

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202239001**

Release Date: 9/30/2022

Index Number: 1400Z.02-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-100256-22

Date:
June 29, 2022

Taxpayer =
Member A =
Lawyer =
Accounting Firm =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Month 1 =
Month 2 =
Year 1 =
State Z =

Dear :

This responds to Taxpayer's request dated Date 1, and additional information submitted by Taxpayer, seeking a private letter ruling granting relief to make a late regulatory election pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 8996, Qualified Opportunity Fund, to (1) self-certify the Taxpayer as a Qualified Opportunity Fund (QOF) defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) for the Taxpayer to be treated as a QOF, effective as of the month the

Taxpayer was formed, as provided under Code § 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a). 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.

FACTS

Taxpayer was organized as a limited liability company on Date 2 under the laws of State Z 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). Member A is the managing member of Taxpayer and had the principal responsibility for timely filing Taxpayer's Form 1065, *U.S. Return of Partnership Income*, for Year 1, along with Taxpayer's Form 8996, *Qualified Opportunity Fund*, to self-certify Taxpayer as a QOF. Member A does not have expertise or experience with federal tax matters. Taxpayer is the first entity classified as a partnership for which Member A had the principal responsibility to file the tax return.

In Month 1, Member A consulted Lawyer regarding the formation and self-certification of Taxpayer as a QOF. Lawyer advised Member A on matters relating to the formation of Taxpayer including filing organization documents with State Z. They also discussed general time and form requirements of a QOF including the required self-certification on Form 8996. However, Lawyer did not advise Member A as to the timing of the required Form 1065 with which Form 8996 is filed and assumed that Member A was consulting with his tax preparer. Lawyer has provided, in a signed affidavit submitted to our office, given Member A's lack of experience with Form 8996 and the complexity of the Qualified Opportunity Fund regulations, the scope of Lawyer's discussion with Member A could have included a discussion of the timing of the filing of Taxpayer's Form 1065 and accompanying Form 8996. The filing deadline for Taxpayer's Year 1 Form 1065 and accompanying Form 8996 was Date 3. Member A did not timely file Taxpayer's Form 1065, Form 8996 or Form 7004, *Application for the Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*.

In Month 2 Member A approached Accounting Firm to prepare and file Taxpayer's Year 1 Form 1065 and accompanying Form 8996. At this time Accounting Firm contacted Lawyer, and they communicated to Member A that Taxpayer had missed the filing deadline for its Form 1065 and Form 8996 or Form 7004. Taxpayer then authorized Accounting Firm to prepare this request for relief. Taxpayer filed its Year 1 Form 1065 and accompanying Form 8996 on Date 4 along with a disclosure statement identifying that the Taxpayer was in the process of filing this request for relief. Taxpayer filed its Year 1 Form 1065, Form 899, and disclosure statement before the omission was discovered by the Internal Revenue Service.

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 inexperience from Member A and assumptions made by Lawyer.

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 4, 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,

Angella L. Warren
Branch Chief, Branch 4
Office of the Associate Chief Counsel
(Income Tax & Accounting)

cc: