

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-124342-21

Date:
April 19, 2022

Taxpayer	=
State X	=
Supervisor	=
Developer	=
Associate	=
Tax Preparer	=
Law Firm	=
Accounting Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Month 1	=
Year 1	=

Dear :

This 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's Form 8996, *Qualified Opportunity Fund*, filed on Date 7 to be treated as timely for purposes of making an election to: (1) self-certify Taxpayer as a Qualified Opportunity Fund (QOF), defined in § 1400Z-2(d) of the Internal Revenue Code (Code); and (2) for

Taxpayer to be treated as a QOF, effective as of Month 1, as provided under Code § 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a).

FACTS

Taxpayer was organized as a limited liability company on Date 2 under the laws of State X and is classified as a partnership for federal income tax purposes. As stated in Taxpayer's LLC Agreement entered into on Date 2, Taxpayer was organized for the purpose of investing in qualified opportunity zone property as defined in § 1400Z-2(d)(2). Developer is both the managing member and partnership representative of Taxpayer. Supervisor is the manager of Developer and Associate is Supervisor's business partner.

According to the representations and information provided by Taxpayer, Supervisor engaged Tax Preparer to provide accounting and tax return preparation services for Taxpayer. Tax Preparer received electronic correspondence from Associate on Date 3 which acknowledged Supervisor's intention of forming and reinvesting eligible gains in Taxpayer. On Date 4, Supervisor e-mailed Tax Preparer a list of items to discuss during a meeting which included Year 1 tax filings and related extensions, as well as Supervisor's investments in qualified opportunity funds, specifically Taxpayer. During the meeting Supervisor conferred with Tax Preparer regarding the formation of Taxpayer, investments made in Taxpayer and that Taxpayer intended to qualify as a QOF by filing Form 8996 along with its Year 1 Form 1065, *U.S. Return of Partnership Income*. The next day, Supervisor sent Tax Preparer another electronic correspondence with a summary of various financial and accounting matters, including more information on investments made in Taxpayer. Either Taxpayer's Year 1 Form 1065 and accompanying Form 8996, or Form 7004, *Application for the Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, was due on Date 5.

On or about Date 6 Tax Preparer informed Supervisor and Associate that due to an administrative error, neither Taxpayer's Year 1 Form 1065 nor Form 7004 was filed by Date 5. Subsequently, Supervisor consulted Law Firm and Accounting Firm on behalf of Taxpayer regarding Tax Preparer's failure to file Taxpayer's Year 1 Form 1065 and accompanying Form 8996 by the due date. On Date 7 Accounting Firm filed Taxpayer's Year 1 Form 1065 including Form 8996 to certify Taxpayer as a QOF as of Month 1.

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 Taxpayer did not file its Form 8996 by the due date of its Year 1 income tax return due to an administrative error made by Tax Preparer.

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).

Treas. Reg. §§ 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. Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treas. Reg. § 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 301.9100-3(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 Treasury Regulation § 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)(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 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, the Taxpayer's completed Form 8996, filed on Date 7, to make the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) certifying the Taxpayer as a QOF as of Month 1, is considered timely.

CAVEATS

This ruling is based upon facts and representations submitted by the 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.

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, Qualified Opportunity Fund, 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 § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. We also 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. In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

This letter ruling 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 Taxpayer.

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
Office of the Associate Chief Counsel
(Income Tax & Accounting)

cc: