

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: _____, ID No.

Telephone Number: _____

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CC:ITA:B04
PLR-109925-22

Date:
November 14, 2022

Legend

- Taxpayer =
- Advisor =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Year 1 =
- Month 1 =
- State Z =

Dear _____ :

This letter responds to Taxpayer’s request dated May 10, 2022. 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 1 to be treated as timely for purposes of making an election to: (1) self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) be treated as a QOF, effective as of the month the Taxpayer was formed, as provided under section 1400Z-2(d) and Treas. Reg. § 1.1400Z2(d)-1(a).

This letter ruling is being issued electronically in accordance with Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

Based on the information provided, Taxpayer has represented that Taxpayer, a partnership organized as a State Z _____, was formed on Date 2. Taxpayer formed a subsidiary as a QOF specifically for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2).

During Year 1, Taxpayer engaged Advisor to prepare Taxpayer's Form 1065, *U.S. Return of Partnership Income*, for Year 1. The information provided indicates that Advisor was tasked with preparing and timely filing Taxpayer's Federal income tax return and all related forms and elections to self-certify Taxpayer as a QOF, and to treat Taxpayer as a QOF as of Month 1, the month Taxpayer was formed.

According to the affidavits and representations, Taxpayer and Advisor were aware of the requirement to file a Form 8996 for the Taxpayer to self-certify its QOF status and to be treated as a QOF as of the month Taxpayer was formed. However, Advisor was not aware that the Form 8996 was required to be filed with Taxpayer's timely filed federal income tax return. Additionally, Advisor was expected to file a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*, to request an automatic extension of time for Taxpayer's federal income tax return for Year 1. Advisor failed to file either the federal income tax return or the Form 7004.

Advisor discovered this failure on Date 3, and prepared Taxpayer's Form 1065 for Year 1, including the Form 8996 and filed the return late on Date 1. On Date 4, it was learned that the Form 8996 is only valid when filed with Taxpayer's timely filed federal income tax return for the year of the election. Consequently, Taxpayer submitted this request.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treas. Reg. § 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 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 for Year 1 due to

Advisor's failure to timely file Taxpayer's federal income tax return. Taxpayer filed its first federal income tax return and Form 8996 on Date 1.

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 Treas. Reg. § 301.9100-1(b). According to Treas. Reg. § 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards that the Service 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.

Treas. Reg. § 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 Treas. Reg. § 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 section 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.

Treas. Reg. § 301.9100-3(c) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting

of relief. 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). Treas. Reg. § 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.

CONCLUSION

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, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's late-filed Form 8996, certifying the Taxpayer as a QOF as of Month 1 is considered timely filed.

The ruling contained in this letter is 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.

This ruling addresses the granting of Treas. Reg. § 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 Treas. Reg. § 1.1400Z2(a)-1(b)(34) or whether, at any time, Taxpayer met or meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. 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.

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. Section 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 section 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.

Sincerely,

Lisa Mojiri-Azad
Senior Technician Reviewer, Branch 4
(Income Tax & Accounting)

cc: