

Legend:

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
State	=
Manager A	=
Individual A	=
Individual B	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Entity A	=
Entity B	=
Accounting Firm	=
Tax Preparer	=
Law Firm	=
Operating Agreement	=

Amended Operating Agreement =

Dear :

This letter responds to Taxpayer's request for a ruling dated Date 1 and its additional submission relating to that request dated Date 3. Specifically, Taxpayer requests relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations, granting an extension of time to make an election under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to self-certify as a Qualified Opportunity Fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code). The election would be effective for the tax year Year 3.

FACTS

Taxpayer represents the facts, supported by affidavits, as follows:

Taxpayer is a limited liability company organized under the laws of State on Date 2. Taxpayer is treated as a partnership for Federal income tax purposes. Taxpayer uses the cash method of accounting and the calendar year as its taxable year. Taxpayer is managed by Manager A, which is in turn managed by Individual A. Individual A was responsible for causing the tax returns of Taxpayer to be filed for the year at issue.

Taxpayer's submission includes a copy of its Operating Agreement and Amended Operating Agreement, which reflect that Taxpayer was organized for the purpose of operating as a Qualified Opportunity Fund, as defined in section 1400Z-2(d)(1) of the Code, and to develop and own a real estate project comprising the construction of an office building in a Qualified Opportunity Zone, as defined in section 1400Z-1 of the Code. Since Date 2, the members in Taxpayer have made contributions to Taxpayer, which have been used in construction.

In Year 2, Entity A made contributions to Taxpayer in exchange for a majority of the equity interests in Taxpayer. Individual A, owner of Entity A, intended for these contributions to be qualifying contributions and attached Form 8997, *Initial and Annual Statement of QOF Investments*, to his income tax returns for Years 2, 3, 4, and 5.

In Years 3 and 4, Entity B made contributions to Taxpayer. Individual B, owner of Entity B, intended for these contributions to be qualifying contributions and attached Form 8997 to his income tax returns for Years 3, 4 and 5.

Taxpayer relied on its original tax preparer to prepare its tax returns. Taxpayer was not aware that in order for Taxpayer to elect to be a QOF it was required to attach to its tax return a Form 8996, *Qualified Opportunity Fund*. Individual A also relied on the original

tax return preparer to file returns for other partnerships which he controlled. The original tax preparer failed attach a Form 8996 to Taxpayer's Form 1065, *U.S. Return of Partnership Income*, for Year 1.

Respecting Years 2 and 3, Taxpayer's returns were prepared by a second tax preparer. Individual A also relied on the second tax preparer to prepare and file returns for other partnerships which he controlled for Years 2 and 3. The second tax preparer also failed to attach a Form 8996 to Taxpayer's returns for Years 2 and 3. Taxpayer filed its return for Year 3 pursuant to an extension of time to file on Date 4.

Taxpayer engaged Accounting Firm to prepare and file its returns for Years 4 and 5. Accounting Firm C attached a Form 8996 to Taxpayer's Form 1065 for Years 4 and 5. In preparing Taxpayer's Form 1065 for Year 5, Tax Preparer, a partner at Accounting Firm, realized the original tax preparer and the second tax preparer had failed to attach the Form 8996 to the Taxpayer's returns for years 1, and 2 and 3, respectively.

Upon discovery of the error, Tax Preparer informed Taxpayer of the consequences of the failure to file the Forms 8996. Taxpayer engaged Law Firm to prepare and file a request for relief for Year 3. Taxpayer did not receive a communication from the Internal Revenue Service (Service) indicating that the Service discovered Taxpayer's failure to file a timely return with attached Form 8996 for Year 1 through Year 3 before submitting this ruling request.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations and 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). The information provided indicates that Taxpayer did not file its Form 8996 by the due date of its income tax return due to the second return preparer's failure to include the Form 8996 with Taxpayer's Year 3 return.

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 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), 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 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. 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). The election must be made on a completed Form 8996 attached to the Taxpayer's amended Year 3 tax return or by making an administrative-adjustment request (as applicable).

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 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.

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.

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

Sincerely,

Gerald Semasek
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: