

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-115587-24

Date:

February 19, 2025

Legend

Taxpayer	=
Manager Member	=
State	=
First Taxable Year	=
Lawyer	=
Accounting Firm	=
Tax Director	=
Law Firm	=
Operating	=
Agreement	
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
N1	=
N2	=

Dear :

This responds to the request by Taxpayer, dated Date 1, for a private letter ruling granting relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations with respect to filing a Form 8996, *Qualified Opportunity Fund*. Taxpayer provided additional information in a submission dated Date 6.

Specifically, Taxpayer requests a ruling that the Internal Revenue Service (Service) grant to Taxpayer an extension of time under §§ 301.9100-1 and 301.9100-3 to make an election to self-certify as a qualified opportunity fund (QOF), as defined under section 1400Z-2(d) of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1 of the Income Tax Regulations, effective Date 2, the first month in which Taxpayer intended to be a QOF, as provided in section 1400Z-2(d) and § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations.

FACTS

The information and affidavits submitted reflect the following representations of the Taxpayer.

Taxpayer was formed as a limited liability company under the laws of State in Date 2. Taxpayer elected to be treated as a Subchapter S Corporation for federal income tax purposes and files income tax returns on the basis of a calendar year. Taxpayer computes income under the cash method of accounting for purposes of maintaining its accounting books and records and filing its federal income tax returns. Manager Member is the sole shareholder, and manager of Taxpayer. Operating Agreement, paragraph N1. Manager Member is the 100 percent shareholder in Taxpayer.

Taxpayer represents that it was formed for the purpose of being a QOF and investing in and rehabilitating qualified opportunity zone property as defined in § 1400Z-2(d)(2). Paragraph N2 of the Operating Agreement of Taxpayer provides that Taxpayer's purpose is to engage in any lawful acts or activities for which limited liability companies may be formed and to engage in all activities that are necessary and incidental to that purpose. Taxpayer is actively developing properties located in qualified opportunity zones as defined in § 1400Z-1(a).

In connection with Taxpayer's formation, Lawyer filed Form 2553, *Election By A Small Business Corporation*, to elect for Taxpayer to be classified as an S Corporation. This election was unknown to Accounting Firm, the entity which prepared Taxpayer's Form 8996, *Qualified Opportunity Fund*, for Taxpayer's First Taxable Year to permit Taxpayer to self-certify as a QOF. Accounting Firm prepared Taxpayer's first income tax return under the mistaken belief that Taxpayer was classified as a partnership for federal income tax purposes, and thus prepared Taxpayer's first return on Form 1065, *U.S. Return of Partnership Income*. The Form 1065, together with the Form 8996, was timely filed and accepted by the Service on Date 3.

Taxpayer received a notice from the Service in Date 4 that referenced the S Corporation election previously filed in connection with Taxpayer's formation. This notice stated that because an S Corporation election had been filed and accepted by the Service, the Form 1065 filed for the Taxpayer's First Taxable Year was invalid. Taxpayer, however, has not received any correspondence from the Service concerning the validity of its self-certification as a QOF on the Form 8996.

Taxpayer relied on Accounting Firm to prepare the Form 8996 and the federal income tax return for the First Taxable Year. Manager Member was not informed about the disconnect between Lawyer, who filed the S Corporation election, and Accounting Firm, who filed the Form 1065 and 8996 but was unaware of the S Corporation election. Taxpayer believed Accounting Firm had all relevant information in its possession when it prepared the filings.

Taxpayer submitted affidavits signed under penalties of perjury from Manager Member, from Tax Director of Accounting Firm, and from Lawyer explaining the chain of events in this case, including Lawyer's failure to directly provide information about Taxpayer's tax status to Accounting Firm, which led to Accounting Firm's inadvertent error concerning the proper income tax return to file for Taxpayer's First Taxable Year. Tax Director of Accounting Firm stated in this affidavit that he was aware that Manager Member intended to treat Taxpayer as a QOF pursuant to the relevant provisions of the Code. Tax Director further stated in the affidavit that Accounting Firm proceeded under two mistakenly beliefs. Tax Director did not believe that a single-member limited liability company could self-certify as a QOF, and he apparently did not take into account that section 1400Z-2(d)(1) defines a QOF to include an entity organized as a corporation or partnership.

As of the date Accounting Firm received copies of Taxpayer's formation documents, the deadline to timely file Form 2553 had passed. As a result, Accounting Firm and Member Manager took steps to have Manager Member's spouse admitted as a member of Taxpayer and consequently cause Taxpayer to become a partnership, and to file Form 1065. Accounting Firm first became aware of the S Corporation election filed by Lawyer only when it received notification from the Service, dated Date 4, referencing that election and its impact on Taxpayer's initial tax return. Accounting Firm first received a copy of Taxpayer's filed Form 2553 on Date 7, upon investigating the Service notice.

Taxpayer took immediate steps to correct the error and caused Accounting Firm to file a Form 1120-S, *U.S. Income Tax Return for an S Corporation*, for the Taxpayer's First Taxable Year on Date 5, which was after the filing deadline. Taxpayer immediately sought legal counsel from Law Firm on the impact, if any, on Taxpayer's status as a QOF in light of the untimely filing of the return as a result of the unknown S Corporation election. Taxpayer directed Law Firm to promptly submit this request for relief in the form of a private letter ruling granting an extension of time to file the Form 8996 or similar relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration 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 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 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 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) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service. A taxpayer may alternatively demonstrate good faith actions if he reasonably relies on a qualified tax professional and the professional failed to make, or advise the taxpayer to make, the election.

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 § 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 is 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. Manager Member reasonably relied on a qualified tax professional who mistakenly, but timely, filed the Taxpayer's Form 8996 to self-certify Taxpayer as a QOF with an improper Form 1065 for the Taxpayer's First Taxable Year instead of filing the Form 8996 with the correct tax return, a Form 1120-S. The correct tax return, a Form 1120-S, was later filed once Accounting Firm became aware of the previously made S Corporation election by Taxpayer. Taxpayer filed the Form 8996 with the wrong tax return and thus the election to self-certify as a QOF pursuant to § 1.1400Z2(d)-1(a)(2) was improperly made.

Consequently, pursuant to § 301.9100-3(a)-(e), the Form 8996 attached to Taxpayer's Form 1120-S for its First Taxable Year, filed on Date 5, is considered timely filed, and Taxpayer has thereby made the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for its First Taxable Year. 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 associate this ruling with the First Taxable Year Form 1120-S.

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 by 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.

The rulings contained in this letter are based upon affidavits, 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 a ruling, 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 sent to your authorized representative.

Sincerely,

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

CC: