

**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-124834-23

Date:

June 13, 2024

TY:

Legend

Taxpayer =

Member 1 =

Member 2 =

Individual =

Director =

Accounting Firm 1 =

Accounting Firm 2 =

Operating Agreement =

State =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Month 1 =

Month 2 =

Dear :

This responds to the request by Taxpayer, dated Date 1, for relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file Form 8996, *Qualified Opportunity Fund*. Taxpayer supplemented its request on Date 2 and Date 3. Specifically, Taxpayer requests that the Internal Revenue Service (Service) grant to

Taxpayer an extension of time to make an election under § 1400Z-2 of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to self-certify Taxpayer as a Qualified Opportunity Fund (QOF) and to be treated as a QOF, effective Month 1, Year 1, as provided under § 1400Z-2 of the Code and § 1.1400Z2(d)-1(a) of the Income Tax Regulations.

## FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer, a limited liability company, was formed under the laws of State. Taxpayer is treated as a partnership for federal income tax purposes and files income tax returns on the basis of a calendar year. Taxpayer computes income under the accrual method of accounting. The current members of Taxpayer are Member 1 and Member 2, and both are regarded entities for federal income tax purposes. Individual, a partner of Member 1 and grantor of Member 2, is the managing member of Taxpayer.

The Operating Agreement of Taxpayer, dated Date 4, provides that Taxpayer is intended to be a qualified opportunity fund within the meaning and requirements of § 1400A-2(d)(1) of the Code and will invest only in qualified opportunity zone property as defined in § 1400Z-2(d)(2) of the Code. The Operating Agreement also provides that Taxpayer will have and exercise all powers conferred by the laws of State on limited liability companies and do any and all things necessary, convenient or incidental to achieving Taxpayer's purpose. In addition, the Operating Agreement provides that the managing member shall use commercially reasonable efforts to cause the Taxpayer to operate in a manner so that it qualifies as a qualified opportunity fund.

Individual retained Accounting Firm 1 to serve as Taxpayer's accounting and tax advisor. Accounting Firm 1 is a management consulting and accounting firm which had provided tax advice and preparation services for many years. Accounting Firm 1 was responsible for preparing and filing Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, and Form 8996, *Qualified Opportunity Fund*, to self-certify Taxpayer as a QOF as of the month Taxpayer was formed. Taxpayer's Members understood that Taxpayer's Year 1 tax return was accurately and timely filed with the Form 8996 attached. In addition, Individual's federal income tax return reflected gain deferral, which suggested that the proper election had been made to qualify Taxpayer as a QOF.

In Month 2, Year 2 Taxpayer retained new tax advisors at Accounting Firm 2 to prepare all required tax filings for Taxpayer. After reviewing Taxpayer's Year 1 Form 1065 prepared by Accounting Firm 1, the tax advisors at Accounting Firm 2 identified that the initial tax return of Taxpayer was not properly prepared to certify Taxpayer as a QOF. Specifically, Accounting Firm 2 discovered that Accounting Firm 1 had neither prepared nor submitted a Form 8996 with Taxpayer's initial tax return.

Accounting Firm 2 contacted Member 1, Member 2 and Individual to inform them that Accounting Firm 1 had failed to file Form 8996 with Taxpayer's Year 1 Form 1065. Accounting Firm 2 advised Taxpayer that it could seek to make the QOF election by filing a private letter ruling request, in order to request an extension of time to file the self-certification included in Form 8996 pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations. Accounting Firm 2 was immediately authorized to prepare and submit a request for a private letter ruling.

Taxpayer has submitted affidavits signed under penalties of perjury from Individual, from a Senior Manager at Accounting Firm 2, and from Director, a Director of Tax Services at Accounting Firm 1 in support of the requested ruling. Director stated in his affidavit that although he was aware that Taxpayer's members intended to treat Taxpayer as a QOF pursuant to the relevant provision of the Code, he failed to file Form 8996 with Taxpayer's Year 1 Form 1065 due solely to inadvertence.

#### LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including 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 forms or instructions, or in publications or guidance of the Service, 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).

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 of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not

relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for an election. A taxpayer may alternatively demonstrate good faith actions if he reasonably relies on a qualified tax professional and the professional failed to make, or advise the taxpayer to make, the election.

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provisions in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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 is closed by the period of limitations on assessment under § 6501(a) before the taxpayer's receipt of a ruling granting relief under that section.

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. Members and Individual reasonably relied on a qualified tax professional who failed to make, or advise Taxpayer

to make, the election to self-certify as a QOF pursuant to § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations.

Accordingly, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make an election to self-certify as a QOF, effective Month 1, Year 1, under § 1400Z-2 of the Code and § 1.1400Z2-1(a)(2)(i) of the Income Tax Regulations. The election must be made on a completed Form 8996 attached to the Taxpayer's amended tax return or by making an administrative-adjustment request (as applicable).

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) of the Income Tax Regulations, or whether Taxpayer meets the requirements under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. 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.

The rulings contained in this letter are based upon affidavits, 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 sent to your authorized representative.

Sincerely,

Gerald Semasek,  
Assistant to the Chief, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

cc: