

Internal Revenue Service

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Attn:

Department of the Treasury
Washington, DC 20224

[Third Party Communication:
Date of Communication: Month DD, YYYY]

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-107551-22

Date:
October 07, 2022

VIA FAX

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Members	=
Year 1	=
Year 2	=
Year 3	=
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 for an extension of time to make an election to: (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, effective as of Date 2, as provided under Code § 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a).

FACTS

According to the information and representations provided, Taxpayer, a partnership treated as limited liability company for U.S. tax purposes, formed on Date 2, for the purpose of qualifying as a QOF and investing in "qualified opportunity zone property" as defined in Section 1400Z-2. Taxpayer currently has two members, Members. Members each own a _____ percent interest in Taxpayer. Taxpayer's LLC operating agreement states the Taxpayer's intention to be a QOF and to invest in at least 90 percent of Taxpayer's assets in one or more qualified opportunity zone businesses.

Members employed a financial advisor to assist in forming and structuring Taxpayer to meet the requirements under § 1400Z-2 and be a valid QOF. On Date 3, Members first invested gains into Taxpayer, who subsequently invested those gains into a qualified opportunity zone business (QOZB). The QOZB then acquired and developed a piece of real estate in an opportunity zone. Taxpayer represents that other than the missed election to be a QOF, Taxpayer and QOZB meet all the rules under section 1400Z-2 and the regulations thereunder.

For tax year Year 1, Members engaged Advisor to advise them on reporting related to their Year 1 investments, including their investments in Taxpayer. Advisor has filed all of the Members' individual and business tax returns for a number of years. During the process of advising Members on how to file returns for Taxpayer, Advisor incorrectly believed that the Members had the option to classify Taxpayer as either a partnership or a disregarded entity. Specifically, Advisor advised that Taxpayer could qualify as a joint venture and Members could report Taxpayer's activity directly on the Members' federal income tax return. In addition, Advisor failed to timely file an extension to file Taxpayer's Form 1065 for Year 1. As such, Taxpayer did not file a federal tax return and a Form 8996 for Year 1. Rather, all activity for tax year Year 1 related to Taxpayer was reported on the Members' Form 1040 for Year 1.

In the summer of Year 3, Advisor realized that Taxpayer was not certified as a QOF beginning in tax year Year 1 due to Members incorrectly reporting Taxpayer's activities on their return. On Date 4, Advisor informed Members that Taxpayer's improper classification as a disregarded entity disqualified Taxpayer from being a QOF. Upon being made aware of this mistake, Taxpayer engaged Advisor to prepare this private letter ruling request.

According to the representations provided, Taxpayer could not have ever qualified to be a joint venture under federal law and therefore cannot be treated as a disregarded entity. Rather, Taxpayer represents that it must be treated as a partnership by default under section 301.7701-3(b)(1). In addition, Taxpayer filed Form 1065 along with a Form 8996 for tax years Year 2 and Year 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 (including extensions) due to Advisor incorrectly advising that Taxpayer could be classified as a disregarded entity.

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.

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.

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 Taxpayer's request for extension of time to elect to be a QOF and to self-certify as a QOF is a regulatory election governed by Treasury Regulation § 301.9100-3. We further conclude that, based on the facts and information submitted in connection with this request, Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government. Accordingly, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and is granted an extension of 45 days from the date of this letter ruling to file a Federal income tax return to make the election to self-certify as a QOF under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election is to be made on a completed Form 8996.

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. In addition, 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, including whether Taxpayer could not have been classified as a disregarded entity or whether Taxpayer is classified as a partnership.

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 Chief Counsel
(Income Tax & Accounting)

cc: