

1 and 301.9100-3 of the Treasury Regulations.¹ Specifically, Taxpayer seeks an extension of time to (1) self-certify as a qualified opportunity fund (QOF) as defined in section 1400Z-2(d) of the Internal Revenue Code by filing Form 8996, *Qualified Opportunity Fund*; and (2) be treated as a QOF as provided under section 1400Z-2 and § 1.1400Z2(d)-1(a)(2).

This letter ruling is being issued electronically in accordance with Rev. Proc. 2025-1, 2025-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer was organized as a limited liability company under the laws of State on Date 1. Taxpayer is classified as a partnership for federal income tax purposes and recognizes income on a calendar year basis. As set forth in its Operating Agreement, Taxpayer was organized as a QOF for the purpose of investing in qualified opportunity zone property.

Managing Member is the managing member of Taxpayer. Taxpayer engaged Accountant as its accounting firm and tax advisor because Managing Member lacked expertise in tax matters and was unfamiliar with the filing requirements to be a QOF. Accountant therefore was responsible for preparing and timely filing Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, together with Form 8996.

Accountant advised Taxpayer that Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, would be filed before Date 2. An extension of time, however, was not requested due to internal oversight. Accountant did not discover the failure to file Form 7004 until Date 3 and advised Taxpayer to seek relief immediately under §§ 301.9100-1 and 301.9100-3. Taxpayer filed the Year 1 Form 1065, with Form 8996, on Date 4.

Taxpayer represents that the granting of relief will not prejudice the government.

LAW AND ANALYSIS

Section 1400Z-2(e)(4) directs the Secretary to prescribe such regulations as may be necessary to carry out the purposes of § 1400Z-2, including rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2)(i) provides that the self-certification of a QOF must be timely-filed and effectuated annually in such form and manner as may be prescribed by the Commissioner of Internal Revenue (Commissioner) in the forms or instructions, or in publications or guidance of the Service published in the Internal Revenue Bulletin.

¹ Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code of 1986, as amended, Title 26 U.S.C., or the Treasury Regulations, Title 26 C.F.R. pt. 1 (Income Tax), or Title 26 C.F.R. pt. 301 (Procedure and Administration).

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). The information provided indicates that Taxpayer did not file its Form 8996 by the due date of its income tax return because Accountant failed to obtain an automatic extension of time to file Taxpayer's Year 1 income tax return.

Section 301.9100-1(b) defines the term "regulatory election" as including any election whose due date is prescribed by a regulation published in the Federal Register. Inasmuch as § 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for electing to be a QOF and to self-certify as a QOF, these elections are regulatory elections.

Sections 301.9100-1 through 301.9100-3 provide the standards 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 changes 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 granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

(i) requests relief before the failure to make the regulatory election is discovered by the Service;

(ii) failed to make the election because of intervening events beyond the taxpayer's control;

(iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;

(iv) reasonably relied on the written advice of the Service; or

(v) reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

Section 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 will be 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).

CONCLUSION

Based solely on the 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 has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's late-filed Form 8996 for Year 1 is considered timely filed. Accordingly, Taxpayer has elected to self-certify as a QOF under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) as of the month and year it was formed. 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 Center associate this ruling with the Year 1 Form 1065.

CAVEATS

This ruling is based upon the representations made and information 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. As part of an examination process, the Service may verify the information, representations and other data submitted.

This ruling addresses the granting of relief under § 301.9100-3 as applied to the election to self-certify Taxpayer as a QOF by filing Form 8996 for Year 1. We have 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. In addition, we express no opinion on whether any interest owned by Taxpayer qualifies as qualified opportunity zone property, as defined in section 1400Z-2(d)(2), or whether any such interest 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 Internal Revenue Code or Treasury 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.

Finally, we express no opinion as to whether Taxpayer's Year 1 federal income tax return is considered timely filed.

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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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.

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: