

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-109428-22

Date:
November 28, 2022

LEGEND

- Taxpayer =
- Tax Advisor =
- Individual A =
- Individual B =
- Individual X =
- X% =
- Y% =
- State =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Tax Year 1 =
- Tax Year 2 =
- Tax Year 3 =
- Tax Year 4 =

Dear :

This responds to Taxpayer’s request dated Date 1. Specifically, Taxpayer requests relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3 granting an extension of time to make a timely election under Treasury Regulation § 1.1400Z-2(a)-1(a)(2)(i) to be certified as a Qualified Opportunity Fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code) for Tax Year 2 and Tax Year 3.

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

On or about Date 2, Individual A was presented with an opportunity to invest in property located in a qualified opportunity zone by Individual X. Individual X was a founder and principal of a real estate development company that specialized in qualified opportunity zone investments. Individual X advised Individual A about how to form a QOF and various tax matters related to QOFs. However, Individual X did not inform Individual A about the requirement to file Form 8996, Qualified Opportunity Fund, which a corporation or partnership uses to certify that it is organized to invest in qualified opportunity zone property.

On Date 3, Individual A formed Taxpayer, a limited liability company, under the laws of State, classified as a partnership for United States federal income tax purposes. Taxpayer is on the cash method of accounting and keeps its books and accounting records on the calendar year end. Taxpayer's articles of organization state that Taxpayer was formed for the purpose of investing in qualified opportunity zone property.

Individual A is the managing member of Taxpayer. Taxpayer has two members, Individual A, who owns an X% interest, and Individual B, who owns a Y% interest. Individual A and Individual B are husband and wife. Individual A and Individual B self-prepared their federal income tax return for Tax Year 1, making an election on Form 8949 of their Tax Year 1 federal income tax return to defer tax on eligible gains by investing those gains into a QOF pursuant to Code § 1400Z-2(a)(1). Individual A and Individual B listed Taxpayer as the QOF that was invested in for the election under Code § 1400Z-2(a)(1) on their Tax Year 1 Form 8949.

Individual A and Individual B initially treated Taxpayer as a disregarded entity for federal income tax purposes for Tax Year 2 and Tax Year 3 and were unaware that Taxpayer needed to separately file Form 1065, U.S. Return of Partnership Income, for the Taxpayer. Additionally, Taxpayer did not timely file Form 8996, Qualified Opportunity Fund, certifying itself as a QOF for either Tax Year 2 or Tax Year 3. Individual A represents that he was unaware of the requirement to file Form 8996 for Taxpayer. Individual A is not a tax professional and does not have experience in matters related to qualified opportunity funds.

On Date 4, Individual A engaged Tax Adviser to prepare his federal income tax return for Tax Year 4. In connection with the Tax Year 4 return, Individual A informed Tax Adviser that he and Individual B had made an additional contribution to Taxpayer, an entity purported to be a QOF, during that year. Tax Adviser subsequently asked if Individual A had filed Form 8996 for Taxpayer. Individual A was unaware of the existence of Form 8996 and Taxpayer's Form 1065 filing requirement. Individual A subsequently engaged Tax Adviser to prepare a private letter ruling request for relief. Taxpayer has since filed Tax Year 2 and Tax Year 3 Forms 1065, respectively, along with Forms 8996, signifying its intent to self-certify as a QOF effective as of Date 3.

Taxpayer represents that it has invested the funds received into an entity that is purported to be a qualified opportunity zone business under Code § 1400Z-2(d)(3), that the qualified opportunity zone business has substantially improved property located in a qualified opportunity zone, that such property is qualified opportunity zone business property, that Taxpayer satisfies the 90-percent investment standard, and the entity formed to be a qualified opportunity zone business meets the 70-percent tangible property standard as defined in Treasury Regulation § 1.1400Z2(a)-1(b)(2).

LAW AND ANALYSIS

Code § 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 income tax return (including extensions) for Tax Year 2 and Tax Year 3 because Individual A was unaware that a timely filed Form 8996 was required to certify Taxpayer as a QOF.

Because Treasury Regulation § 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 Treasury Regulation § 301.9100-1(b).

Treasury Regulation §§ 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. Treasury Regulation § 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 Treasury Regulation § 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.

Treasury Regulation § 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.

Treasury Regulation § 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.

Treasury Regulation § 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).

Treasury Regulation § 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 Code § 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, Taxpayer has satisfied the requirements of the regulations for granting of relief and Taxpayer's Form 8996, to make the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) certifying the Taxpayer is a QOF as of Date 3, 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 Treasury Regulation § 1.1400Z2 (a)— 1(b)(34) or whether Taxpayer 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.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being faxed to your authorized representative.

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: