

**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:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B08

PLR-117051-23

Date:

February 23, 2024

Taxpayer =

Month 1 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 2 =

State Z =

Tax Director =

Operating Agreement =

Tax Advisor =

Firm =

Dear \_\_\_\_\_ :

This letter responds to Taxpayer's request for a letter ruling dated Date 2. Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3<sup>1</sup> of the Procedure and Administration Regulations, for an extension of time to file Form 8996, *Qualified Opportunity Fund*, to self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code, 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 on Date 4 in State Z. Taxpayer represents that, pursuant to the terms of the Operating Agreement, Taxpayer was formed for the purposes of operating as a QOF and investing in qualified opportunity zone property within the meaning of section 1400Z-2(d).

Taxpayer represents that it intended to elect to be a QOF beginning in Month 1, the first month of Year 1. Taxpayer represents that Taxpayer's internal team of tax professionals, including Tax Director (collectively, Taxpayer's Managers) were aware of the requirement to file Form 8996 for Taxpayer to self-certify as a QOF. However, Taxpayer represents that Taxpayer's Managers were not experienced with Form 8996, and were not aware of the need to file Form 8996's QOF self-certification with a timely-filed federal income tax return.

Taxpayer represents that Taxpayer engaged Firm for the purpose of preparing all of Taxpayer's U.S. federal income tax and information returns for Year 1, including Forms 1065 and 8996. Due to administrative oversight on the part of Taxpayer's Managers, caused by the Tax Managers' lack of experience filing Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, in connection with federal partnership tax returns, Taxpayer's Managers failed to timely request an automatic extension of Taxpayer's due date for its Year 1 tax return on or before Date 3. As a result, Taxpayer failed to file its Year 1 Form 1065 and accompanying Form 8996 by Date 3.

Taxpayer represents that on or about Date 5, Director spoke with Tax Advisor, a Partner at Firm whose responsibilities include overseeing Firm's engagement with Taxpayer and its investors, and discovered for the first time that Taxpayer could not file a late Form 1065 and Form 8996 for Year 1 to self-certify as a QOF after Date 3 (if no request for an automatic extension of time to file Taxpayer's federal income tax return had been made by Date 3). Taxpayer represents that Taxpayer's Managers mistakenly believed that Taxpayer had a later filing deadline for Form 7004.

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<sup>1</sup> 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).

Tax Advisor represents that Taxpayer became aware of its failure to timely file Forms 8996 and 1065 while on a call with Tax Director on or about Date 5. Tax Advisor represents that shortly after becoming aware of the error in failing to attach Form 8996 to Taxpayer's timely-filed return, Tax Advisor informed Tax Director of the consequences of the mistake and advised Taxpayer to request an extension of time under § 301.9100-1 and § 301.9100-3. Tax Advisor represents that, thereafter, Taxpayer retained Firm for the purpose of requesting an extension to file Forms 8996 and 1065 through this private letter ruling request.

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 Income Tax 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 Procedure and Administration 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) 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) 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

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 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 is granted 60 days from the date of this letter to file an amended Year 1 Form 1065 and accompanying Form 8996 to make an election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i) self-certifying the Taxpayer as a QOF as of Month 1.

#### 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 representative.

Sincerely,

Shareen S. Pflanz  
Branch Chief, Branch 8  
Office of Chief Counsel  
(Income Tax & Accounting)

cc: