

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

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PLR-120218-24

Date:

April 30, 2025

LEGEND

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Month 1 =

Month 2 =

Year 1 =

Manager =

Advisors =

State Z =

Dear :

This letter responds to Taxpayer's request dated Date 4, requesting a private letter ruling granting relief 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 for its filed Form 8996, *Qualified Opportunity Fund*, to be treated as timely for purposes of the election (1) to self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) to be treated as a QOF, effective as of the date Taxpayer was formed, Date 1, as provided under section 1400Z-2(d) and Treas. Reg. § 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

Taxpayer has represented that the facts are as follows. Taxpayer, organized as a partnership under the laws of State Z, was formed on Date 1 to be a QOF for the purpose of acquiring, owning, and managing interests in one or more entities qualifying as a qualified opportunity zone business under the meaning of section 1400Z-2(d)(3). Taxpayer was formed and is owned by Manager and another member, and is managed by Manager.

In early Year 1, Manager had two conversations with Advisors, who had been engaged to prepare Manager's individual and business income tax returns. During this conversation, Manager expressed an interest in forming a QOF to invest in qualified opportunity zone property, and in which Advisors described the mechanics of setting up and funding a QOF and the required language to be included in a QOF operating agreement, but did not discuss any procedural requirements for qualifying such an entity as a QOF for Federal income tax purposes. Subsequently, Manager engaged legal counsel to assist with the formation of Taxpayer and to prepare the operating agreement.

In Month 2, Manager informed Advisors that Taxpayer had been formed on Date 1, and that Manager had opened a bank account for Taxpayer and had transferred funds to the account in Month 1. Advisors requested that Manager provide Taxpayer's organizational documents and taxpayer identification number, which Manager provided. Advisors were generally familiar with QOFs, but not with the specific procedures required to elect to self-certify as a QOF. Additionally, Taxpayers had not specifically requested that Advisors prepare a Year 1 tax return for Taxpayer.

On Date 2, Manager requested assistance from Advisors in preparing a schedule K-1 for Taxpayer for Year 1. Advisors then realized that an extension should have already been filed for Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, but that such an extension had not been filed due to a miscommunication between Manager and Advisors. Accordingly, Taxpayer had not timely elected to be treated as a QOF on Form 8996.

On Date 3, Advisors filed Taxpayer's non-timely Year 1 Form 1065, including a completed Form 8996 identifying Month 1 as Taxpayer's first month as a QOF. Taxpayer and Advisors subsequently submitted this request for relief.

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 the month Taxpayer was formed, Month 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.

- (iv) Treas. Reg. § 301.9100-3(c) 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. 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.

CONCLUSION

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 would 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, is considered timely filed.

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. 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.

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 your authorized representatives.

Sincerely,

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

cc: