

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

[Third Party Communication:  
Date of Communication: Month DD, YYYY]

Person To Contact: \_\_\_\_\_, ID No.

Telephone Number: \_\_\_\_\_

Refer Reply To:  
CC:ITA:B04  
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DATE: 09/10/2021

**VIA FAX**

Taxpayer =  
Date 1 =  
Date 2 =  
Date 3 =  
Date 4 =  
Date 5 =  
Date 6 =  
Date 7 =

Date 8 =  
Date 9 =  
Year 1 =  
Advisor 1 =  
Advisor 2 =  
Advisor 3 =  
Advisor 4 =

Dear :

This letter responds to Taxpayer's request dated Date 1. Specifically, Taxpayer requests relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3 for Taxpayer's Form 8996 (Qualified Opportunity Fund), as filed on Date 2, to be treated as timely for purposes of the election: (1) to self-certify the Taxpayer as a qualified opportunity fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code); and (2) for the Taxpayer to be treated as a QOF, effective as of Date 3, as provided under Code § 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a).

#### FACTS

Taxpayer, a partnership organized as a limited liability company for U.S. tax purposes, is a Qualified Opportunity Fund (QOF), formed on Date 4, for the exclusive purpose of investing in "qualified opportunity zone property" as defined in Section 1400Z-2(d)(2). The members of Taxpayer employed Advisor 1 to assist in forming and structuring Taxpayer to meet the requirements under § 1400Z-2 and be a valid QOF. Taxpayer's LLC operating agreement states the Taxpayer's intention to be a QOF and the need to file certification forms in connection with that designation with Taxpayer's federal income tax returns.

For tax year Year 1, Taxpayer engaged Advisor 2 to prepare Form 7400 (Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Return) on Taxpayer's behalf. Taxpayer's Form 7004 was timely filed on Date 5, extending the Taxpayer's filing deadline to Date 6.

In Date 7, Taxpayer subsequently engaged a different firm, Advisor 3, to prepare its tax year Year 1 federal income tax return and Form 8996 (Qualified Opportunity Fund) to

self-certify and be treated as a QOF. Taxpayer represents that it reasonably believed Advisor 3 had the requisite expertise to timely and completely fulfill its tax compliance obligations as a QOF for Year 1 as Advisor 3 holds itself out to be an expert in assisting taxpayers with Qualified Opportunity Zones.

According to the representations provided, Taxpayer, alongside Advisor 1, met with Advisor 3 on Date 8 to discuss the QOF structure in connection with the preparation of the Taxpayer's Year 1 tax return. The meeting ended with Advisor 3 informing the parties that it would contact Taxpayer and Advisor 1 if more information was needed regarding the QOF structure of Taxpayer. Advisor 3 never requested additional information.

Based on the facts and representations provided, Taxpayer reached out to Advisor 3 multiple times throughout the following months as to the status of its tax return. Despite confirming that the return would be ready to be filed by the extended deadline, on Date 6, Advisor 3 contacted Taxpayer advising that the return should not be filed as there were issues with Taxpayer's structure as a QOF and was therefore not in compliance. Advisor 3 recommended Taxpayer seek advice from an attorney. Taxpayer's federal income tax return and Form 8996 were not filed by the extended deadline.

Taxpayer represents that on Date 9, Taxpayer contacted Advisor 4 to consult on their QOF structure. According to Taxpayer, Advisor 4 informed Taxpayer that their current structure was eligible to be designated as a QOF and Advisor 3's concerns were unwarranted.

On Date 1, Taxpayer submitted this request asking for relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3. On the following day, Date 2, Taxpayer filed its federal income tax return along with Form 8996 signifying its election to self-certify and be treated as a QOF, effective as of Date 3.

## LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treasury Regulation § 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 (Qualified Opportunity Fund) 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 the Taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to intervening events beyond the taxpayer's control.

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 section 301.9100-1(b). According to Treasury Regulation § 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of Treasury Regulation § 301.9100-2 (automatic extensions) must be made under the rules of Treasury Regulation § 301.9100-3. Additionally, requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

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 section 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 section 301.9100-3(b), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer failed to make the election because of intervening events beyond the taxpayer's control.

In addition, section 301.9100-3(b)(3) provides that 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 § 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the facts and information submitted and the representations made, we conclude that Taxpayer's request for extension of time to elect to be a QOF and to self-certify as a QOF is a regulatory election governed by Treasury Regulation § 301.9100-3. We further conclude that, based on the facts and information submitted in connection with this request, 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 Form 8996, filed on Date 2, certifying the Taxpayer as a QOF as of Date 3 is considered timely filed.

#### CAVEATS

This ruling is based upon facts and representations submitted by the Taxpayer and accompanied by penalty of perjury statements 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 factual information, representations, and other data submitted.

This ruling addresses the granting of Treasury Regulation § 301.9100-3 relief as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 1. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in Treasury Regulation § 1.1400Z2 (a)-1(b)(34) or whether Taxpayer meets the requirements and structure under section 1400Z-2 and the regulations thereunder to be a QOF. In addition, we have no opinion on whether Taxpayer's return is considered timely filed or whether Taxpayer's Form 8996 is completed correctly. 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.

A copy of this letter must be attached to any 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.

This ruling is directed only to the taxpayer requesting it. Code § 6110(k)(3) provides that it may not be used or cited as precedent. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under Code § 6110.

Pursuant to the Form 2848, Power of Attorney and Declaration of Representation, on file, we are sending a copy of this letter to Taxpayer's authorized representative.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to the taxpayer.

Sincerely,

Lisa Mojiri-Azad  
Senior Technician Reviewer, Branch 4  
Office of Chief Counsel  
(Income Tax & Accounting)

cc: