

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:B05

PLR-116527-20

Date:

February 12, 2021

TY:

Legend

Taxpayer	=
Date 1	=
Date 2	=
State X	=
Date 3	=
Date 4	=
Date 5	=
Year 1	=
Year 2	=
Year 3	=
Firm	=

Dear :

This ruling responds to the taxpayer's request dated Date 1. Specifically, the taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Income Tax Regulations (Regulations) to (1) make a timely election, including any necessary revisions to the taxpayer's operating agreement, under section 1.1400Z2(a)-1(a)(2)(i) of the 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 the taxpayer to be treated as a QOF, effective as of Date 2, as provided under section 1400Z-2(d) of the Code and section 1.1400Z2(d)-1(a) of the Regulations.

FACTS

The taxpayer is a limited liability company organized as a partnership under the laws of State X on Date 3 and is an accrual basis taxpayer with a tax year end of December 31.

The taxpayer was organized for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2). The taxpayer purchased property that was wholly located within qualified opportunity zones in State X on Date 4 and Date 5. Because the taxpayer is a start-up company, it was focused on significant business operations including capital investment, hiring workforce and other essential operations.

The taxpayer was not aware of the necessity to attach a Form 8996 to its timely filed return for Year 1. The Chief Financial Officer (CFO) of the taxpayer, who also served as the tax advisor, was not involved with the discussions of qualifying the taxpayer as a qualified opportunity fund, nor was the CFO involved with the investor communications. Thus, the CFO was unaware of the need to file the Form 8996 with the taxpayer's federal income tax return. As a result, the CFO did not attach the Form 8996 to the federal income tax return nor did the CFO check the box on the federal income tax return to elect to be certified as a QOF. In addition, the taxpayer was unaware of the need to include certain language in the operating agreement of the taxpayer.

In Year 2, a new investor discovered that the taxpayer did not have certain language in its operating agreement. In Year 3, the taxpayer discovered that it had failed to attach a Form 8996 to its timely filed federal tax return in Year 1. According to affidavits and information provided to us, the CFO, who also prepared the federal tax return for Year 1, was unaware of the need to file a Form 8996 to the timely filed tax return. The taxpayer formed in Year 1, prior to guidance being released by the Internal Revenue Service on the requirements for certification under section 1400Z-2(d).

After becoming aware of the consequences of failing to timely file the Form 8996, the taxpayer directed Firm to promptly submit this request for relief under sections 301.9100-1 and 301.9100-3 of the Regulations. The taxpayer represents that it was unaware of the need to timely file Form 8996. The taxpayer further represents that granting of the relief under section 301.9100-3 will not result in a lower tax liability for Year 1.

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 the CFO's failure to attach the form to the timely filed return because the CFO was unaware of the need to file a Form 8996.

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.

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, was unaware of the necessity to make 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 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, we grant the taxpayer an extension of 45 days from the date of this letter ruling to either file an amended return or an Administrative Adjustment Request (whichever is appropriate) to make the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election is to be made on Form 8996.

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.

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,

Shareen S. Pflanz
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: