

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202503006**
Release Date: 1/17/2025

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 9100.00-00, 1400Z.02-00,
1400Z.01-00.

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-108211-24

Date:
October 18, 2024

Legend

Taxpayer =
Tax Year =
Manager =
CPA1 =
CPA2 =
Law Firm =
Year 1 =
Month 1 =
Month 2 =
Month 3 =
Date 1 =
Date 2 =
Date 3 =

Date 4 =

Date 5 =

Date 6 =

State A =

State B =

X =

Dear _____ :

This letter responds to Taxpayer’s request, dated Date 6, for a private letter ruling. Specifically, Taxpayer requests relief, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations for Taxpayer’s Form 8996, *Qualified Opportunity Fund*, to be treated as timely for purposes of making the election, under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations: (1) to self-certify as a qualified opportunity fund (“QOF”), as defined in § 1400Z-2(d) of the Internal Revenue Code , and (2) to be treated as a QOF, effective Month 1, the month in which Taxpayer was formed (“Request”).¹

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

Based on the provided information and representations, Taxpayer was organized on Date 3 as a limited liability company under the laws of State A and is treated as a partnership for Federal income tax purposes. Taxpayer has a tax year-end of Tax Year. Taxpayer was formed for the purpose of operating as a QOF and investing in qualified opportunity zone property as defined in § 1400Z-2(d)(2).

Manager is Taxpayer’s appointed partnership representative in all Federal income tax matters. Over several years prior to Year 1, Manager retained CPA1 to prepare some, but not all, tax returns for Manager and various entities in which Manager held an ownership interest. CPA1, a certified public accountant licensed by State B, has more than X years of experience.

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code or the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301) as applicable.

Shortly before Date 1, Manager advised CPA1 of Manager's intention to invest in a partnership structured as a QOF and to seek advice from CPA2 and Law Firm on the structuring and compliance requirements of a QOF. CPA2, a certified public accountant licensed by State B, has more than X years of experience.

During the period between Date 1 and Date 2, Manager asked CPA1 to participate on several conference calls with Law Firm and CPA2 on which the participants discussed QOF-related matters pertaining to Taxpayer. Manager also informed CPA2 of the longstanding professional relationship between CPA1 and Manager.

Manager continued to retain CPA1 to prepare various tax returns for which the latter had been previously engaged to prepare in prior years, but CPA1 and Manager did not execute an engagement letter for the preparation of Taxpayer's Form 1065, *U.S. Return of Partnership Income*, for Year 1.

Due to a misunderstanding, CPA1 and CPA2 each assumed that the other was responsible for the preparation of Taxpayer's Year 1 tax return. While preparing various Year 2 tax returns for Manager during Month 2, CPA1 asked CPA2 to provide a copy of Taxpayer's Year 1 Form 8996 as filed with Taxpayer's Year 1 tax return. CPA2 responded that it had never been engaged by Manager to prepare either Taxpayer's Year 1 return or Form 8996. On Date 4, CPA1 informed CPA2 that the former likewise had not been so engaged. Shortly thereafter, CPA2 informed Manager that Taxpayer had failed to timely file for Year 1 either a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, or a Form 1065 with a Form 8996 attached. Consequently, Taxpayer failed to self-certify as a QOF beginning as of Month 1.

Shortly thereafter, Manager engaged CPA2 to prepare Taxpayer's late Year 1 tax return, which was subsequently filed on Date 5 and this Request for relief, which the latter began drafting during Month 3.

Taxpayer represents that granting relief under § 301.9100-3 will not result in a lower tax liability in the aggregate for all tax years affected by the election. Taxpayer further represents that its actions are not described in § 301.9100-3(b)(3).

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations 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 in which the certification applies. The Form 8996 must be filed by the due date (including extensions) of the tax return. The information provided indicates that Taxpayer did not timely file Form 8996 beginning with Year 1 due to a miscommunication among CPA1, CPA2, and Manager.

Sections 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. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes 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 granting relief will not prejudice the interests of the Government. Section 301.9100-1(b) defines the term “regulatory election” as including any election whose due date is prescribed by a regulation published in the Federal Register. 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. 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).

Section 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.

For purposes of paragraph (b), 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. See § 301.9100-3(b)(2).

Under § 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 § 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.

Section 301.9100-3(c) provides that the Service will grant a reasonable extension of time to make a regulatory election only when the interests of the Government will not be prejudiced by the granting of relief. Section 301.9100-3(c)(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). Further, under § 301.9100-3(c)(ii), 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.

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, based solely on the facts and information submitted, and the representations made in the Request, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's Form 8996, attached to Taxpayer's Form 1065 for Year 1, filed on Date 5, shall be considered timely filed. Therefore, Taxpayer has thereby made the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year 1. Taxpayer should submit a copy of this letter ruling to the IRS Service Center where Taxpayer files its income tax returns, along with a cover letter requesting that the Service associate this ruling with Taxpayer's Year 1 income tax return.

CAVEATS

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 information, representations, and other data submitted.

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 in Taxpayer are qualifying investments as defined in § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. Further, we 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). Finally, we express no opinion regarding any other sections of the Code or regulations that may be applicable, or the tax treatment of any conditions existing at the time of, or effects resulting from, Taxpayer's election.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representative*, on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

Sincerely,

Alexa T. Dubert
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: