

**Internal Revenue Service**

Department of the Treasury  
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Person To Contact:  
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Telephone Number:

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Date:  
August 18, 2022

TY:

Taxpayer =  
Member =  
Date 1 =  
Month =  
Year 1 =  
State Z =  
Date 2 =  
Date 3 =  
Date 4 =  
Advisor A =  
Firm A =  
Date 5 =  
Advisor B =  
Firm B =  
Date 6 =

Dear :

This letter responds to Taxpayer’s request for a letter ruling dated Date 1. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (Regulations), for an extension of time to make an election under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to be: (1) certified as a Qualified Opportunity Fund (QOF) as defined in § 1400Z-2(d) of the Internal Revenue Code (Code), and (2) treated as a QOF, effective as of Month in Year 1.

FACTS

Taxpayer is a limited liability company, organized under the laws of State Z on Date 2, and is treated as a partnership for Federal income tax purposes. Taxpayer uses the cash method of accounting as its overall method, and files its Federal income tax returns on a taxable year ending Date 3. On Date 4, Taxpayer amended and restated its operating agreement so it would be organized for purposes of investing in Qualified Opportunity Zone (QOZ) property as defined in § 1400Z-2(d)(2) of the Code.

Taxpayer directly or indirectly, through one or more subsidiaries, acquires, maintains, manages, finances, or otherwise deals in and with office, retail, commercial, and multi-family, industrial, hospitality, or mixed-use real estate properties located with qualified opportunity zones. According to the affidavits and information provided to us, around Date 4, the time Taxpayer organized as a QOF, it had been working with Advisor A, a certified public accountant at Firm A, for more than 10 years. Advisor A had always provided accurate tax advice upon which Taxpayer relied. Advisor A provided accounting and tax preparation return services for Year 1. While preparing its Year 1 Federal income tax return, Advisor A suffered from serious health complications, including multiple surgeries. As a result, Advisor A mistakenly told Taxpayer that it did not need to self-certify as a QOF and file a Form 8996, *Qualified Opportunity Fund*, at the time Taxpayer organized as a QOF. Rather, Advisor 1 told Taxpayer it needed to self-certify as a QOF upon completion of the property, on Date 5. As a result, Taxpayer failed to file a timely Form 8996 to self-certify as a QOF for Year 1.

Due to Advisor A's health issues, Taxpayer ended the professional relationship with Advisor A. Taxpayer then engaged the services of Advisor B, a certified public accountant at Firm B. Taxpayer and Advisor B discussed what actions, if any, must be taken in connection with Taxpayer's certification as a QOF for Year 1. Advisor B informed Taxpayer that in order to have self-certified as a QOF, Taxpayer should have filed the Form 8996 on or before Date 6. Advisor B directed Taxpayer to retain legal counsel to request an extension to file Form 8996 through a private letter ruling request.

Taxpayer represents that granting of the relief under section 301.9100-3 of the Regulations will not result in a lower tax liability for the years affected by the election. Taxpayer further represents it is subject to the centralized partnership audit regime under section 6221 of the Code for its taxable year ending in Year 1.

#### 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) 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 Federal income tax return for the taxable 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 Taxpayer did not file Form 8996 due to Taxpayer's reliance on mistaken advice given by Advisor A.

Because section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations sets forth the manner and timing for an entity to self-certify as a QOF, these elections are regulatory elections, as defined in section 301.9100-1(b) of the Regulations.

Sections 301.9100-1 through 301.9100-3 of the 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 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 § 301.9100-3(b) of the Regulations, a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. However, 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.

In addition, § 301.9100-3(b)(3) of the Regulations 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 section 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) of the 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 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 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 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 has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government. Accordingly, the requirements of §§ 301.9100-1 and 301.9100-3 of the Regulations have been met.

Taxpayer is granted an extension of 45 days from the date of this letter ruling to file an amended return, or an Administrative Adjustment Request (whichever is appropriate), to make the election to self-certify as a QOF under § 1400Z-2 of the Code and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations, by filing a completed Form 8996.

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 factual 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 into Taxpayer are qualifying investments as defined in § 1.1400Z2 (a)–1(b)(34) of the Income Tax Regulations or whether the taxpayer meets the requirements under § 1400Z-2 of the Code 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.

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

The rulings contained in this letter are based upon information and representations submitted by the 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.

Sincerely,

Christina M. Glendening  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel  
(Income Tax & Accounting)

CC: