

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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PLR-106982-23

Date:

September 22, 2023

VIA E-FAX

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Year 1 =

State Z =

Member A =

Member B =

Manager =

CPA =

Law Firm =

Dear _____ :

This ruling responds to Taxpayer's request for a letter ruling dated Date 4. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Treasury Regulations for Taxpayer's Form 8996, *Qualified Opportunity Fund*, as filed on Date 4, to be treated as timely for purposes of making an 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 § 1400Z-2 of the Code and § 1.1400Z2(d)-1(a) of the regulations.

FACTS

According to the information and representations provided, Taxpayer, a limited liability company classified as a partnership for federal tax purposes, was formed on Date 2 to qualify as a QOF and invest in qualified opportunity zone property. Taxpayer represents that it had two members during Year 1, Member A and Member B. Taxpayer represents that Manager is the manager of Taxpayer.

Taxpayer represents that it intended to self-certify as a QOF by filing Form 8996 with its tax return for the Year 1 tax year. Manager represents that it relied on CPA, an accounting firm which Manager has previously engaged for tax and accounting services, to prepare and file all required returns and elections in order for Taxpayer to comply with the opportunity zone incentive. CPA represents that, during Year 1, it was aware of the requirement for a taxpayer seeking to be treated as a QOF to self-certify as such by filing Form 8996 with its timely filed federal tax return. However, during a conversation on Date 3, Taxpayer represents that it discovered that CPA did not file a federal income tax return or a Form 8996 on behalf of Taxpayer for Year 1.

Upon discovering this failure, Taxpayer represents it directed CPA to file a Form 1065, *U.S. Return of Partnership Income*, and an accompanying Form 8996 for Year 1 on behalf of Taxpayer. Taxpayer represents it subsequently proceeded to engage Law Firm to prepare this private letter ruling request. Taxpayer represents that it filed its Form 1065 and Form 8996 for Year 1 on Date 4.

LAW AND ANALYSIS

Section 1400Z-2(e)(4) of the Code directs the Secretary to prescribe such regulations as may be necessary to carry out the purposes of § 1400Z-2, including rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2)(i) of the regulations 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. The Form 8996 Instructions published pursuant to

these regulations specify that to self-certify as a QOF, a taxpayer must file Form 8996 with its tax return for the year to which the certification applies by the due date of the tax return (including extensions).

Because § 1.1400Z2(d)-1(a)(2)(i) of the 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 regulations.

Sections 301.9100-1 through 301.9100-3 of the 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) of the regulations 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) of the regulations 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) of the regulations 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 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 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 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.

CONCLUSION

Based on the facts and information submitted and the representations made, we conclude that Taxpayer's request for an extension of time to elect to be a QOF and to self-certify as a QOF is a regulatory election governed by § 301.9100-1 of the regulations. 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's Form 8996, filed on Date 4, certifying the Taxpayer as a QOF as of Date 1 is considered timely filed. 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.

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 relief under § 301.9100-3 of the regulations as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 1. Specifically, we have 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 regulations or whether Taxpayer meets the requirements and structure under § 1400Z-2 of the Code 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) of the Code, or whether such entity would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3) of the Code. 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. Furthermore, we express no opinion regarding whether Taxpayer's tax return for Year 1 is considered timely filed.

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) of the Code provides that it may not be used or cited as precedent.

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. 2023-1, 2023-1 I.R.B. 1. A paper copy will not be mailed to the taxpayer.

Sincerely,

Martin L. Osborne
Senior Counsel, Branch 8
Office of Chief Counsel
(Income Tax & Accounting)

cc: