

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-102976-22

Date:
July 13, 2022

Legend

- Taxpayer =
- Partnership Representative =
- Member =
- State Z =
- Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Date 9 =
- Year 1 =
- Year 2 =
- Month 1 =
- Month 2 =

Dear :

This letter refers to a request for a private letter ruling, dated Date 1, filed on behalf of Taxpayer (), requesting relief under sections 301.9100-1 and 301.9100-3 of the Income Tax Regulations for Taxpayer’s Form 8996, *Qualified Opportunity Fund* as filed on Date 4, to be treated as timely for purposes of the election: (1) to self-certify

Taxpayer as a Qualified Opportunity Fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code (Code); and (2) for Taxpayer to be treated as a QOF, effective as of Month 1 in Year 1.

FACTS

Taxpayer was organized as a limited liability company under the laws of State Z on Date 2 and is treated as a partnership for Federal income tax purposes. Taxpayer's overall method of accounting is accrual, and has a tax year end of Date 5. Partnership Representative and Member each own % of Taxpayer.

According to the affidavits and information provided to us, Partnership Representative and Member both work as entrepreneurs in the real estate investment and financing fields, and neither has an educational or professional background that focuses on taxation. Numerous due dates for Federal income tax returns were extended due to the COVID pandemic. While other Federal income tax returns' deadline were extended, Partnership Representative, due to their unfamiliarity with tax laws and procedures, did not realize that the initial due date for Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, was not extended. Because of Partnership Representative's erroneous belief respecting the due date for Taxpayer's Year 1 tax return, Partnership Representative did not request an extension on Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*. Partnership Representative intended to obtain professional assistance filing Form 1065 on behalf of Taxpayer but only sought assistance after the initial due date had passed.

In Month 2 of Year 2, Partnership Representative discovered that the due date for Taxpayer's Year 1 tax return had not been extended. Partnership Representative, on behalf of Taxpayer, engaged Firm for assistance in compiling this private letter ruling request. Firm additionally completed and filed Taxpayer's initial Form 1065 for Year 1, and included Form 8996, certifying its QOF status. Taxpayer's Year 1 return and completed Form 8996 were filed on Date 4.

Partnership Representative represents that on or about Date 6, Partnership Representative received Letter 6502 from the Service regarding their investments in Taxpayer. The letter, dated Date 7, indicated that the Employer Identification Number (EIN) reported for Taxpayer is not associated with a certified QOF. On Date 8, Manager called the contact number listed in the letter and left a message as instructed. As of Date 9, Manager has not received a response. Taxpayer's private letter ruling request was filed on Date 1, five months prior to receiving the letter.

Taxpayer represents that granting of the relief under section 301.9100-3 will not result in a lower tax liability for the years affected by the election

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Internal Revenue 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 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 Partnership Representative did not file Taxpayer's Form 8996 due to Partnership Representative's mistaken belief that IRS had extended the due date for Taxpayer's Federal income tax return.

Because section 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 section 301.9100-1(b).

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 failed to make the election because, after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election.

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 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) 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 section 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. Partnership Representative has no background or education in taxation and did not realize that the due date for Taxpayer's return had not been extended. Further, while the IRS sent Letter 6502 to Partnership Representative regarding their investment in Taxpayer, the IRS did not send a letter to Taxpayer regarding Taxpayer's certification as a QOF.

Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief. Consequently, Taxpayer's Form 8996, certifying Taxpayer as a QOF as of Month 1, Year 1, is considered timely filed.

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 section 1.1400Z2 (a)–1(b)(34) or whether the taxpayer meets the requirements under section 1400Z-2 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 section 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in section 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.

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.

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 representative.

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,

Erika C. Reigle
Senior Technician Reviewer, Branch 5
(Income Tax & Accounting)

cc: