

Internal Revenue Service

Number: **202317006**

Release Date: 4/28/2023

Index Number: 1400Z.01-00, 9100.00-00

Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:ITA:B05

PLR-115008-22

Date:

January 26, 2023

TY:

Legend

Taxpayer =

Manager =

State Z =

Firm =

Tax Advisor =

Submission Date =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Dear :

This ruling responds to Taxpayer's request for a letter ruling requested on Submission Date. Taxpayer requests relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests that its Form 8996, *Qualified Opportunity Fund*, filed on Date 5 with its amended Forms 1065, *US Return of Partnership Income*, be treated as timely filed for purposes of making an election: (1) to self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations, and (2) for Taxpayer to be treated as a QOF effective as of Date 1, as provided by section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

FACTS

Taxpayer was organized as a limited liability company (LLC) under the laws of State Z on Date 1 (in Year 2) and is treated as a partnership for Federal income tax purposes. Taxpayer was formed with contributions from its Members, one of whom is the Manager of Taxpayer. The Members had capital gain from Year 1 that they contributed to Taxpayer.

In Year 2, Taxpayer invested in a partnership interest in another LLC. Taxpayer represents that the LLC is a qualified opportunity zone partnership and qualifies as a Qualified Opportunity Zone Business, a QZOB. Accordingly, the sole asset of Taxpayer is an interest in a QZOB.

Taxpayer's overall method of accounting is the cash receipts and disbursements method of accounting, and Taxpayer has a December 31 tax year end.

According to the affidavits and information provided to us, Manager engaged the services of Firm and Tax Advisor, a certified public accountant and tax senior manager of Firm, for filing Manager's individual tax return for Year 1 (Tax Advisor also prepared the individual tax return of the other Member of Taxpayer for Year 1). Manager informed Tax Advisor of the creation and investment in Taxpayer (and the other Member's investment in Taxpayer) that occurred in Year 2.

Tax Advisor prepared individual income tax returns for the Manager and the other Member of Taxpayer for Year 1, and included Form 8997, *Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments*, reporting the investments in Taxpayer. Thus, Tax Advisor knew at the time of engagement that Manager and the other Member of Taxpayer rolled over their Year 1 capital gain into Taxpayer. .

Although aware of the creation and investment in Taxpayer, Tax Advisor did not prepare a Form 1065 for Year 2. Tax Advisor therefore also did not attach to the Year 2 Form 1065 the Form 8996, *Qualified Opportunity Fund*.

On Date 2 (in Year 3), Taxpayer received a Year 2 Schedule K-1 (Form 1065) from the QZOB. After the receipt of the Schedule K-1, Tax Advisor prepared a late Form 1065 for the Taxpayer for Year 2. On Date 3 (in Year 4), Taxpayer received a Year 3 Schedule K-1 (Form 1065) from the QZOB. The Tax Advisor timely prepared the Form 1065 for Year 3. On neither of the Form 1065s filed by Tax Advisor did Tax Advisor attach the Form 8996.

On Date 4 (in Year 4), Manager and the other Member of Taxpayer received a letter from the IRS, informing them that the employer identification number reported on the Year 1 individual returns' Forms 8997 were not associated with a QOF. Soon thereafter, on Date 5, Tax Advisor filed amended Forms 1065 for Year 2 and Year 3, attaching a Form 8996 to each year's amended return.

Later, Tax Advisor informed Manager and the other Member that the Form 8996 had to have been filed with the original, timely filed Form 1065 for Year 2 and Year 3. Acting on this last information, Manager, on behalf of the Taxpayer, engaged legal counsel to prepare this private letter ruling.

Taxpayer represents that granting of the relief under section 301.9100-3 will not result in a lower tax liability for the years affected by the election.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) 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 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 Firm did not file Taxpayer's Form 8996 due to a lack of knowledge by the Firm and Tax Advisor regarding the nature of Taxpayer, and the lack of knowledge associated with QOFs and filing requirements. Accordingly, Taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to Manger of Taxpayer's belief that Firm would perform all necessary filings on time, while Firm and Tax Advisor were unaware of the requirement to file the 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, 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 section 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 section 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 Taxpayer has acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government. Further, while the IRS sent a letter to Manager and the other individual Member regarding their investment in Taxpayer, the IRS did not send a letter to Taxpayer regarding Taxpayer's certification as a QOF.

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 as a QOF consistent with its amended filings made on Date 5, and Taxpayer's Form 8996, certifying Taxpayer as a QOF as of Date 1, is considered timely filed.

This ruling is based upon facts and representations submitted on behalf of the Taxpayer by Manager and Tax Advisor and accompanied by a penalty of perjury statement executed by the appropriate parties. 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 information, representations, and other data submitted.

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 section 1.1400Z2 (a)-1(b)(34) or whether Taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. Further, we also express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in section 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in section 1400Z-2(d)(3). 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.

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 representatives.

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.

Sincerely,

Amy J. Pfalzgraf
Acting Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: