

Internal Revenue Service

Number: **202309009**

Release Date: 3/3/2023

Index Number: 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-112844-22

Date:

December 05, 2022

Attn:

VIA Fax:

Legend

Individual Manager	=
P1	=
P2	=
Taxpayer	=
Project Owner	=
Law Firm	=
State	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Year 1	=
Year 2	=
Year 3	=
N1	=
Project Address 1	=
Project Address 2	=

Dear :

This letter responds to Taxpayer's request, dated Date 1, for relief under § 301.9100-3 of the Procedure and Administration Regulations to file a Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Internal Revenue Service (Service) grant Taxpayer an extension of 45 days from the date of this letter allowing Taxpayer to file an amended return for Year 1 and make an election under § 1400Z-2 of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to self-certify Taxpayer as a Qualified Opportunity Fund (QOF) by attaching Form 8996 to such amended return.

FACTS

The information and affidavit submitted reflect the following facts.

Individual manager is the sole managing member of P1, a limited liability company and classified as a partnership for federal income tax purposes. P1 serves as the sole manager of P2, a limited liability company organized under the laws of State and classified as a partnership for federal income tax purposes. P2 is the manager of Taxpayer, a limited liability company formed under the laws of State on Date 2. Taxpayer, a partnership for federal income tax purposes, was created for the purpose of serving as a QOF, as defined by § 1400Z-2(d)(1) of the Code, and investing in qualified opportunity zone property.

Taxpayer is a N1 percent member and manager of Project Owner, limited liability company and classified as a partnership for federal income tax purposes. Project Owner was formed to acquire and hold real property and improvements within a designated qualified opportunity zone located at Project Address 1 and Project Address 2. Project Owner is expected to qualify as a qualified opportunity zone business (QOZB), as defined in § 1400Z-2(d)(3) of the Code and §§ 1.1400Z2(a)-1(b)(29) and 1.1400Z2(d)-1(d) of the Income Tax Regulations. At all times, P1, P2 and Taxpayer intended Taxpayer to qualify as a QOF pursuant to § 1400Z-2(d)(1) of the Code and § 1.1400Z2(d)-1(a) of the Income Tax Regulations. At all times, Taxpayer intended to make a timely election under § 1.1400Z2(a)-1(a)(2) of the Income Tax Regulations to be certified as a QOF.

On or about Date 3, members of Taxpayer contributed cash to the capital of Taxpayer. Taxpayer and certain members contributing capital gain proceeds intended the contributed capital to be a qualifying investment in Taxpayer as a QOF, as defined in § 1.1400Z2(a)-1(b)(34) of the Income Tax Regulations. Taxpayer made contributions of the contributed capital cash to the capital of Project Owner in exchange for membership interests in Project Owner. Taxpayer, Project Owner, and their members intended those contributions to be a qualifying investment by Taxpayer in Project Owner as a QOZB.

Taxpayer's operating agreement includes language referencing Project Owner's intended status as a QOZB but the agreement's drafters inadvertently failed to include clear language referencing Taxpayer's intended status as a QOF.

Project Owner purchased and took possession of the Project on Date 4 and commenced construction. Since Date 3, Taxpayer, as manager of Project Owner, and Project Owner have been engaged in constructing the project and starting Project Owner's business within a qualified opportunity zone. This includes obtaining permits, licenses, renovating a building and marketing non-triple net leases to lease space at the

project and operating the project. Upon completion of the project, Project Owner intends to lease the remaining portions of the project to end-user tenants. Consistent with Taxpayer's intention to qualify as a QOF and to have a timely election to certify as a QOF effective as of Date 5, Taxpayer and its accountants filed Form 1065, *U.S. Return of Partnership Income* for Year 2 that included a Form 8996 for Year 2. Taxpayer intends to file a Form 1065 for Year 3 that will include a Form 8996 for such year.

Individual Manager represents he was not aware of the requirement that Taxpayer timely file a Form 8996 to elect and self-certify its QOF status, and thus did not instruct the accountants for Taxpayer timely file such form by attaching it to Taxpayer's return for Year 1. As a result, no Form 8996 was attached to Taxpayer's Year 1 Form 1065.

Taxpayer's manager participated in a telephone conference call with Law Firm during which the participants discussed the Year 1 Form 1065 filed for Taxpayer. During the call P1 was advised that because the Form 1065 for Year 1 filed for Taxpayer did not include a Form 8996, it appeared that no QOF election had been made for Taxpayer. P1 contacted the accountants P1 had retained to discuss Taxpayer's failure to be certified as a QOF for Year 1 and the steps necessary to correct the inadvertent failure.

Taxpayer subsequently directed Law Firm to prepare documentation and submit a request to the Service to grant Taxpayer relief to file a late Form 8996 for Year 1 pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

Individual Manager represents that P1, P2 and Taxpayer relied upon Individual Manager to instruct the accountants for Taxpayer to self-certify Taxpayer as a QOF and to include a Form 8996 with Taxpayer's timely filed Form 1065 for Year 1. Individual Manager also represents that Taxpayer initiated this request to file a late Form 8996 to self-certify taxpayer as a QOF before the Service discovered an election was not made. The affidavit of Individual Manager also represents, on behalf of P1, P2 and Taxpayer, that the period for assessing tax pursuant to § 6501 of the Code has not closed. Moreover, Taxpayer represents that it is subject to the centralized partnership audit regime under Code section 6221 for Taxpayer's year ending Year 1.

Based on the information and affidavit submitted to our office, Taxpayer now seeks relief pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, in the form of an extension of 45 days, beginning with the date the Service issues a ruling, allowing Taxpayer to file an amended Form 1065 for Year 1 to make an election under § 1400Z-2 of the Code and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to self-certify Taxpayer as a QOF by attaching a completed Form 8996 to such amended return.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including 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 1.1400Z2(d)-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 forms or instructions, or in publications or guidance of the Service, published in the Internal Revenue Bulletin.

To self-certify as a QOF, a taxpayer must file Form 8996 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).

Because § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations sets forth the manner and timing for an entity to self-certify as a QOF, these elections are regulatory elections, as defined in § 301.9100-1(b) of the Procedure and Administration Regulations.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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 § 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 § 301.9100-3(b) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for an election.

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was 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) of the Procedure and Administration Regulations 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 Procedure and Administration 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).

Section 301.9100-3(c)(1)(ii) of the Procedure and Administration Regulations 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 and the representations made, we conclude that Taxpayer's request for extension of time to elect to be a QOF and to self-certify as a QOF is a regulatory election governed by § 301.9100-3 of the Procedure and Administration Regulations. Further, 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 has satisfied the requirements for the granting of relief. Consequently, Taxpayer may self-certify itself as a QOF for Year 1 by filing an amended return and attaching to such return a completed Form 8996 within 45 days of the date of this letter ruling.

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 § 1.1400Z2 (a)-1(b)(34) of the Income Tax Regulations or whether Taxpayer meets the requirements under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. We also 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.

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 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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: