

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.

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Refer Reply To:

CC:ITA:B04

PLR-116014-24

Date:

February 28, 2025

LEGEND

Taxpayer =

State Z =

Individual =

CPA =

Attorney =

Tax Year =

X =

Month A =

Month B =

Month C =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Dear :

This letter responds to Taxpayer's request, dated Date 1. Specifically, Taxpayer requests an extension of time, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file Taxpayer's Forms 8996, *Qualified Opportunity Fund*, for purposes of making the election to: (1) self-certify Taxpayer as a qualified opportunity fund ("QOF") as defined in § 1400Z-2(d) of the Internal Revenue Code; and (2) be treated as a QOF, effective as of Month A, as provided under § 1400Z-2(d) and § 1.1400Z(d)-1(a).¹

¹ Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code or the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301) as applicable.

FACTS

Based on the provided information and representations, Taxpayer was organized, on Date 2, as a limited liability company, under the laws of State Z and is classified as a partnership for federal income tax purposes. Taxpayer was organized for the purpose of qualifying as a QOF to invest in qualified opportunity zone property as defined in § 1400Z-2(d)(2). Taxpayer employs the cash method of accounting and has a taxable year end of Tax Year.

In Month B, Individual, Taxpayer's managing member, engaged Attorney to assist with the formation of a qualified opportunity fund. Individual was responsible for ensuring Taxpayer's federal tax returns were prepared and filed on a timely basis and engaged CPA to handle Taxpayer's tax compliance. CPA is a certified public accountant with X years of experience. Individual was unaware of the various requirements for Taxpayer to be treated as a QOF and relied upon CPA for the various tax-compliance requirements for Taxpayer to be treated as a QOF.

Around Date 3, Individual provided CPA with information regarding Taxpayer's intent to be a QOF. CPA was unaware of the need to make an election to be treated as a QOF and did not make the election on behalf of Taxpayer. Early in Year 2, Individual contacted CPA and Attorney regarding the status of Taxpayer's Federal income tax returns. On Date 1, Taxpayer filed its Year 1 Federal income tax return, with the Form 8996 attached. In Month C, Attorney advised Individual that Taxpayer missed the election to self-certify as a QOF for Year 1 and as a result Taxpayer would need to seek relief to make a late election.

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)(i) of the regulations 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 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). The information provided indicates Taxpayer failed to file the Form 8996 by the due date of its income tax return (including extensions) due to Taxpayer's reliance on and CPA's misunderstanding of the requirement to file the Form 8996 for Year 1 or the federal tax laws applicable to Taxpayer and of the self-certification requirements for QOFs.

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.

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. Section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for electing to be a QOF and electing to self-certify as a QOF. As such, these elections are regulatory elections, as defined in § 301.9100-1(b).

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.

Under § 301.9100-3(b)(2), a taxpayer, however, 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.

Section 301.9100-3(b)(3) provides a taxpayer will not be considered 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 a 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.

CONCLUSION

Based solely on the information submitted and the representations made in connection with this ruling request, 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. Accordingly, the Form 8996, attached to Taxpayer's Year 1 Federal income tax return, filed on Date1, 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 Year 1. Taxpayer should submit a copy of this letter ruling to the IRS Service Center where Taxpayer files its returns along with a cover letter requesting that the Service Center associate this letter ruling with Taxpayer's Year 1 Form 1065.

CAVEATS

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by the appropriate parties. 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 information, representations, and other data submitted.

This ruling addresses the granting of § 301.9100-3 relief as applied to the election to self-certify Taxpayer as an QOF by filing Form 8996 for Year 1.

Except as expressly provided herein, no opinion is either expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we have no opinion, neither express nor implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z-2(a)-1(b)(34), or whether Taxpayer met or meets the requirements

under § 1400Z-2 and the regulations thereunder to be a QOF. Further, we express no opinion on whether any interest indirectly owned by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether the indirect interest would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3). Nor do we express any 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.

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 Form 2848, *Power of Attorney and Declaration of Representative*, on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2024-1, 2024-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

Sincerely,

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

cc: