

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-114457-23

Date:
December 13, 2023

LEGEND

- Taxpayer =
- State Z =
- Individual =
- Firm 1 =
- Firm 2 =
- Tax Year =
- Month A =
- Year 1 =
- Year 2 =
- Year 3 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =

Dear :

This letter responds to Taxpayer’s request, dated Date 6. Specifically, Taxpayer requests an extension of time, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file Taxpayer’s Form 8996, *Qualified Opportunity Fund*, for purposes of making the election, under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations, to: (1) self-certify Taxpayer as a qualified opportunity fund (“QOF”), as

defined in § 1400Z-2(d) of the Internal Revenue Code; and (2) be treated as a QOF, effective as of the month Taxpayer was formed, as provided under § 1400Z-2(d) and § 1.1400Z(d)-1(a).¹

This letter ruling is being issued electronically in accordance with Rev. Proc. 2023-1, 2023-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

Based on the provided information and representations, Taxpayer was organized, on Date 1, as a limited liability company, under the laws of State Z and is classified as a partnership for federal income tax purposes. As stated in Taxpayer's operating agreement, Taxpayer was organized for the purpose of qualifying as a QOF and investing indirectly in qualified opportunity zone property as defined in § 1400Z-2(d)(2). Taxpayer represents that it is eligible to make an election to be recognized as a QOF for Year 1. Taxpayer uses the cash method of accounting and has a taxable year end of Tax Year.

Individual, as managing member of Taxpayer, was responsible for ensuring Taxpayer's federal tax returns were prepared and filed on a timely basis. Individual, however, did not have extensive knowledge of the federal tax laws or of the QOF qualification requirements. Taxpayer's Form 1065, *U.S. Return of Partnership Income*, for the period ending Date 2, was due on Date 3. Taxpayer, however, did not file by Date 3, either Taxpayer's Form 1065, or a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*. As such, Taxpayer did not file timely a Form 8996 for Year 1.

Late in Month A of Year 2, Individual sought tax advice from Firm 1. At their initial meeting, Firm 1 informed Individual that Taxpayer had missed Date 3 filing deadline. At that time, Firm 1 did not advise Individual of the requirements for Taxpayer to qualify as a QOF, or of the consequences for missing the filing deadline. On Date 4, Firm 1 filed Taxpayer's untimely Year 1 Form 1065 without attaching a completed Form 8996.

At the beginning of Year 3, Individual engaged Firm 2 to handle future tax compliance matters for Taxpayer. Firm 2 reviewed Taxpayer's Year 1 Form 1065 and advised Individual that Taxpayer did not timely self-certify as a QOF for Year 1. Upon discovery, Firm 2 advised Taxpayer to request an extension of time, under § 301.9100-3, to file the Form 8996 for Year 1. On Date 5, Taxpayer engaged Firm 2 to prepare this request for a private letter ruling.

LAW AND ANALYSIS

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

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. 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 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). The information provided indicates that Taxpayer did not timely file the Form 8996 by the due date of its Year 1 federal income tax return due to Individual's lack of knowledge of the federal tax laws applicable to Taxpayer and of the self-certification requirements for QOFs.

Sections 301.9100-1 through 301.9100-3 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 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 301.9100-1(b) defines the term "regulatory election" as including any election whose due date is prescribed by a regulation published in the Federal Register. 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 § 301.9100-1(b).

Section 301.9100-3(b)(1) 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.

Under § 301.9100-3(b)(3), a taxpayer will not be considered 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 a 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 § 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Taxpayer represents that it requested relief before the failure to make the regulatory election was discovered by the Service. Taxpayer also represents that none of the circumstances listed in § 301.9100-3(b)(3) apply.

CONCLUSION

Based solely on the facts and information submitted and the representations made in this ruling request, we conclude that that Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the Government. Accordingly, 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). The election must be made on a completed Form 8996 attached to the Taxpayer's amended tax return or to an administrative-adjustment request (as applicable).

CAVEATS

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement 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 § 301.9100-3 relief as applied to the election to self-certify Taxpayer as an QOF by filing Form 8996 for Year 1. Specifically, we have no opinion, either express nor implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z-2(a)-1(b)(34), or whether Taxpayer met or meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. Further, we express no opinion on whether any interest indirectly owned by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether the indirect interest would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3). Nor do we express any opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Internal Revenue Code or Treasury 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) 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.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representative*, on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

Sincerely,

Alexa T. Dubert
Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: