

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-108857-23

Date:

October 04, 2023

TY:

Legend

Taxpayer	=
Member A	=
Member B	=
QOZB	=
Accounting Firm	=
State	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Month 1	=
Year 1	=
Year 2	=
N1	=
N2	=
N3	=
N4	=
N5	=
N6	=

Dear :

This responds to the request by Taxpayer, dated Date 1 for relief under § 301.9100-3 of the Procedure and Administration Regulations to file Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Internal Revenue Service (Service) grant to Taxpayer an extension of time to make an election under § 1400Z-2 of the Internal

Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to self-certify as a Qualified Opportunity Fund (QOF), effective as of Date 2.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer is a limited liability company which was formed under the laws of State on Date 3. Taxpayer uses the cash method of accounting. Member A, who is the partnership representative of Taxpayer, holds a N1% interest in Taxpayer and Member B holds a N2% interest in Taxpayer. Taxpayer owns a N3% interest in QOZB, a qualified opportunity zone business, and Member A and Member B own the remaining interests.

The recitals and the provision in section N4 of Taxpayer's Limited Liability Company Agreement indicate that Taxpayer intended to meet the legal requirements to be a QOF. For example, one of the recitals in the Limited Liability Agreement states that Taxpayer's members intended to cause Taxpayer "to acquire a [qualified opportunity zone partnership interest]; . . . state the business purpose of [Taxpayer] in connection with § 1400Z-2(d) of the Code; and . . . provide for the management and the conduct of the business and the affairs of . . ." Taxpayer and its members' relative rights and obligations.

Member A and Member B first contributed \$N5 in what would be eligible capital gains to Taxpayer during Month 1 of Year 1. Apart from receiving those contributions, Taxpayer engaged in no economic activity and had no income, deductions, or credits in Year 1. Subsequently, during Year 2 members contributed additional eligible gains totaling \$N6 to Taxpayer. Taxpayer used the funds contributed to it to acquire QOZB, which operated and improved a retail business in a qualified opportunity zone.

Member A, as the partnership representative, believed that because Taxpayer had no economic activity during Year 1, aside from receiving contributions of capital gain from investors, no tax return was required to be filed with the Service. As a result, neither Taxpayer nor either of its members engaged anyone to prepare a Form 1065, *U.S. Partnership Return of Income*, for Year 1. Consequently, Taxpayer made no self-certification for Year 1 by including a completed Form 8996 with a filed Form 1065 for that taxable year. It was only after the close of Year 2, that Accounting Firm became aware that Taxpayer had received contributions in Year 1 as well as in Year 2 and alerted Member A and Member B that Taxpayer should have filed a Form 1065 for Year 1 and made a self-certification to be a QOF.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including 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 entity electing to be certified as a QOF must do so annually on a timely filed return in such form and manner as may be prescribed by the Commissioner of Internal Revenue in the 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 tax return (including extensions).

Because § 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 § 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 a request for extensions of time for regulatory elections, other than automatic extensions covered in § 301.9100-2, will be granted if 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 § 301.9100-3(b) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although 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 an election.

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).

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 will 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 § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i), effective Date 2. The election must be made on a completed Form 8996 attached to the Taxpayer's tax return for Year 1. This letter ruling grants an extension of time to file a Form 8996. This letter ruling does not grant an extension of time to file Taxpayer's Form 1065.

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 referred to 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 Taxpayer meets the requirements under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. 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.

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

Sue-Jean Kim
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: