

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202330007**
Release Date: 7/28/2023
Index Number: 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:IT:B05
PLR-120734-22

Date:
April 21, 2023

TY:

Taxpayer =
LLC A =
Accounting Firm =
Tax Advisors =
Accountant =
Member X =
Member Y =
Abbreviation =
State =
N1 =
N2 =
Year 1 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =

Dear :

This responds to Taxpayer's request dated Date 1 for relief under § 301.9100-3 of the Procedure and Administration Regulations in regard to a Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Internal Revenue Service (Service) grant to Taxpayer an extension under § 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a timely election under § 1400Z-2 of

the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to self-certify as a Qualified Opportunity Fund (QOF), as defined in § 1400Z-2(d) of the Code, for Taxpayer's Year 1.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer, a limited liability company formed pursuant to the laws of State, is treated as a partnership for federal income tax purposes. Taxpayer uses the accrual method of accounting and keeps its books and records and reports income on a calendar year basis.

Taxpayer's operating agreement, dated Date 2, states that Taxpayer is intended to be a QOF pursuant to § 1400Z-2(d)(1), organized for the purpose of investing in qualified opportunity zone property as defined by § 1400Z-2(d)(2). On Date 3, members of Taxpayer each contributed \$N1 of capital gain to Taxpayer. Taxpayer subsequently contributed \$N2 to LLC A, a qualified opportunity business as defined by § 1400Z-2(d)(3), in exchange for qualified opportunity zone partnership interests.

In Year 1, Taxpayer retained Accounting Firm, which is located in State, to prepare Taxpayer's federal income tax return. Accounting Firm provided accounting services and certain tax advice and the preparation of state and federal income tax returns for Taxpayer. Accountant, who has more than two decades of experience with Accounting Firm, was responsible for filing Taxpayer's annual return, a Form 1065, *U.S. Return of Partnership Income*.

On Date 4, Member X discussed with Accountant the filing of a Year 1 return for Taxpayer, whose name includes Abbreviation. According to Member X, a copy of Taxpayer's operating agreement was dropped off at Accountant's office around that time period. When Accountant prepared Taxpayer's return for Year 1, he did not prepare or include a Form 8996 with Taxpayer's Form 1065 for Year 1. Taxpayer filed a Form 1065 for Year 1 with the Service on Date 5. Because no Form 8996 was included with Taxpayer's Form 1065, Taxpayer failed to make the self-certification to be a QOF, pursuant to § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations, for Year 1.

Member X and Member Y, who made capital contributions to Taxpayer, indicated that Accountant worked on the Taxpayer's account during Year 1. Member X and Member Y intended that Taxpayer satisfy the Code's requirements and applicable regulations governing QOFs for Year 1. Moreover, Member X and Member Y believed Accountant was qualified to identify and prepare the forms required to be filed with the Service in order that Taxpayer could meet the requirements to be QOF for Year 1. Member X and Member Y relied upon Accountant to prepare and file such forms with the Service.

On Date 6, Tax Advisors to Taxpayer informed members of Taxpayer that no election to be a QOF was included with Taxpayer's Year 1 return. The same day Member X and Member Y confirmed with Accountant that no Form 8996 was filed with Taxpayer's Year 1 return. After Member X and Member Y learned that no Form 8996 was filed with Taxpayer's return for Year 1, Taxpayer's Tax Advisors informed Taxpayer of the consequences and potential remedy to the late QOF election.

Member X and Member Y are not aware of an examination by the Service of Taxpayer's Form 1065 for Year 1 or the returns of such members. Moreover, to the best knowledge of Member X and Member Y, apart from this consideration of Taxpayer's ruling request by our office, the Service did not discover that Taxpayer failed to make an election to self-certify itself as a QOF pursuant to § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations for Year 1 as of the date Member X and Member Y signed updated affidavits.

Taxpayer represents that it is subject to the centralized partnership audit regime under Code §§ 6221-35 for Taxpayer's Year 1.

LAW AND ANALYSIS

Section 13823(a) of Public Law 115-97, commonly known as the Tax Cuts and Jobs Act of 2017, added provisions to the Code authorizing taxpayers to defer eligible capital gain through reinvesting the funds into state-designated population census tracts in low-income communities, known as Qualified Opportunity Zones. Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including 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 forms or instructions, or in publications or guidance of the Service, 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).

Because § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations sets forth the manner and timing for an entity to self-certify as a QOF, these elections are regulatory elections, as defined in § 301.9100-1(b) of the Procedure and Administration Regulations.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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 § 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 § 301.9100-3(b) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer, made a request for relief before the Service discovers that the taxpayer failed to make the regulatory election. § 301.9100-3(b)(1)(i). Good faith may also be shown if, after exercising reasonable diligence (taking into account the taxpayer's experience and complexity of the return or issue) the taxpayer was unaware of the necessity for the election. § 301.9100-3(b)(1)(ii). A taxpayer may also demonstrate having acted reasonably and in good faith if he reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election. § 301.9100-3(b)(1)(v).

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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 has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government. At the relevant time, Taxpayer was not informed about and was not aware of the provision in § 1.1400Z2(d)-1(a)(2) under which a taxpayer is required to self-certify itself as a QOF. Moreover, Taxpayer reasonably relied on a qualified tax professional who failed to prepare and include a Form 8996 for filing with the Taxpayer's Year 1 Form 1065. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief.

Consequently, Taxpayer is afforded a period of sixty (60) days from the date of this letter to file an amended return for Year 1 and attach to it a completed Form 8996, such that the Taxpayer can make the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year 1. Taxpayer should include a copy of this letter ruling with the amended return filed at the Service Center where Taxpayer files its returns.

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 § 1.1400Z2(a)-1(b)(34) of the Income Tax Regulations or whether Taxpayer meets the requirements under § 1400Z-2 of the Code 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. 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 representative.

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 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,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: