

Internal Revenue Service

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Attn:

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:B04
PLR-115377-22
Date:
February 08, 2023

VIA FAX

Taxpayer =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Year 1 =
Year 2 =
General Partner =
Manager =
Number =

Tax Advisor =

Tax Return Preparer =

Dear :

This letter responds to Taxpayer's request dated Date 1. Specifically, Taxpayer requests relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3 for Taxpayer's Form 8996 (Qualified Opportunity Fund), as filed on or before Date 2, to be treated as timely for purposes of the election: (1) to self-certify the Taxpayer as a qualified opportunity fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code); and (2) for the Taxpayer to be treated as a QOF, effective as of Date 3, as provided under Code § 1400Z-2 and Treasury Regulation § 1.1400Z2(d)-1(a).

FACTS

According to representations provided, Taxpayer, a limited partnership, formed on Date 4, with the intent to qualify as a QOF and invest in qualified opportunity zones (QOZ). Taxpayer's partnership agreement states the Taxpayer's intention to be a QOF. As of Date 5, Taxpayer had one general partner, General Partner, and Number limited partners. Taxpayer is managed by Manager, who was established by several of the limited partners of Taxpayer.

During Date 6, Manager approached Tax Advisor for advice regarding investing in a QOF. Tax Advisor determined a new entity structure should be formed. Taxpayer was subsequently formed. Manager did not engage Tax Advisor to provide tax compliance services related to Taxpayer's filing of its Form 8996 for Year 1, the tax year of the missed election to self-certify as a QOF. Nevertheless, Tax Advisor did inform Manager of the need to file a Form 8996 with the first tax return of Taxpayer. However, there was no discussion as to the applicable due date.

Taxpayer subsequently engaged Tax Return Preparer to file its Year 1 tax filings. Manager has relied on Tax Return Preparer since Year 2 to advise and prepare filings for various entities related to Manager. Because Taxpayer did not have any income, deductions, or credits for federal income tax purposes for its initial short taxable year Date 4 through Date 5, Taxpayer represents that it believed it was not required to file a Form 1065 for this tax period. As such, Taxpayer did not file a Form 1065 for Year 1 by its due date, Date 7, and did not file for an automatic extension of time for Year 1.

During tax compliance discussions with Taxpayer during Date 8, Tax Return Preparer learned that Taxpayer intended to qualify as a QOF in Year 1 and advised Taxpayer of the requirement to file a Form 8996 with its timely filed federal income tax return for Year 1.

Upon discovering the failure to timely file the automatic extension to file Taxpayer's Form 1065 for Year 1, Taxpayer engaged Tax Return Preparer to prepare this private letter ruling request. Taxpayer represents that Taxpayer filed its Form 1065, which included a completed Form 8996, for Year 1 on Date 2. Taxpayer also represents that but for the lack of filing a timely Form 8996 for Year 1, Taxpayer was otherwise eligible to be a QOF for Year 1.

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 of its income tax return (including extensions) due to the failure to file an automatic extension of time to file Taxpayer's Form 1065 for Year 1.

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 § 301.9100-1(b). According to Treasury Regulation § 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of Treasury Regulation § 301.9100-2 (automatic extensions) must be made under the rules of Treasury Regulation § 301.9100-3. Additionally, requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government.

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 § 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.

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.

In addition, § 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 § 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 § 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'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 Treasury Regulation § 301.9100-3. We further conclude that, based on the facts and information submitted in connection with this request, 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 or before Date 2, certifying the Taxpayer as a QOF as of Date 3 is considered timely filed.

CAVEATS

This ruling is based upon facts and representations submitted by the Taxpayer and accompanied by penalty of perjury statements 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 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 and structure under § 1400Z-2 and the regulations thereunder to be a QOF. In addition, we also express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3). We express no opinion whether Taxpayer's federal income tax return for Year 1 is considered timely filed. 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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under Code § 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.

This letter is being issued electronically in accordance with Rev. Proc. 2020-29, 2020-21 I.R.B. 859 and Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to the taxpayer.

Sincerely,

Lisa Mojiri-Azad
Senior Technician Reviewer
Branch 4
Office of Chief Counsel
(Income Tax & Accounting)

cc: