

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04
PLR-100409-23

Date:
June 26, 2023

State Z =
State Y =
X =
Year 1 =
Year 2 =
Taxpayer =

Entity 1 =
Entity 2 =

Advisor =
Individual =

Date 1 =
Date 2 =
Date 3 =
Date 4 =

Dear :

This responds to Taxpayer’s request, dated Date 4, for a private letter ruling. Specifically, Taxpayer requests relief, under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, for Taxpayer’s Form 8996, *Qualified Opportunity Fund*, filed on Date 4, to be treated as timely for purposes of making the election to: (1) self-certify Taxpayer 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 Taxpayer was formed, as provided under Code section 1400Z-2 and Treasury Regulation section 1.1400Z(d)-1(a).¹

FACTS

Taxpayer was organized on Date 1 as a limited liability company (“LLC”) under the laws of State Z and is classified as a partnership for Federal tax purposes.

As stated in Taxpayer’s LLC agreement, Taxpayer was organized for the purpose of qualifying as an QOF and investing in qualified opportunity zone property as defined in section 1400-2(d)(2). Since its organization, Taxpayer has invested in Entity 1. Taxpayer is managed by Entity 2, whose sole manager is Individual. Entity 2 and Individual are Taxpayer’s partnership representatives. Taxpayer employs the accrual method of accounting and has a calendar tax year.

Advisor, a State Y licensed certified public accountant with more than X years of experience, has provided Individual with tax and accounting services since Year 1. Unaware of Taxpayer’s specific filing requirements, Individual relied upon Advisor in the timely filing of Taxpayer’s required Federal tax returns and accompanying forms for Year 2. Advisor was unaware of the requirement to file a completed Form 8996 with to Taxpayer’s timely filed Year 2 Federal income tax return in order for Taxpayer to self-certify as an QOF and be treated as a QOF as of the month Taxpayer was formed.

Advisor timely filed on Taxpayer’s behalf a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*. On Date 2, Advisor timely filed Taxpayer’s Year 2 Form 1065, *U.S. Return of Partnership Income*, without attaching a completed Form 8996. Advisor discovered on Date 3 that the Form 8996 should have been included with Taxpayer’s Form 1065 for Year 2 and promptly informed Individual of the failure to include the Form. On Date 4, Advisor filed an amended Form 1065, on Taxpayer’s behalf, for Year 2 with a Form 8996 attached. On the same day, Taxpayer submitted this request.

Taxpayer represents that granting of the relief under section 301.9100-3 will not result in a lower tax liability for the years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

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

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

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 Taxpayer did not file a Form 8996 by the due date of its income tax return for Year 2 due to Advisor's failure to advise Taxpayer of the requirement and to include the Form 8996 with Taxpayer's timely filed Year 2 Form 1065.

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 301.9100-3(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.

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. 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 section 301.9100-1(b)(1).

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, however, 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 section 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 has been or 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 informed in all material respects 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.

Section 301.9100-3(c)(1) provides that the Commissioner will grant a reasonable extension of time to make a 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 facts and information submitted and the representations made, we conclude that Taxpayer has acted reasonably and in good faith, and the granting of relief would not prejudice the interests of the government.

Taxpayer has satisfied the requirements of the regulations for the granting of relief. Consequently, the Form 8996, attached to Taxpayer's amended Year 2 tax return filed on Date 4, is considered timely filed. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns along with a cover letter requesting that the Service associate this ruling with Taxpayer's amended Year 2 return.

This ruling is based upon facts 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.

This ruling addresses the granting of section 301.9100-3 relief as applied to the election to self-certify Taxpayer as an QOF by filing Form 8996 for Year 2. Specifically, we have no opinion, either express nor implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in section 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 Treasury 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.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representative* on file with this office, we are sending an electronic copy of this letter to Taxpayer's authorized representative.

Sincerely,

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

cc: