

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202302001**
Release Date: 1/13/2023
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:5
PLR-107125-22
October 12, 2022

TY=

Legend

- Taxpayer =
- Member =
- State Z =
- Firm =
- Consulting Team =
- Tax Compliance Team =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Year 1 =
- Year 2 =
- Month =

Dear :

This ruling responds to Taxpayer’s request for a letter ruling dated Date 1. Specifically, Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Income Tax Regulations, to (1) make a timely election under section 1.1400Z2(d)-1(a)(2)(i) to be certified as a qualified opportunity fund (QOF), as defined in section

1400Z-2(d) of the Internal Revenue Code, and (2) for Taxpayer to be treated as a QOF, effective as of Month in Year 1, as provided by section 1400Z-2(d) and section 1.1400Z2(d)-1(a) of the Income Tax Regulations.

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 the accrual method of accounting and has a tax year end of Date 3.

Taxpayer engaged the services of Firm in Year 1. According to the affidavits and information provided to us, Member engaged Firm to prepare and timely file Taxpayer's Year 1 Federal income tax return, Form 1065, *U.S. Return of Partnership Income*, and all related forms and elections to self-certify Taxpayer as a QOF. Firm accepted the engagement and the responsibility to prepare and file a timely return, including the preparation and filing of an automatic extension using Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*, if necessary.

Firm is made up of two different teams, Consulting Team and Tax Compliance Team. Consulting Team consists of Firm's accounting and consulting group. Tax Compliance Team consists of Firm's tax services group, a separate group from Consulting Team. Around the time Member engaged with Firm, Member provided Consulting Team with Taxpayer's operating agreement, dated on Date 4. The agreement outlined the business and purpose of the company, with emphasis on Taxpayer's intent to qualify as a QOF. Separately, Member engaged Tax Compliance Team to perform tax compliance services, including preparing and timely filing Taxpayer's Form 1065 for Year 1. Given the scope of services agreed upon between Taxpayer and Firm, Taxpayer reasonably expected that Consulting Team would adequately relay to the Tax Compliance Team Taxpayer's wish to certify as a QOF, and that all necessary tax filings would be addressed in a timely manner, including any necessary QOF election and/or certification for Year 1.

Tax Compliance Team timely filed the Federal income tax return for Year 1 before Date 5, the extended statutory due date. Tax Compliance Team, however, failed to include Form 8996. According to the affidavits and information provided to us, the omission of the Year 1 necessary form and failure to make the election resulted from a miscommunication between Consulting Team and Tax Compliance Team. Consulting Team had failed to inform Tax Compliance Team that Taxpayer was organized with the intent to qualify as a QOF. As a result, Tax Compliance Team inadvertently failed to identify the QOF information and qualification intent reflected in Taxpayer's operating agreement and thus, prepared and filed the Year 1 return without the Form 8996 attached to it.

Upon initial preparation of Taxpayer's Year 2 Federal income tax return, Tax Compliance Team became aware of the failure to file the Form 8996 in Year 1. Firm promptly notified Taxpayer and advised Taxpayer to seek a ruling under Treas. Reg. section 301.9100-3 with respect to the lack of its initial year QOF self-certification election as required by Treas. Reg. section 1.1400Z2(d)-1(a)(2).

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 Firm did not file Taxpayer's Form 8996 due to a communication error between Consulting Team and Tax Compliance Team. Taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to Taxpayer's belief that Firm, having received all necessary documents and data to perform the intended services, would perform all necessary filings on time.

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 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 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. 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 an amended return, or an Administrative Adjustment Request (whichever is appropriate), to make the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election is to be made on Form 8996.

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 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.

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 representatives.

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 Reigle
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: