

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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CC:ITA:B04

PLR-101505-25

Date:

March 31, 2025

LEGEND

Taxpayer	=
Date 1	=
Date 2	=
Month 1	=
Month 2	=
Year 1	=
Year 2	=
Year 3	=
State Z	=
Tax Professional	=

Dear :

This letter responds to Taxpayer's request, dated Date 1, for a private letter ruling granting an extension of time to make a late regulatory election pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to (1) self-certify as a Qualified Opportunity Fund (QOF) defined in section 1400Z-2(d) of the Internal Revenue Code (Code); and (2) be treated as a QOF, effective as of Month 1, Year 1, as provided under Code section 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a).

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.

FACTS

According to the facts and representations provided, Taxpayer was organized as a limited liability company under the laws of State Z on Date 2 and is classified as a partnership for federal income tax purposes. As stated in Taxpayer's operating

agreement, executed in Month 1, Year 1, Taxpayer was formed for the purpose of being a QOF and to invest in qualified opportunity zone property as defined in section 1400Z-2(d)(2). Taxpayer's annual accounting period is the calendar year and Taxpayer uses the cash method of accounting.

Taxpayer retained Tax Professional to handle Taxpayer's tax filings, including preparing and timely filing Taxpayer's Form 1065, *U.S. Return of Partnership Income*, and completing the steps necessary for Taxpayer to be treated as a QOF. Due to intervening events beyond Taxpayer's control, Taxpayer did not timely file its Year 1 Form 8996, *Qualified Opportunity Fund*, to self-certify as a QOF.

The realization that the Form 8996 was not filed was discovered in Month 2, Year 2. Thereafter, in Year 2, Taxpayer filed its Form 1065 and Form 8996 for Year 1 and Year 3. Taxpayer subsequently filed this request for an extension of time to make an election to be considered a QOF as of Month 1, Year 1.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for the certification of QOFs. Treas. Reg. § 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 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. Form 8996 must be filed by the due date of the tax return (including extensions). The information provided indicates that Taxpayer intended to self-certify as a QOF as of Month 1, Year 1.

Because Treas. Reg. § 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 § 301.9100-3(b)(1).

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards the Service will use to determine whether to grant an extension of time to make a regulatory election. Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treas. Reg. § 301.9100-2) will be granted when the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government.

Treas. Reg. § 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 Treas. Reg. § 301.9100-3(b)(3), 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 could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) Was fully informed of the required election and related tax consequences, but chose not to file 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.

Treas. Reg. § 301.9100-3(c)(1) provides that the Service will grant a reasonable extension of time 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).

CONCLUSION

Based solely 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. Accordingly, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's late-filed Form 8996 for Year 1 certifying Taxpayer as a QOF as of Month 1, Year 1, is considered timely filed. Taxpayer has, therefore, elected to self-certify as a QOF under section 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) as of Month 1, Year 1. Taxpayer should submit a copy of this letter ruling to the IRS Service Center where Taxpayer files its income tax returns, together with a cover letter requesting that the Service Center associate this letter ruling with Taxpayer's Year 1 and Year 3 Form 1065.

CAVEATS

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 addresses the granting of Treas. Reg. § 301.9100-3 relief as applied to the election to self-certify Taxpayer as a QOF, as of Month 1, Year 1. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in Treas. Reg. § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. Further, we also express no opinion on whether any interest owned 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. 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) of the Code 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 representative.

Sincerely,

Stephen J. Toomey
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: