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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Attn:

Refer Reply To:

CC:ITA:B04

PLR-122200-22

Date:

June 30, 2023

VIA eFAX

Taxpayer =

QOZB =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Year 1 =

Year 2 =
X =
Y =
Member A =
Member B =
Tax Return Preparer =

Dear :

This letter responds to Taxpayer's request dated Date 11. Specifically, Taxpayer requests relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3 to allow Taxpayer to file Forms 8996 (Qualified Opportunity Fund) for Year 1 and Year 2 and for the Forms 8996 to be treated as timely for purposes of the election: (1) to self-certify the Taxpayer as a qualified opportunity fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code); and (2) for the Taxpayer to be treated as a QOF, effective as of Date 1, as provided under Code § 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a).

FACTS

According to the information and representations provided, Member A and Member B (hereto referred to as Shareholders, collectively), as part of a QOF structuring plan, formed QOZB, a corporation for U.S. tax purposes, on or around Date 2, for the purpose of being a qualified opportunity zone business and operate a newly formed business in a Qualified Opportunity Zone (QOZ). On Date 3, Shareholders formed Taxpayer, a corporation for U.S. tax purposes, for the purposes of qualifying as a QOF and investing in qualified opportunity zones (QOZ). On Date 4, Taxpayer's Board of Directors adopted a resolution that Taxpayer was formed for the purpose of serving as a QOF. Taxpayer currently has two members, Member A and Member B. Member A owns a X percent interest in Taxpayer, while Member B owns a Y percent interest.

In Date 5, in anticipation of Taxpayer's 2019 tax return filing obligations, Member A engaged Tax Return Preparer to prepare Taxpayer's and QOZB's federal and state corporation tax returns for the Year 1 tax year. Taxpayer represents that it reasonably believed Tax Return Preparer to be competent, reliable, and sophisticated in handling federal income tax matters, including the filing of federal income tax returns and self-certifications with respect to QOFs. Taxpayer also represents that Tax Return Preparer

understood that Taxpayer was required to file a Form 8996 in Year 1 in order to self-certify as a QOF.

Prior to engaging Tax Return Preparer, Taxpayer filed a timely request for an extension of time to file its Year 1 return, extending Taxpayer's due date for its Year 1 return to Date 8.

Taxpayer represents that due to common ownership of Taxpayer and QOZB, Taxpayer and QOZB are an affiliated group which may elect to file a consolidated return in lieu of separate returns. In Date 6, Tax Return Preparer began preparing Taxpayer's Form 1120 consolidated return for Year 1. However, when Tax Return Preparer filed Taxpayer's Year 1 Form 1120 consolidated return, the necessary Form 8996 was not included in the filing. Taxpayer's Form 1120 was filed on Date 7.

It has been represented that the same issue occurred for Year 2. As such, Taxpayer's Year 2 Form 1120 (filed on Date 9) did not include the necessary Form 8996 with Taxpayer's Form 1120.

On Date 10, Taxpayer was notified of that additional information was needed in connection with Taxpayer's Form 8996 for Tax Year 1. Upon further review, Taxpayer identified the error and failure to timely file the Form 8996. Taxpayer then proceeded to prepare this private letter ruling request.

LAW AND ANALYSIS

Section 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 the Taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to Tax Return Preparer's failure to file a Form 8996 with Taxpayer's Forms 1120 for Year 1 and Year 2.

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 § 301.9100-1(b). According to Treasury Regulation § 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of Treasury Regulation § 301.9100-2 (automatic extensions) must be

made under the rules of Treasury Regulation § 301.9100-3. Additionally, requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

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 301.9100-3(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.

In addition, § 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 § 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's request for extension of time to elect to be a QOF and to self-certify as a QOF is a regulatory election governed by Treasury Regulation § 301.9100-3. We further conclude that, based on the facts and information submitted in connection with this request, 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 Taxpayer has 60 days from the date of this letter to file its Forms 8996, certifying the Taxpayer as a QOF as of Date 1, for Year 1 and Year 2. The election must be made on completed Forms 8996 attached to the Taxpayer's amended tax returns or administrative-adjustment requests (as applicable).

CAVEATS

This ruling is based upon facts and representations submitted by the 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 Treasury Regulation § 301.9100-3 relief as applied to the election to self-certify the Taxpayer as a QOF by filing Forms 8996 for Year 1 and Year 2. Specifically, we have 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 and structure under § 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 § 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3). 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. Code § 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 Code § 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.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859 and Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to the taxpayer.

Sincerely,

Lisa Mojiri-Azad
Senior Technician Reviewer, Branch 4
Office of Chief Counsel
(Income Tax & Accounting)

cc: