

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
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Date:
April 14, 2023

Taxpayer =
Partner A =
Partner B =
Accounting Firm =
CPA 1 =
CPA 2 =
Advisor 1 =
X =
Y =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =
Year 2 =
Year 3 =
State A =
State B =

Dear :

This letter responds to Taxpayer's request, dated Date 4 and supplemental correspondence. Specifically, Taxpayer requests relief, pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, for its Forms 8996, *Qualified Opportunity Fund*, filed on Date 3, to be treated as timely for purposes of the election to: (1) self-certify the Taxpayer as a qualified opportunity fund ("QOF") as defined in section 1400Z-2(d) of the Internal Revenue Code (Code); and (2) for the Taxpayer to be treated as a QOF, effective as of the month Taxpayer was formed, as

provided under section 1400Z-2 of the Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations.¹

FACTS

Taxpayer has represented that the facts are as follows.

Taxpayer was organized as a limited liability company under the laws of State A on Date 1 and is classified as a partnership for U.S. federal income tax purposes. Taxpayer was organized for the purpose of being a QOF and investing in qualified opportunity zone business property as defined in section 1400Z-2(d)(2). Partner A owns X percent of Taxpayer while Partner B owns the remaining Y percent.

Partner A and Partner B were clients of Accounting Firm for many years. CPA 1 of Accounting Firm was an experienced certified public accountant licensed in State B.

CPA 1 served as the primary tax preparer for Partner A and Partner B throughout their lengthy business relationship with Accounting Firm. Partner A engaged CPA 1 to prepare Taxpayer's Forms 1065, *Return of Partnership Income* for Years 1 through 3. When Partner A initially engaged CPA 1 to prepare the Forms 1065, Partner A informed CPA 1 that Taxpayer intended to operate as a QOF. Partner A provided CPA 1 with the information necessary to complete the Forms 8996 for each of the years.

CPA 1 prepared and filed Taxpayer's Forms 1065 for Years 1 and 2 but failed to attach completed Forms 8996 to the returns. While preparing Taxpayer's Form 1065 for Year 3, CPA 1 discovered the earlier failures and informed Partner A. On Date 2, CPA 1 prepared and timely filed Taxpayer's Form 1065 for Year 3 but again did not attach a completed Form 8996 to the return. Shortly after Date 2, CPA 1 died. On Date 3, another certified public accountant with Accounting Firm, CPA 2, filed, on Taxpayer's behalf, amended returns with completed Forms 8996 attached for Years 1 through 3 ("Amended Returns"). Shortly thereafter, Partner A engaged Advisor 1 to seek a private letter ruling for relief under sections 301.9100-1 and 301.9100-3.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Section 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.

¹ Hereinafter, references to "section" are to sections of the Internal Revenue Code or the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301) as applicable.

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 Taxpayer did not file Forms 8996 by the due date of its income tax returns (including extensions) for Years 1 through 3 due to CPA 1's failure to attach completed Forms 8996 to Taxpayer's returns for these years.

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 301.9100-1(b) defines the term "regulatory election" as including any election, whose due date is prescribed by a regulation published in the Federal Register. Because section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for an entity to self-certify as a QOF, this election is a regulatory election within the meaning of section 301.9100-1(b).

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.

Under section 301.9100-3(b)(2), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not —

- (i) competent to render advice on the regulatory election; or
- (ii) 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 § 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.

CONCLUSION

Based on the representations and information submitted in connection with this request, we conclude 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 the Forms 8996, attached to Taxpayer's Amended Returns, for Years 1 through 3 and filed on Date 3, shall be considered timely filed. Accordingly, Taxpayer has thereby made the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Years 1 through 3. Taxpayer should submit a copy of this letter ruling to the IRS Service Center where Taxpayer files its income tax returns, along with a cover letter requesting that the Service associate this ruling with Taxpayer's Amended Returns.

This ruling is based upon facts and representations submitted by 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 section 301.9100-3 relief as applied to the election to self-certify Taxpayer as a QOF by filing Form 8996 for Year 1, Year 2, and Year 3. Except as expressly provided herein, no opinion is either expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we have 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. 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). Finally, 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) 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. This letter 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.

Sincerely,

Alexa T. Dubert
Senior Technician Reviewer
Branch 4
Office of Chief Counsel
(Income Tax & Accounting)

cc: