

Internal Revenue Service

Number: **202351001**

Release Date: 12/22/2023

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:B08

PLR-104682-23

Date:

September 27, 2023

TY:

Legend

Amount 1	=
Amount 2	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Firm	=
Interest X	=
Interest Y	=
Manager	=
Member 1	=
Member 2	=
State	=
Taxpayer	=

Dear :

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

FACTS

Based on the affidavits and additional information provided, Taxpayer has represented the facts are as follows: Taxpayer is a limited liability company, organized under the laws of State, taxed under Federal law as a partnership, and formed on Date 2. The Taxpayer has two members: (1) Member 1, who owns Interest X; and (2) Member 2, which owns Interest Y. Member 1 is also the authorized representative of Member 2, whose members are not known. The Taxpayer's manager is Manager and does not hold a profits or capital interest in Taxpayer. According to Taxpayer's amended and restated operating agreement, Taxpayer was formed to invest qualified opportunity zone property and operate as a QOF. Member 1 acquired his Interest X in Taxpayer by contributing Amount 1 on Date 3. Member 2 acquired its Interest Y in Taxpayer by contributing Amount 2, also on Date 3.

Firm is the tax return preparer for many entities related to Taxpayer. Taxpayer failed to file its initial Form 1065, *U.S. Return of Partnership Income* (the "1065 Return"), which was due on Date 4. Taxpayer represents that it failed to file its initial 1065 Return due to a miscommunication between a member's family office and Manager regarding who was to inform Firm that Taxpayer was created and intended to be certified as a QOF. Since neither the Manager nor the family office informed Firm of the Taxpayer's existence, Firm did not file a 1065 Return with an attached Form 8996, *Qualified Opportunity Fund*. Firm also did not file an extension for Taxpayer on or before Date 4. Taxpayer then engaged Firm to file this ruling request seeking an extension of time to file Form 8996.

According to the affidavits and representations, Taxpayer and Firm were aware of the requirement to file a Form 8996 for the Taxpayer to self-certify its QOF status and to be treated as a QOF as of the month Taxpayer was formed.

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.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Internal Revenue Code directs the Secretary to prescribe regulations for rules 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 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 Federal income tax return (including extensions). The

information provided indicates that Taxpayer did not file its Form 8996 by the due date of its Federal income tax return (including extensions) due to a miscommunication between a member's family office, Manager, and Firm.

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). According to section 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extensions) must be made under the rules of section 301.9100-3. Additionally, requests for relief subject to section 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.

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, failed to make the election, because after exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election, 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) 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 section 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 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, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make the election 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 return or administrative-adjustment request (as applicable).

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 section 1.1400Z2(a)-1(b)(34) or whether the taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. Further, we also express no opinion on whether any interest(s) owned by Taxpayer qualify as qualified opportunity zone property, as defined in section 1400Z-2(d)(2), or whether such interest(s) 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 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.

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.

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.

The rulings contained in this letter are based upon information and representations submitted by the 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.

Sincerely,

Erika C. Reigle
Senior Technician Reviewer, Branch 8
(Income Tax & Accounting)

cc: