

Internal Revenue Service

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Date:

October 16, 2023

Attn:

VIA FAX

Taxpayer =

Month 1 =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

State Z =

Member A =

Member B =

Member C =

Member D =

Member E =

Member F =

Member G =

CPA 1 =

CPA 2 =

Dear

This letter responds to Taxpayer's request for a letter ruling dated Date 2. Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3¹ for an extension of time to file Form 8996, *Qualified Opportunity Fund*, to self-certify as a qualified opportunity fund, as defined in section 1400Z-2(d) (QOF), effective as of Month 1, the first month in which Taxpayer intended to be a QOF.

FACTS

According to the information and representations provided, Taxpayer, a limited liability company classified as a partnership for federal tax purposes, was formed in Month 1 in State Z, for the purposes of qualifying as a QOF and investing in qualified opportunity zone property. As of Date 1, the last day of Year 1, Taxpayer represents that it had seven members, Member A, Member B, Member C, Member D, Member E, Member F, and Member G.

Taxpayer represents that it intended to elect to be a QOF beginning in Month 1, the first month of Year 1. Taxpayer represents that it relied on CPA 1 to notify it of the requirement to file the appropriate form with the Internal Revenue Service (IRS) with its tax return for Year 1 to cause the Taxpayer to be treated as a QOF. Taxpayer represents that it had previously engaged CPA 1 to prepare federal income tax returns on behalf of other companies as well as to answer questions related to federal income tax matters. However, Taxpayer represents that CPA 1 did not file a Form 8996 with Taxpayer's Form 1065 for Year 1.

CPA 1 represents that Taxpayer requested that it prepare the appropriate forms for filing with the IRS to cause Taxpayer to be treated as a QOF from the time of its formation, and that CPA 1 agreed to undertake the requested preparation. CPA 1 further represents that it was unaware that filing Form 8996 was required to make the election to self-certify as a QOF.

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).

Taxpayer represents that in Year 2 it discovered its failure to file Form 8996 with its tax return for Year 1 after one of its members received correspondence from the IRS related to the member's investment in Taxpayer. Taxpayer represents that it subsequently engaged CPA 2 to file this private letter ruling request which was submitted on Date 2. Taxpayer then filed an amended Form 1065 for Year 1 on Date 3 and included Form 8996 to self-certify as a QOF as of Month 1.

Taxpayer further represents that the tax liabilities of Taxpayer and its investors would not be lower in the aggregate for Year 1 and subsequent taxable years affected by the election than if the election had been timely made (taking into account the time value of money).

LAW AND ANALYSIS

Section 1400Z-2(e)(4) directs the Secretary to prescribe such regulations as may be necessary to carry out the purposes of section 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).

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) 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).

CONCLUSION

The information and representations provided indicates that Taxpayer did not file its Form 8996 by the due date of its income tax return for Year 1 due to Taxpayer's reasonable reliance on CPA 1 and CPA 1's failure to include the Form 8996 with Taxpayer's Form 1065. 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 amended Form 1065 for Year 1, filed on Date 3, 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 amended Form 1065.

CAVEATS

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 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.

Except as expressly provided herein, no opinion is either expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we have no opinion, either express or implied, concerning whether any investments made in Taxpayer are qualifying investments as defined in § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be treated as 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 section 1400Z-2(d)(2), or whether such entity 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 Internal Revenue 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) 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 Chief Counsel
(Income Tax & Accounting)

cc: