

Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-103031-21

Date:
August 10, 2021

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Year	=
Advisor	=

Dear _____ :

This letter responds to Taxpayer's request dated Date 1. Specifically, Taxpayer requests relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3 to allow Taxpayer to file Form 8996 (Qualified Opportunity Fund) and for the Form 8996 to be treated as timely for purposes making an election: (1) to self-certify the Taxpayer as a qualified opportunity fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue

Code (Code); and (2) for the Taxpayer to be treated as a QOF as provided under Code § 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a).

FACTS

Taxpayer, organized as a limited liability company under the laws of the state of Delaware, was formed on Date 2, for the intended purpose of investing in “qualified opportunity zone property” as defined in Section 1400Z-2(d)(2). Taxpayer’s operating agreement states the Taxpayer’s intention to be a QOF and the need to execute and file certificates and documents to carry out that purpose.

Members of Taxpayer were not well versed in tax law or the procedures for forming a QOF. As such, the members retained Advisor on behalf of Taxpayer to serve as Taxpayer’s accounting firm and tax advisor. Advisor was responsible for preparing and filing Taxpayer’s Form 1065 (U.S. Return of Partnership Income) for Year along with Form 8996 to self-certify Taxpayer as a QOF as of Date 3.

Advisor advised Taxpayer to file for an extension of time to file Taxpayer’s Year tax return. Advisor was expected to file Form 7004 (Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns) by Date 4, thereby extending the deadline to file Taxpayer’s tax return for Year to Date 5. However, Advisor failed to file a Form 7004 on behalf of Taxpayer.

A short time after Date 4, Advisor revealed to Taxpayer that it failed to file the Form 7004. Consequently, Advisor informed Taxpayer that Taxpayer would not be able to timely file its Year tax return and Form 8996 to self-certify as a QOF. On Date 1, Taxpayer submitted this request asking for relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treasury Regulation § 1.1400Z2(d)-1(a)(2)(i) 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 (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 extensions). The information provided indicates that the Taxpayer did not file its Form 8996 by the due date of its income tax return due to Advisor’s failure to file Form 7004 to extend the return due date, despite Advisor being aware of the need to file Form 7004.

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 section 301.9100-1(b). According to Treasury Regulation § 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of Treasury Regulation § 301.9100-2 (automatic extensions) must be made under the rules of Treasury Regulation § 301.9100-3. Additionally, requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

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 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 section 301.9100-3(b), 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, 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 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 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 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.

Based on the facts and information submitted and the representations made, we conclude that the 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 ruling request, we grant the Taxpayer an extension of 45 days from the date of this letter ruling to file Form 8996 to make the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i).

CAVEATS

This ruling is based upon facts and representations submitted by the Taxpayer and accompanied by penalty of perjury statements 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 Treasury Regulation § 301.9100-3 relief as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 1. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in Treasury Regulation § 1.1400Z2 (a)-1(b)(34) or whether Taxpayer meets the requirements and structure under section 1400Z-2 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.

A copy of this letter must be attached to any 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.

This ruling is directed only to the taxpayer requesting it. Code § 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 Code § 6110.

Pursuant to the Form 2848, Power of Attorney and Declaration of Representation, on file, we are sending a copy of this letter to Taxpayer's authorized representative.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to the taxpayer.

Sincerely,

Lisa Mojiri-Azad
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: