

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202401016**
Release Date: 1/5/2024
Index Number: 1400Z.02-00, 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B08
PLR-108776-23

Date:
October 06, 2023

LEGEND

Taxpayer	=
State	=
CPA	=
Attorneys	=
Trust	=
Responsible Person	=
X	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Year 1	=
Year 2	=

Dear :

This letter responds to Taxpayer's request for a letter ruling dated Date 1. Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3¹ for an extension of time to file

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

Form 8996, *Qualified Opportunity Fund*, to self-certify as a qualified opportunity fund, as defined in section 1400Z-2(d) (QOF), effective as of Date 2.

According to the affidavits and additional information provided, Taxpayer is a limited liability company organized under the laws of State. Taxpayer was formed for the purpose of investing in qualified opportunity zone property and serving as a QOF.

Trust owns X% of Taxpayer and is responsible for handling the affairs of Taxpayer, including the filing of tax elections. Due to numerous health issues of Trust's Responsible Person during Year 2, Trust and Responsible Person did not communicate with CPA regarding Trust's investment in the Taxpayer. Taxpayer, Trust, and Responsible Person were therefore unaware of the QOF's self-certification requirement at the time the income tax return with Form 8996 for Year 1 was required to be filed with respect to the Taxpayer. Consequently, the election to self-certify as a QOF on Form 8996 was not timely made.

On Date 3, upon learning that the self-certification on Form 8996 was not timely made, CPA advised Taxpayer to engage Attorneys to prepare and file this request for a ruling. On Date 4, Taxpayer filed the Year 1 tax return with an attached Form 8996. After Date 4 but on or before Date 5, Taxpayer filed this ruling request seeking an extension of time for Taxpayer to self-certify as a QOF, effective from Date 2.

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 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 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).

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic extensions covered in section 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, 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 section 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).

The information provided indicates that Taxpayer did not self-certify as a QOF on Form 8996 by the due date of its Federal income tax return (including extensions) because of intervening events beyond Taxpayer's control. Based on the information provided, including affidavits and representations under penalties of perjury, we conclude that Taxpayer has acted reasonably and in good faith, and that granting a reasonable extension of time for Taxpayer to file Form 8996 will not prejudice the interests of the Government. Consequently, the Form 8996 attached to Taxpayer's return for Year 1, 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.

The granting of an extension of time in this ruling letter is not a determination that Taxpayer is otherwise eligible to self-certify as a QOF. See § 301.9100-1(a).

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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) 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 owned by Taxpayer qualifies as qualified opportunity zone property, as defined in section 1400Z-2(d)(2), or whether such interest 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.

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. Taxpayers that have previously filed a return or administrative adjustment requests attaching Form 8996 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 previous filing(s).

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

Pursuant to the Form 2848, *Power of Attorney and Declaration of Representative*, on

file, we are sending a copy of this letter to Taxpayer's authorized representatives.

Sincerely,

Frank W. Dunham, III
Senior Counsel, Branch 8
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: