

Internal Revenue Service

Number: **202332009**

Release Date: 8/11/2023

Index Number: 9100.00-00, 1400Z.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:04

PLR-122336-22

Date:

May 16, 2023

Taxpayer =

Advisor =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Manager =

Year 1 =

Month X =

Dear :

This letter responds to Taxpayer's request, dated Date 4, for a private letter ruling. Specifically, Taxpayer requests an extension of time, under Treasury Regulation §§301.9100-1 and 301.9100-3, to file Form 8996, *Qualified Opportunity Fund*, for purposes of: making the election, under section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations, to be self-certified as a qualified opportunity fund ("QOF"), as defined in § 1400Z-2(d) of the Internal Revenue Code ("Code"), and to be treated as a QOF, effective as of Month X of Year 1, as provided under Code § 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

Taxpayer represents that it was formed on Date 1 as a limited liability company under the laws of State. Taxpayer is classified as a partnership for Federal income tax purposes. Taxpayer was formed with the intent to be a QOF to invest in qualified opportunity zone property as defined in Code § 1400Z-2(d)(2). Taxpayer's overall method of accounting is the accrual method of accounting and employs a calendar tax year.

Taxpayer did not accept capital contributions from its members until Month X of Year 1. At that time, Taxpayer amended its operating agreement ("Amended Agreement") and communicated to each member that Taxpayer was to become a QOF effective Month X of Year 1.

Taxpayer vested its management with Manager and designated Manager as the partnership representative. Manager engaged Advisor to prepare Taxpayer's Federal income tax return for Year 1 ("Year 1 Return"). During preparation of the Year 1 Return, Advisor asked Manager whether Taxpayer had become a QOF as of Year 1. Due to a miscommunication between the parties, Manager mistakenly responded that Taxpayer had not intended to become a QOF in Year 1. As a result of this miscommunication, Advisor prepared and filed Taxpayer's Year 1 Return on Date 2 without attaching a completed Form 8996.

Shortly before Date 3, Manager and Advisor held a telephone call to discuss specific tax questions raised by Taxpayer's members. After the call, Advisor reviewed Taxpayer's Year 1 return and discovered that a completed Form 8996 was not attached. Subsequently, Manager asked Advisor to request, on Taxpayer's behalf, regulatory relief provided under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to remedy the failure to file Form 8996 for Year 1 on a timely basis.

LAW AND ANALYSIS

Code § 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, *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 failed to attach a completed Form 8996 to its timely filed Year 1 Return due to a miscommunication between Manager and Advisor.

Treas. Reg. § 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 Internal Revenue Service (“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.

Treas. Reg. § 301.9100-3(b)(2) clarifies that 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.

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 Code § 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. 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). 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 Code § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the information provided, including affidavits and representations, we conclude that Taxpayer has acted reasonably and in good faith, and granting relief will 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 Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make the election to self-certify as a QOF for Year 1 under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996 attached to the Taxpayer's amended tax return or administrative-adjustment request (as applicable).

The ruling contained in this letter is 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, the information is subject to verification on examination.

This ruling only 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, express nor implied, concerning whether any capital

contributions 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 Code § 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 this ruling 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 § 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 representatives.

Sincerely,

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

cc: