

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B04
PLR-101986-23

Date:
July 25, 2023

LEGEND

- Taxpayer =
- State Z =
- Month X =
- Tax Year =
- % =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Member A =

- Member B =
- Advisor =
- Accounting Firm =

- Date 1 =
- Date 2 =

Dear :

This responds to Taxpayer’s request, dated Date 2, 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 an extension of time to file Taxpayer’s Form 8996, *Qualified Opportunity Fund*, 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

According to the facts and representations provided, Taxpayer was organized as a limited liability company under the laws of State Z on Date 1 and is classified as a partnership for Federal tax purposes. Taxpayer's overall accounting method is the cash method and has a tax year end of Tax Year. Member A and Member B, each own % of Taxpayer.

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). Taxpayer engaged Advisor to prepare and file Taxpayer's Year 1 and Year 2 Federal income tax return, including any forms and elections to certify Taxpayer as a QOF. For Year 1 and Year 2, Advisor prepared and timely filed Form 1065, *U.S. Return of Partnership Income*, but failed to include a completed Form 8996, *Qualified Opportunity Fund* to self-certify as a QOF.

In Year 3, Advisor sold his accounting practice to Accounting Firm. In Month X of Year 4, Member B received a Form 6502 letter from the Service indicating that the Service had no record of Taxpayer's QOF status. Accounting Firm reviewed Taxpayer's previous Federal income tax returns and discovered that Form 8996 was not attached to Taxpayer's Federal income tax returns for Year 1 and Year 2.

Taxpayer then instructed Accounting Firm to prepare this request for an extension of time for Taxpayer to file its Form 8996 for Year 1 and Year 2. Additionally, Accounting Firm completed and filed Taxpayer's Year 3 Federal income tax return and attached the Form 8996.

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.

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's inadvertent failure to file a Form 8996 by the due date of its income tax return (including

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.

extensions) for Year 1 and Year 2 was through circumstances beyond Taxpayer's control.

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

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 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)(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.

Accordingly, Taxpayer has satisfied the requirements of the regulations for the granting of relief. Based solely on the facts and information submitted, and representations made in the ruling request, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file Form 8996 for Year 1 and Year 2 to self-certify as a QOF 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 returns or administrative-adjustment requests (as applicable).

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by 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.

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 nor 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). 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.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859 and Rev. Proc. 2023-1, 2023-1 I.R.B. 1. A paper copy will not be mailed to the taxpayer.

Sincerely,

Mon L. Lam
Senior Counsel
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: