

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:B08

PLR-106499-24

Date:

August 27, 2024

Legend

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Firm =

Interest A =

Interest B =

Interest C =

Interest D =

Member 1 =

Member 2 =

Member 3 =

Member 4 =

State Z =

Year 1 =

Year 2 =

Year 3 =

Dear _____ :

This letter responds to Taxpayer’s request dated Date 1. Specifically, Taxpayer requests relief, under sections 301.9100-1 and 301.9100-3 of the Procedure and Administrative Regulations, for an extension of time to (1) make a timely election under section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to be certified as a

qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code and (2) for Taxpayer to be treated as a QOF, effective as of Date 2, as provided by section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

FACTS

Based on the affidavits and additional information provided, Taxpayer was organized as a limited liability company under the laws of State Z on Date 2 and is treated as a partnership for Federal income tax purposes. The Taxpayer has four members: (1) Member 1, who owns Interest A; (2) Member 2, who owns Interest B; (3) Member 3, who owns Interest C; and (4) Member 4, who owns Interest D. Taxpayer is an accrual method taxpayer and keeps its books and accounting records on a calendar year end basis. Member 1 and Member 2 are its managing members.

Firm is the tax return preparer for Taxpayer. Taxpayer and Firm were both aware of Taxpayer's intent to be a QOF and of the requirement to file a Form 8996, *Qualified Opportunity Fund*, for the Taxpayer to self-certify its QOF status and to be treated as a QOF. Further, both were aware that the Form 8996 needed to be attached to Taxpayer's initial Form 1065, *U.S. Return of Partnership Income*, in order to self-certify as a QOF.

For the Taxpayer's Year 1, Firm timely filed a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*. Firm then prepared Taxpayer's Form 1065. It also prepared the Form 8996. On Date 3, Firm provided fully prepared copies of Forms 1065 and 8996 to Taxpayer for review. Taxpayer reviewed both forms and authorized Firm to electronically file both. Firm intended to timely file both forms contemporaneously. However, due to an administrative oversight, Firm failed to electronically file both Form 1065 and Form 8996 by their extended due date.

Firm timely filed Taxpayer's Year 2 return. During Year 3, the Internal Revenue Service initiated an audit of Member 1's Form 1040, *U.S. Individual Income Tax Return*. During that audit, the examiner requested a copy of Taxpayer's Year 1 return. It was at this time that Firm discovered its failure to file Taxpayer's Year 1 return. Firm immediately filed Taxpayer's Year 1 Form 1065 and Form 8996 electronically. Taxpayer and Firm discussed what actions, if any, must be taken in connection with Taxpayer's certification as a QOF for Year 1, resulting in this letter ruling request.

Taxpayer represents that granting relief under section 301.9100-3 of the Procedure and Administration Regulations will not result in a lower tax liability for the year affected by the election.

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 the rules for an entity to self-certify as a QOF. Section § 1.400Z2(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, *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 Federal income tax return (including extensions). The information provided indicates that Taxpayer did not file its Form 8996 by the due date of its Federal income tax return (including extensions) due to Firm's administrative oversight.

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 section 301.9100-1(b). According to section 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extensions) must be made under the rules of section 301.9100-3. Additionally, requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

Under section 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or failed to make the election, because after exercising reasonable diligence (taking into the account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for the election, or reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make the election. However, a taxpayer is not considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not competent to render advice on the regulatory election or was not aware of all relevant facts.

In addition, section 301.9100-3(b)(3) provides that a taxpayer is deemed not to have acted reasonable 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 year 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)(i) 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

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.

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by all appropriate parties. This office has not verified any of the material submitted in support of the request for a ruling. However, as part of the 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 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. Further, 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 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.

Sincerely,

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

cc: