

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202205021**
Release Date: 2/4/2022

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1400Z.02-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-114032-21

Date:
November 08, 2021

LEGEND

Taxpayer	=
Accountant	=
Real Estate Collective	=
National Accounting Firm	=
State X	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year 1	=
Month 1	=

Dear :

This responds to Taxpayer's request dated July 1, 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 (1) self-certify the Taxpayer as a Qualified Opportunity Fund (QOF) defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) for the Taxpayer to be treated as a QOF, effective as of the month the Taxpayer was formed, as provided under Code § 1400Z-2 and Treasury Regulation § 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

Taxpayer has represented that the facts are as follows. Taxpayer was organized as a limited liability company under the laws of State X on Date 1 and is classified as a partnership for US federal income tax purposes. Taxpayer was organized for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2), as stated in the operating agreement of the entity entered on Date 1. Taxpayer's year end for maintaining its accounting books and records and filing its Federal income tax return is that of an ordinary calendar year.

The information provided by Taxpayer indicates that Accountant was tasked with preparing and timely filing Taxpayer's Federal income tax return. According to the affidavits and additional information provided to us, neither Taxpayer or Accountant were aware of the requirement to file Form 8996 (Qualified Opportunity Fund) with the Taxpayer's timely filed Federal income tax return for Year 1 to self-certify QOF status and to be treated as a QOF as of the month Taxpayer was formed.

Accountant is a State X licensed CPA with over 40 years of experience in public and private accounting. Taxpayer is part of Real Estate Collective. Accountant has serviced numerous Real Estate Collective affiliated entities since 2016. Accountant was engaged to prepare Year 1 tax returns for 68 entities associated with Real Estate Collective and understood that Taxpayer intended to be a QOF. Due to a miscommunication, Accountant initially filed the Taxpayer's return on Date 3 with no equity contributions, no activity and no Form 8996 QOF certification. A few weeks later the miscommunication was discovered, Taxpayer was alerted, and Accountant filed an amended return on Date 4. In filing the amended return, Accountant did not complete Form 8996 to certify Taxpayer as a QOF as he was still unaware of the requirement.

Taxpayer hired National Accounting Firm for its 2020 income tax return filings. In Month 1, National Accounting Firm received and reviewed Taxpayer's Year 1 filings and alerted Taxpayer that they did not include Form 8996. Taxpayer then engaged National Accounting Firm to assist in compiling this private letter ruling request.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for 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 due of its Year 1 income tax return due to Taxpayer and Accountant's lack of knowledge regarding the necessity of Form 8996.

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.

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 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, based solely on the facts and information submitted, and the representations made in the ruling request, we grant the Taxpayer an extension of 60 days from the date of this letter ruling to file an amended return including a completed Form 8996 to make the election under section 1400Z-2 and section 1.1400Z(d)-1(a)(2)(i) certifying the Taxpayer as a QOF as of the month the Taxpayer was formed.

This ruling is based upon facts and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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 Treasury Regulation § 301.9100-3 relief as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 1. 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 directed only to the taxpayer requesting it. Code § 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely,

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