

Internal Revenue Service

Number: **202412006**

Release Date: 3/22/2024

Index Number: 1400Z.02-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-113493-23

Date:

December 28, 2023

Legend

Taxpayer	=
Members	=
Tax Accountant	=
Year 1	=
State X	=
Accounting Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Dear :

This ruling responds to the Taxpayer's request dated Date 4. Specifically, the taxpayer requests relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, for its Form 8996, *Qualified Opportunity Fund*, filed on Date 5, to be treated as timely for purposes of the election for Taxpayer: (1) to self-certify as a qualified opportunity fund ("QOF") as defined in section 1400Z-2 of the Internal Revenue Code (Code); and (2) to be treated as a QOF, effective as of the month Taxpayer was formed, as provided under section 1400Z-2 of the Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations.

FACTS

According to the facts and representations provided, Taxpayer was organized by Members as a limited liability company on Date 1 under the laws of State X and is classified as a partnership for U.S. federal income tax purposes. As indicated in Taxpayer's company agreement, Taxpayer was organized for the purpose of being a QOF and to invest in qualified opportunity zone property.

As Members lacked tax experience, before Taxpayer was organized, they contacted Tax Accountant about performing tax compliance work for a QOF and to discuss the various tax aspects of forming a QOF. Members agreed to contact Tax Accountant again once the QOF was organized and indicated their intention to engage Tax Accountant to prepare and file the QOF's Federal income tax return for Year 1. The filing deadline for the tax return was not discussed.

Once Taxpayer was formed, Members mistakenly believed that the filing deadline for Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, and accompanying Form 8996 was Date 3. As such, Members contacted Tax Accountant to prepare Taxpayer's Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, on Date 2, after the due date. Taxpayer filed its Form 1065 and accompanying Form 8996 on Date 5 after submitting this request for a private letter ruling.

LAW AND ANALYSIS

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 that the rules for an entity to self-certify as a QOF. Section 1.1400Z2(a)-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.

To self-certify as a QOF, a taxpayer must file Form 8996, *Qualified Opportunity Fund*, 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 the taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to a mistaken belief regarding the filing deadline.

Because section 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 section 301.9100-1(b).

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 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) 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 § 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).

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.

Based on the facts and information submitted and the representations made, we conclude that the taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements of the regulations for the granting of relief and Taxpayer's Form 8996, filed on Date 5, is considered timely filed.

This ruling is based upon facts and representations submitted by the 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 the taxpayer are qualifying investments as defined in section 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. We also express no opinion whether any interest owned in any entity by the Taxpayer qualifies as qualified opportunity zone property or whether such entity would be treated as a qualified opportunity zone business. 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 the 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,

Kyle C. Griffin
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

Cc: