Internal Revenue Service

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Date:
September 13, 2021

LEGEND

Taxpayer	=
State	=
Member A	=
Member B	=
Firm	=
Tax Advisor X	=
Tax Advisor Y	=

Dear :

This letter responds to Taxpayer's request dated March 11, 2021, 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 (i) self-certify that it is a qualified opportunity fund as defined in section 1400Z-2(d) ("QOF"), and (ii) to be treated as a QOF for its taxable year ended December 31, 2019, effective as of October 2019, as provided under section 1400Z-2 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 Taxpayers.

FACTS

Taxpayer has represented that the facts are as follows. Taxpayer is a limited liability company organized under the laws of State, classified as a partnership for U.S. federal income tax purposes, for the purpose of investing in qualified opportunity zone property and serving as a QOF. All of the outstanding member interests in Taxpayer are owned by Member A and Member B as community property, directly and through trusts that are treated as owned (under subpart E of part 1 of subchapter J of chapter 1 of the Internal Revenue Code) by Members A and B.

In the summer of 2019, Member A learned about the ability to establish a QOF to defer recognition of gain realized on the disposition of property. Upon learning of this opportunity Member A engaged an attorney to form Taxpayer as a limited liability company for the purpose of investing in qualified opportunity zone property and serving as a QOF, and to prepare the operating agreement for Taxpayer.

Member A and Member B engaged Firm for tax compliance and advisory services individually and for certain business and investment entities they own and control. Shortly after Taxpayer was formed, Taxpayer A informed Tax Advisor X at Firm of his investment in a QOF, but Tax Advisor X was not specifically informed of the formation of Taxpayer to serve as the QOF.

According to the affidavits and additional information provided, Member A and Member B have used limited liability companies as investment vehicles in the past. These limited liability companies have been treated as disregarded entities for U.S. federal income tax purposes. Since Taxpayer was organized and owned in the same manner as these other investment vehicles, Member A was initially unaware that Taxpayer was to be treated as a partnership for U.S. federal income tax purposes and, correspondingly, was unaware of the need to file a partnership return for Taxpayer.

The unextended due date for Taxpayer's U.S. federal income tax return, Form 1065, U.S. Return of Partnership Income, for Taxpayer's taxable year ended December 31, 2019 ("2019 Partnership Return") was March 16, 2020. The due date for the 2019 Partnership Return could have been extended to September 15, 2020, by filing, on or before March 16, 2020, Form 7004, Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns, for the 2019 Partnership Return. A Form 7004 to extend the due date of the 2019 Partnership Return was not timely filed, nor was the 2019 Partnership Return filed by what would have been its extended due date had a Form 7004 been timely filed, because Member A was unaware that Taxpayer was to be treated as a partnership for U.S. federal income tax purposes until after September 15, 2020.

In August 2020, Firm assigned Tax Advisor Y to replace Tax Advisor X as the person primarily responsible for the tax compliance services provided by Firm to Member A and Member B and certain entities that they own and control. In September of 2020, Tax Advisor Y learned of the formation of Taxpayer in an email from Member A. Shortly thereafter, Tax Advisor Y learned that neither a return nor a timely Form 7004 to extend the due date of the 2019 Partnership Return had been filed and informed Member A that for Taxpayer to be a QOF for its taxable year ended December 31, 2019, (i) Taxpayer was required to be a partnership for U.S. federal income tax purposes, and (ii) as a partnership, Taxpayer was required to file a U.S. federal income tax return on Form 1065. Tax Advisor Y also informed Member A that the 2019 Partnership Return could not be timely filed because the due date for filing this return had passed.

Upon learning that the 2019 Partnership Return was not timely filed, Member A contacted another attorney and shortly thereafter filed this private letter ruling request, seeking extension of time to file Form 8996 for Taxpayer's year ended December 31, 2019 and effective October 2019 pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. The 2019 partnership return for Taxpayer was subsequently filed, and included a completed Form 8996.

APPLICABLE LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations setting forth rules for the certification of QOFs. Treasury Regulation § 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) because Member A was unaware that Taxpayer was a partnership and required to file a partnership return and Form 8996 to be a QOF.

Treasury Regulations §§ 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. Treasury Regulation § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treasury Regulation § 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.

Treasury Regulation § 301.9100-3(b)(1)(iii) provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer failed to make an election because, after 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 the election.

Under Treasury Regulation § 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 § 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.

Treasury Regulation § 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.

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 Form 8996, filed on October 15, 2020, certifying the Taxpayer as a QOF as of October 2019, is considered timely filed.

This ruling addresses the granting of relief under Treasury Regulation § 301.9100-3 as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Taxpayers 2019 tax year. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in Treasury Regulation § 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 based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement signed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

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 § 6110.

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

Sincerely,

Ronald J. Goldstein
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: