

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:B04

PLR-118821-22

Date:

March 28, 2023

Taxpayer =
GP =
LLC =
Managing Director =
Accounting Firm =
State =
Date 1 =
Date 2 =
Date 3 =
Month 1 =
Month 2 =
Year 1 =
Year 2 =
Year 3 =

Dear :

This letter responds to Taxpayer's request, dated Date 3, seeking a private letter ruling granting relief to make a late regulatory election pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

Specifically, Taxpayer requests an extension of time to file Form 8996, *Qualified Opportunity Fund*, for purposes of making the 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 Code¹, and (2) to be treated as a QOF, effective as of the month Taxpayer was formed, as provided under section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

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

This letter is being issued electronically in accordance with Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer has represented that the facts are as follows.

Taxpayer was organized as a limited partnership under the laws of State on Date 1 and is classified as a partnership for U.S. federal income tax purposes. Taxpayer was organized for the purpose of being a QOF and investing in qualified opportunity zone business property as defined in section 1400Z-2(d)(2) of the Code.

During Years 1 and 2, GP, the sole general partner of Taxpayer, managed Taxpayer and served as Taxpayer's designated partnership representative for Federal tax matters. LLC held an interest in GP and provided investment advisory and management services to Taxpayer. Managing Director of LLC engaged Accounting Firm on Taxpayer's behalf to prepare Taxpayer's tax filings for Year 1, including any forms and elections to self-certify Taxpayer as a QOF.

Taxpayer did not receive its initial funding until around Date 2 and did not engage in any other business activity during Year 1. Due to this lack of business activity, Accounting Firm mistakenly believed that Taxpayer did not need to file Form 1065, *U.S. Return of Partnership Income* for Year 1. As such, Taxpayer failed to file a Form 8996 and did not self-certify as a QOF by the due date.

In Month 2 of Year 3, Manager became aware of Taxpayer's failure to self-certify as a QOF for Year 1 and contacted Accounting Firm. Taxpayer promptly directed Accounting Firm to prepare a request for a private letter ruling.

LAW AND ANALYSIS

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, *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 Taxpayer did not file its Form 8996 by the due date of its Year 1 income tax return because of the incorrect assumptions made by Accounting Firm.

Section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for an entity to self-certify as a QOF. As such, 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.

Under section 301.9100-3(b)(2), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not —

- (i) competent to render advice on the regulatory election; or
- (ii) Aware of all relevant facts.

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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the facts and information submitted in connection with this request, we conclude 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 a Form 8996 to make the election to self-certify as a QOF under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i) as of Month 1 of Year 1, the month in which Taxpayer was formed. The election must be made on a completed Form 8996 and attached to Taxpayer's tax return for Year 1.

This ruling is based upon facts and representations submitted by 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.

This ruling addresses the granting of section 301.9100-3 relief as applied to the election to self-certify Taxpayer as a QOF by filing Form 8996 for Year 1. 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 into Taxpayer are qualifying investments as defined in section 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements and structure under

section 1400Z-2 and the regulations thereunder to be 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 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.

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 section 6110.

Pursuant to the Form 2848, *Power of Attorney and Declaration of Representation*, on file, we are sending a copy of this letter to Taxpayer's authorized representative.

Sincerely,

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

Cc: