

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

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Third Party Communication: None  
Date of Communication: Not Applicable

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

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

Refer Reply To:  
CC:ITA:B05  
PLR-111768-22

Date:  
January 23, 2023

Legend

- Taxpayer =
- Entity A =
- Entity B =
- Entity C =
- X% =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Month 1 =
- Manager =
- Tax =
- Professional =
- Tax Firm =

Dear \_\_\_\_\_ :

This ruling responds to Taxpayer's request dated Date 1. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations granting an extension of time to make a timely election

under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to self-certify as a Qualified Opportunity Fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code). Taxpayer also requests to be treated as a QOF, effective as of Date 5, as provided under § 1400Z-2(d) of the Code and § 1.1400Z2(d)-1(a) of the Income Tax Regulations.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

### FACTS

Entity A was formed as a corporation in Year 1 and timely self-certified as a QOF for the Year 2 tax year.

Entity B was organized as a limited liability company in Year 3 and is treated as a partnership for U.S. Federal income purposes. Entity B made a timely election to self-certify as a QOF effective Date 3. On Date 4, Entity B acquired X% of the common stock of Entity A.

On Date 5, Entity A was converted to a limited liability company classified as a partnership for U.S. Federal income tax purposes and changed its name, becoming Taxpayer. Taxpayer was organized for the purpose of qualifying as a QOF effective as of Date 5. However, the QOF election was not timely made. Taxpayer represents that the Date 5 conversion was a taxable liquidation of the assets and liabilities of Entity A to its shareholders, followed by a contribution of the same assets and liabilities to Taxpayer.

On Date 6, Taxpayer merged into Entity C, with Entity C as the surviving entity. Entity C is disregarded as an entity separate from its owner, Entity B. Therefore, Taxpayer is treated as merging into Entity B.

The Date 6 merger was intended to qualify as the tax-free merger of two QOF partnerships under § 1.1400Z2(b)-1(c)(6)(ii)(C)(2). However, Taxpayer failed to timely make an election to self-certify as a QOF as of Date 5 on Form 8996, *Qualified Opportunity Fund*. Taxpayer represents that it is eligible to make an election to self-certify as a QOF under § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations.

Manager represents that he relied on Tax Professional to prepare the Taxpayer's return and related documents, including information for the Date 5 conversion and Date 6 merger for Taxpayer's tax year ending on Date 6.

Tax Professional was provided with all relevant information and documents to timely file Taxpayer's short-year tax return and Form 8996 to self-certify as a QOF. Tax Professional filed a request for an extension to file Taxpayer's tax return on the date Tax Professional believed to be the deadline. However, Tax Professional mistakenly

assumed that Taxpayer's tax year ended on December 31, Year 4, not Date 6. As a consequence, Taxpayer's tax return and Form 8996 to self-certify as a QOF were not timely filed.

In Month 1, Manager employed Tax Firm to prepare Taxpayer's tax return for Year 4. An employee of Tax Firm discovered that Tax Professional did not timely file Taxpayer's request for an extension to file and promptly informed Manager. Upon discovery, Tax Firm prepared this submission requesting relief.

On Date 7, Taxpayer filed its Form 1065 and Form 8996 for the short period ending Date 6.

### LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations for rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2)(i) 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 the 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 a 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 any extensions). The information provided indicates that the Tax Representative did not file Taxpayer's Form 8996 due to Tax Professional's mistaken belief that Tax Professional had timely filed a request for an extension and therefore, could timely file Taxpayer's tax return and Form 8996 to self-certify as a QOF.

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 by § 301.9100-1(b).

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 a taxpayer provides evidence (including affidavits) to establish that the taxpayer acted reasonably and in good faith and in the grant of relief will not prejudice the interests of the Government.

Under Section 301.9100-3(b)(v), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election.

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 aspects 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 grant ordinary 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 the 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 limitation 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, the Taxpayer has satisfied the requirements for the granting of relief. Taxpayer reasonably relied on Tax Professional who failed to make a timely election. Accordingly, Taxpayer's Form 8996, dated Date 7, 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 the 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.

Except as expressly provided herein, no opinion 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 § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets requirements under § 1400Z-2 and the regulations thereunder to be a QOF. Further, we also express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in § 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.

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 regarding the tax treatment of the Date 5 conversion or Date 6 merger.

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 Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

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 the return that provides the date and control number of this letter ruling.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being faxed to your authorized representative.

Sincerely,

Amy J. Pfalzgraf  
Acting Branch Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: