

**Internal Revenue Service**

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Department of the Treasury  
Washington, DC 20224

Third Party Communication: None  
Date of Communication: Not Applicable

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Refer Reply To:  
CC:ITA:B04  
PLR-108971-24

In Re: Private Letter Ruling Request

Date:  
November 05, 2024

**LEGEND**

Taxpayer =

State Z =

Individual =

CPA =

Accounting Firm =

Month 1 =

Month 2 =

Month 3 =

Month 4 =

Month 5 =

Tax Year =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

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

This letter responds to Taxpayer's request, dated Date 3. Specifically, Taxpayer requests an extension of time, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file Taxpayer's Forms 8996, *Qualified Opportunity Fund*, for purposes of making the election to: (1) self-certify Taxpayer as a qualified opportunity fund ("QOF") as defined in § 1400Z-2(d) of the Internal Revenue Code; and (2) be treated as a QOF, effective as of the month Taxpayer was formed, as provided under § 1400Z-2(d) and § 1.1400Z(d)-1(a) ("Request").<sup>1</sup>

### FACTS

Based on the provided information and representations, Taxpayer was organized, on Date 1, as a limited liability company, under the laws of State Z and is classified as a partnership for federal income tax purposes. Taxpayer was organized for the purpose of qualifying as a QOF to invest indirectly in qualified opportunity zone property as defined in § 1400Z-2(d)(2). Taxpayer employs an accrual method of accounting and has a taxable year end of Tax Year.

Individual, Taxpayer's designated tax-matters representative and limited partner, was responsible for ensuring Taxpayer's federal tax returns were prepared and filed on a timely basis. Individual, a partner with a law firm, had a general awareness of the tax-compliance requirements of QOFs but did not possess an expertise in QOFs. CPA is a certified public accountant and partner with Accounting Firm.

During Month 1, Individual and CPA's Accounting Firm began preliminary discussions about the preparation of Individual's personal tax return and Taxpayer's Form 1065, *U.S. Return of Partnership Income*, for Year 1. Around this time, CPA provided, and Individual signed a service agreement with Accounting Firm for the preparation of Individual's personal income tax return ("Service Agreement 1"). Due to a miscommunication between Individual and CPA's Accounting Firm, Individual mistakenly believed Service Agreement 1 also covered the preparation of Taxpayer's Form 1065 for Year 1.

Taxpayer's Year 1 tax return was due on Date 2. Taxpayer, however, did not timely file by that date either a Form 1065 with a Form 8996 attached, or a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*. As such, Taxpayer did not file timely a Form 8996 for Year 1.

During Month 2, CPA and Individual resumed discussions about Individual's personal tax return. At this time, the parties discovered the miscommunication regarding on Taxpayer's Year 1 tax return when Individual inquired about the status of the return. CPA informed Individual that the engagement process to have Accounting Firm prepare

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<sup>1</sup> 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.

Taxpayer's Year 1 tax return had not been completed. During Month 3, Individual signed a service agreement with Accounting Firm, formally engaging Accounting Firm to prepare Taxpayer's Year 1 and Year 2 federal income tax returns ("Service Agreement 2").

During Month 4, Accounting Firm personnel advised Individual that a timely filed Form 1065 with an attached Form 8996, was required for Taxpayer to be self-certified as a QOF effective as of the month it was formed, and that Taxpayer should submit a private letter ruling, requesting relief pursuant to § 9100 of the Procedure and Administration Regulations. In Month 5, Accounting Firm personnel filed Taxpayer's tax returns, with Forms 8996 attached, for Year 1 and Year 2. At that time, Individual also formally engaged Accounting Firm to prepare this Request, which was promptly submitted under §§ 301.9100-1 and 301.9100-3.

Individual represents, on Taxpayer's behalf, the following: (1) This Request was submitted before the failure to properly make the election for either Year 1 or Year 2 was discovered by the Service; (2) Taxpayer is not seeking to alter a return position for which an accuracy-related penalty has been or could be imposed under section 6662 as of Date 4; (3) Taxpayer did not knowingly forego making the election; (4) The decision to seek relief did not involve hindsight, (5) no specific facts have changed since the due date for making the Year 1 election that would make the election more advantageous than if it would have been had the election been timely made; (6) The requested relief will not result in the Taxpayer having a lower tax liability in the aggregate for all affected tax years than the Taxpayer would have had if the election had been timely made (considering the time value of money); and (7) The period of limitations on assessment under section 6501(a) has not closed for the tax year in which the election should have been made or any of the subsequent tax years that would be affected by the election had it been timely made.

#### LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2)(i) of the regulations 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. The Form 8996 must be filed by the due date of the tax return (including extensions). The information provided indicates Taxpayer failed to file the Form 8996 by the due date of its income tax return (including extensions) due to a miscommunication between Individual and CPA's Accounting Firm, resulting in Individual's mistaken belief that the latter have been engaged to prepare, on a timely basis, Taxpayer's Year 1 tax return.

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 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.

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. As such, 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.

Under § 301.9100-3(b)(2), a taxpayer, however, 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.

Section 301.9100-3(b)(3) provides 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 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 a 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.

#### CONCLUSION

Based solely on the facts and information submitted and the representations made in connection with this ruling request, 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. Accordingly, based solely on the facts and information submitted, and the representations made as part of the Request, Taxpayer has satisfied the requirements for the granting of relief.

Accordingly, the Forms 8996, attached to Taxpayer's Year 1 and Year 2 income tax returns, filed in Month 5, are considered timely filed, and 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 and Year 2. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns along with a cover letter requesting that the Service associate this ruling with Taxpayer's Year 1 and Year 2 returns.

#### CAVEATS

The granting of an extension of time in this ruling letter is not a determination that Taxpayer is otherwise eligible to self-certify as a QOF. See § 301.9100-1(a).

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement 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 § 301.9100-3 relief as applied to the election to self-certify Taxpayer as an QOF by filing Form 8996 for Years 1 and 2.

Except as expressly provided herein, no opinion is either expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we have no opinion, neither express nor implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z-2(a)-1(b)(34), or whether Taxpayer met or meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. Further, we express no opinion on whether any interest indirectly owned by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether the indirect interest would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3). Nor do we express any opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Internal Revenue Code or Treasury 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. Finally, we express no opinion as to the timeliness of Taxpayer's Year 1 and Year 2 income tax returns.

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

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. 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.

Sincerely,

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

cc: