

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-120083-24

Date:

April 10, 2025

LEGEND

Taxpayer	=
State	=
Entity	=
Accountant	=
Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Year 1	=
Year 2	=

Dear :

This responds to Taxpayer's request received by the Internal Revenue Service (Service) on Date 8, for relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 8996, *Qualified Opportunity Fund*, to (1) self-certify as a qualified opportunity fund (QOF), as defined in Section 1400Z-1(d) of the Internal Revenue Code (Code) and (2) to be treated as a QOF, effective as of Date 3, as provided under Section 1400Z-2 of the Code and § 1.1400Z2(d)-1(a) of the Income Tax Regulations.

FACTS

Taxpayer has represented that the facts are as follows:

Taxpayer is a limited liability company organized under the laws of State on Date 1 and is classified as a partnership for federal income tax purposes. Taxpayer was formed for the purpose of investing in qualified opportunity zone property as defined in Section 1400Z-2(d)(2) of the Code. On Date 2, the members of Taxpayer executed an operating agreement, stating the Taxpayer's purpose of owning a membership interest in Entity, a qualified opportunity zone (QOZ) business.

Taxpayer's members began investing on Date 3 to fund Taxpayer's investment in Entity. Taxpayer represents that some of these member contributions were qualified capital gains that were eligible for deferral on their personal income tax returns.

On Date 4, Taxpayer engaged Accountant, tax partner at Firm, to assist with their tax compliance obligations for Year 1. Accountant had been the accountant for Taxpayer's investors and their medical practice for 15 years and had over 20 years of experience. The members of Taxpayer believed that Accountant would adequately assist Taxpayer with filing the required returns and forms to qualify Taxpayer as a QOF. However, Accountant was unaware of the requirement to file Form 8996, Qualified Opportunity Fund, and failed to attach a Form 8996 to the Taxpayer's Form 1065, U.S. Return of Partnership Income, for Year 1, filed on or about Date 5.

On Date 6, Taxpayer again engaged Accountant to prepare Taxpayer's Form 1065 for Year 2. While preparing this return, Accountant discovered that Form 8996 existed and did further research on the rules for filing this form. Accountant included a properly completed Form 8996 on the Year 2 tax return and made a note that the Year 1 tax return omitted the form and needed to be amended.

Accountant prepared the amended Form 1065 for Year 1, which was eventually approved for filing by the Taxpayer, and was filed with the Service on Date 7. Because the Form 8996 was filed after the original due date, including extensions, for the Taxpayer's return for Year 1, Taxpayer failed to self-certify as a QOF.

After Taxpayer became aware of the consequences of failing to timely file the Form 8996, this request for relief was promptly submitted under Sections 301.9100-1 and 301.9100-3. Taxpayer represents that it relied on Accountant to timely file Form 8996. Taxpayer further represents that granting of the relief under Section 301.9100-3 will not result in a lower tax liability for the years affected by the election.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Internal Revenue Code directs the Secretary to prescribe regulations for 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 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 that Taxpayer did not file its Form 8996 by the due date of its income 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 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.

Under § 301.9100-3(b)(3), 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 Section 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 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 Section 6501(a) before the taxpayer's receipt of a ruling granting relief under § 301.9100-3.

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. Taxpayer reasonably relied on a qualified tax professional, and the tax professional failed to timely make, or advise the taxpayer to make, the election. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements of the regulations for the granting of relief and Taxpayer's Form 8996, filed on Date 7, is considered timely filed.

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 Section 1400Z-2 and the regulations thereunder to be a QOF. We express no opinion on whether any interest in any entity owned by Taxpayer qualifies as QOZ property, as defined in Section 1400Z-2(d)(2), or whether such entity would be treated as a QOZ 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.

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 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Alina N. Lewandowski
Assistant to the Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

CC: