

Internal Revenue Service

Number: **202345007**

Release Date: 11/10/2023

Index Number: 9100.00-00, 1400Z.02-00,
1400Z.01-00, 1400Z.00-00

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:B04

PLR-103628-23

Date:

August 16, 2023

LEGEND

State Z =

State Y =

X =

W =

V =

Tax Year =

Month A =

Taxpayer =

Member 1 =

Member 2 =

Advisor =

Controller =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Dear :

This responds to Taxpayer's request, dated Date 6, for a private letter ruling. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations¹ for Taxpayer's Form 8996, *Qualified Opportunity Fund*, as 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 § 1400Z-2(d) of the Internal Revenue Code; and (2) be treated as a QOF, effective as of the month Taxpayer was formed, as provided under § 1400Z-2(d) and § 1.1400Z(d)-1(a) of the Income Tax Regulations.¹

This letter ruling is being issued electronically in accordance with Rev. Proc. 2023-1, 2023-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

Based on the provided information and representations, 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 income tax purposes. Member 1 and Member 2 own W% and V% of Taxpayer, respectively. Member 1 is the managing member of Taxpayer. As stated in Taxpayer's LLC operating agreement, Taxpayer was organized for the purpose of qualifying as a QOF and investing in eligible properties located in qualified opportunity zones. Taxpayer uses the cash method of accounting and has a tax year end of Tax Year.

Since Year 1, Member 1 has engaged the tax-preparation services of Advisor, a certified public accountant licensed in State Y with more than X years of experience. Around Date 2, Member 1 met with Advisor to discuss Year 2 return preparation for the various business entities of which Member 1 held an ownership interest. Member 1 and Advisor agreed that Advisor would prepare and file Year 2 Forms 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*, for these business entities. Due to a miscommunication between Advisor and Member 1, Advisor mistakenly believed that Taxpayer was a single-member LLC that was not required to file a federal income tax return for Year 2. As result, Taxpayer failed to file by Date 2 either a Year 2 Form 1065, *U.S. Return of Partnership Income*, or a Form 7004.

Around Date 3, Advisor began to prepare Member 1's individual federal income tax return for Year 2. At this time, Advisor spoke with Controller, who was employed by

¹ Unless otherwise specified, all "section" or "§" references are to sections of the Internal Revenue Code ("Code") or the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301) as applicable.

Taxpayer, and discovered that Taxpayer was a multi-member LLC. Based on this discovery, Advisor concluded that Taxpayer should have filed a Year 2 Form 1065. Unaware that a Form 8996 must be filed with a taxpayer's timely filed federal income tax return, Advisor filed on Date 4 Taxpayer's Year 2 Form 1065 with a Form 8996 attached. During Month A of Year 3, Advisor became aware of the consequences of failing to timely file Form 8996. On Date 5, Advisor informed Member 1 of these consequences and advised Taxpayer to seek a ruling under §§ 301.9100-1 and 301.9100-3. Member 1 promptly engaged Advisor to assist with the submission of this relief request.

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 did not file a Form 8996 by the due date (including extensions) of its Year 2 federal income tax return due to a miscommunication between Member 1 and Advisor resulting in Advisor's mistaken belief that Taxpayer was a disregarded entity.

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 § 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 § 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 § 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 § 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 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 § 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 that the granting of relief would not prejudice the interests of the Government.

Accordingly, the Form 8996 attached to Taxpayer's Year 2 federal income tax return, filed on Date 4, is considered timely filed, and Taxpayer has thereby made the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year 2. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns accompanied with a cover letter requesting the Service associate this ruling with Taxpayer's Year 2 return.

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement 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 § 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, neither express nor implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z-2(a)-1(b)(34), or whether, Taxpayer met or meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. 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). In addition, we express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Internal Revenue 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, including whether Taxpayer is appropriately classified as a partnership for federal income tax purposes.

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 § 6110.

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

Sincerely,

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

cc: