

Internal Revenue Service

Number: **202346001**

Release Date: 11/17/2023

Index Number: 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:B05

PLR-102156-23

Date:

August 17, 2023

Legend

Taxpayer =
State =
Manager =
Member 1 =
Member 2 =
Member 3 =
Advisor 1 =
Advisor 2 =
Advisor 3 =
Firm =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Year 1 =
Year 2 =
Year 3 =

Dear :

This ruling responds to Taxpayer's request for a letter ruling dated Date 1. Specifically, Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administrations Regulations to (1) make a timely election under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to be certified as a qualified opportunity fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code); and (2) for Taxpayer to be treated as a QOF, effective as of the month

Taxpayer was formed in Year 1, as provided under § 1400Z-2(d) of the Code and § 1.1400Z2(d)-1(a) of the Income Tax Regulations.

FACTS

Taxpayer is a limited liability company classified as a partnership for Federal income tax purposes, organized under the laws of State on Date 2. Taxpayer is a cash method taxpayer and reports income on a calendar year basis. Taxpayer was formed to operate as a QOF as defined in § 1400Z-2(d) of the Code and to hold qualified opportunity zone property, as defined in § 1400Z-2(d)(2)(A) of the Code. Taxpayer is comprised of 3 members: Member 1, Member 2, and Member 3. Taxpayer is managed by Manager.

Taxpayer retained the services of Advisor 1 to prepare its Federal Income Tax return for Year 1. Advisor 1 timely filed Taxpayer's Form 1065 on or before Date 3 but failed to include a Form 8996, Qualified Opportunity Fund, (Form 8996) with its return for Year 1. As a result, Taxpayer did not make the regulatory election to self-certify as a QOF for Year 1. Advisor 1 passed away approximately one month after filing Taxpayer's return for Year 1. Shortly after, Taxpayer enlisted the services of Advisor 2 to timely file its Form 1065 for Year 2 and Year 3. After review of Taxpayer's previously filed returns, Advisor 2 discovered that Taxpayer failed to include a Form 8996 with its Federal Income Tax return for Year 1. Upon discovering that Taxpayer failed to include the Form 8996 with its Year 1 Federal income tax return, Advisor 2 advised Taxpayer to file amended returns including the Form 8996 for Year 1, Year 2, and Year 3. On Date 4, Advisor 2 electronically filed amended returns on behalf of Taxpayer for Year 1, Year 2, and Year 3, including the Form 8996. Shortly after, Taxpayer engaged Firm to pursue relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

Taxpayer represents that it acted reasonably and in good faith and granting of the relief will not prejudice the interests of the government. Taxpayer and Advisor 3 represents that granting of an extension to make a timely election under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to be certified as a QOF for Year 1 will not change any tax liabilities of the Taxpayer, or as reported to its investors, as Taxpayer intended to elect to be a QOF beginning in Year 1, and Taxpayer has acted consistently as a QOF since Taxpayer was formed. Taxpayer and Advisor 3 represent that granting the relief under § 301.9100-3 of the Procedure and Administration Regulations for Year 1 will not result in a lower tax liability for Taxpayer or its investors in the aggregate for Year 1, and subsequent taxable years affected by the election, than if the election had been made timely as Taxpayer has acted consistently with the intended election. To the best of Taxpayer and Advisor 3's knowledge, the investors of Taxpayer have also acted consistently with a valid election by Taxpayer to be a QOF as of Year 1.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations provides the rules for an entity to self-certify as a QOF. Section 1.1400Z2(d)-1(a)(2)(i) provides that the entity electing to be certified as a QOF must do so annually on a timely field return 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 of the Service, 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 Federal income tax return (including extensions).

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

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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.

Under section § 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make the election. However, 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.

In addition, section § 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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) of the Code before the taxpayer's receipt of a ruling granting relief under this section. The IRS may condition a grant of relief on the taxpayer providing the IRS with a statement from an independent auditor providing an affidavit, in accordance with section 301.9100-3(e)(3) of the Procedure and Administration Regulations, certifying that the interests of the Government are not prejudiced pursuant to section 301.9100-3(c)(1)(i) of the Procedure and Administration Regulations.

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, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements of the regulations for the granting of relief and Taxpayer's Form 8996, 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 1. 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 the Year 1 return.

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by all 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 expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we express no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z2(a)-1(b)(34) of the Income Tax Regulations or whether the taxpayer meets the requirements under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. Further, we also express no opinion on whether any interest in any QOZB owned by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether any business 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income 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.

Sincerely,

Kyle C. Griffin
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: