

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-107360-22

Date:

August 08, 2022

Legend

Taxpayer =
Tax Preparer =
Tax Advisor =
State Z =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Month 1 =
Month 2 =
Year 1 =
Year 2 =

Dear :

This letter responds to Taxpayer's request dated Date 1, seeking a private letter ruling granting relief to make a late regulatory election pursuant to Treas. Reg. §§ 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*, to (1) self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) to be treated as a QOF, effective as of the month the Taxpayer was formed, as provided under section 1400Z-2(d) and Treas. Reg. § 1.1400Z2(d)-1(a).

This letter ruling is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

FACTS

Based on the information provided, Taxpayer has represented that Taxpayer, a partnership organized as a limited liability company under the laws of State Z, was formed as a QOF on Date 2, for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2). In Month 1 of Year 1, Taxpayer purchased land in an Opportunity Zone tract and engaged a third-party tax advisor to assist in structuring Taxpayer to meet the requirement to be a valid QOF. On Date 3, Taxpayer amended its operating agreement to reflect the purpose of being a QOF, effective as of Date 4. Taxpayer represented that in Year 2, a member of Taxpayer contributed qualified capital gains to be invested in qualified opportunity zone property.

Taxpayer hired its lead member's long-time tax preparer, Tax Preparer, to prepare Taxpayer's partnership income tax return for Year 2. The information provided by Taxpayer indicates that Tax Preparer was tasked with preparing and timely filing Taxpayer's Federal income tax return and all related forms and elections to self-certify Taxpayer as a QOF, and to treat Taxpayer as a QOF as of Month 2 of Year 2. Taxpayer's lead member and Tax Preparer met with Tax Advisor on Date 5, to discuss the requirements for Taxpayer to be treated as a QOF.

According to the affidavits and presentations provided to us, Tax Preparer was unaware of the requirement to file Form 8996 with the Taxpayer's timely filed federal income tax return for Year 2 for the Taxpayer to self-certify QOF status and to be treated as a QOF as of Month 2 of Year 2. As a result, Tax Preparer failed to file the Form 8996 with Taxpayer's Form 1065 for Year 2.

Tax Preparer subsequently discovered that the Form 8996 should have been included with Taxpayer's Form 1065 and informed Taxpayer of the error.

Taxpayer subsequently engaged Tax Advisors to assist with submitting this request seeking relief under Treas. Reg. §§ 301.9100-1 and 301.9100-3.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treas. Reg. § 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 the Taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to Advisor's failure to file the Form 8996 with Taxpayer's Year 2 tax return.

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 Treas. Reg. § 301.9100-1(b). According to Treas. Reg. § 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of Treas. Reg. § 301.9100-2 (automatic extensions) must be made under the rules of Treas. Reg. § 301.9100-3.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards that the Service will use to determine whether to grant an extension of time to make a regulatory election. Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treas. Reg. § 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 granting relief will not prejudice the interests of the Government.

Treas. Reg. § 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 Treas. Reg. § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer—

- (i) Seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) Was fully informed of the required election and related tax consequences, but chose not to file 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.

Treas. Reg. § 301.9100-3(c) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. 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). Treas. Reg. § 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 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, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's late-filed Form 8996, certifying the Taxpayer as a QOF as of the month the Taxpayer was formed, will be considered timely filed, provided it is received by the appropriate service center no later than 60 days from the date of this letter ruling.

The ruling contained in this letter is 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.

This ruling addresses the granting of Treas. Reg. § 301.9100-3 relief as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 2. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in Treas. Reg. § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. 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 representatives.

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
(Income Tax & Accounting)

cc: