

Internal Revenue Service

Number: **202321003**
Release Date: 5/26/2023
Index Number: 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-117362-22

Date:
March 02, 2023

TY:

LEGEND

- Taxpayer =
- Manager =
- P =
- SM =
- LLC =
- AF =
- Law Firm =
- State =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Month A =
- Month B =
- Month C =
- Month D =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =

Dear _____ :

This letter responds to Taxpayer's request dated Date 1 for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file a Form 8996, *Qualified Opportunity Fund*, for Taxpayer to make an election to self-certify Taxpayer as a Qualified Opportunity Fund (QOF) under § 1400Z-2(d) of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations for Year 3.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer is a limited liability company formed pursuant to the laws of State on Date 2. Taxpayer is a partnership for federal income tax purposes with an annual accounting period ending Date 3 and reports income using the cash receipts and disbursements method of accounting. The principal purpose of Taxpayer, according to its operating agreement, is to operate as a QOF by investing exclusively in direct or indirect investments in qualified opportunity property. Taxpayer owns an interest in LLC, whose principal purpose is to operate a qualified opportunity zone business. Manager, who manages Taxpayer, holds interests in other businesses. Taxpayer represents that it is eligible to make an election to be recognized as a QOF for Year 3.

AF, an accounting firm, has prepared and filed Manager's individual income tax returns since Year 1. P is a partner at AF and SM, a senior tax manager at AF, was responsible for preparing Manager's returns.

During Month A, Year 3, Manager engaged Law Firm to assist with the formation of Taxpayer. Law Firm advised Manager on how to invest in a QOF, formed Taxpayer, and prepared Taxpayer's operating agreement.

Manager is not trained in taxation nor return preparation, and is not a professional accountant or attorney. Manager was not informed about the election a taxpayer could make to self-certify itself as a QOF, and he was not aware of the method for making such election. Moreover, Manager relied upon AF to prepare Taxpayer's initial Year 3 Form 1065, *U.S. Return of Partnership Income*, and Form 8996.

During Month A, Year 3, SM acknowledged to Manager that Taxpayer's "opportunity zone return" would be filed and that the gain realized by Manager in Year 2 would be deferred for federal income tax purposes. In Month C, Year 3, Manager provided SM with Taxpayer's formation documents and a bank statement showing Manager's investment in Taxpayer of gain deferred from Year 2. AF in turn used that information to prepare Manager's Year 2 individual tax return by its extended due date. In an email to Manager dated Date 4, SM raised the issue of whether a separate accountant would be taking care of filing Manager's "OZ Fund" and ensuring that a Form 8996 would be filed with Taxpayer's Year 3 return. Manager responded by indicating he had no

certified public accountant for the opportunity zone fund, apart from legal counsel, and he asked SM if he would assist Manager with the “tax paperwork.” As of Date 5, SM did not prepare Taxpayer’s initial Form 1065 or a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns* by their Date 6 due date.

During the summer months of Year 4, AF requested information from Manager’s business entities, including the Schedule K-1 from Taxpayer, in order to prepare Manager’s Year 3 individual return by its extended due date. Manager requested Taxpayer’s financial information from Law Firm. On Date 7, Law Firm provided Manager with financial records for Taxpayer and inquired whether Taxpayer included a Form 8996 with a timely filed Form 1065 for Year 3.

Thereafter, between Month B and Month C, Year 4, Manager realized that SM failed to file Taxpayer’s Year 3 Form 1065 and immediately instructed AF to prepare the Taxpayer’s federal tax returns, including Form 8996. P indicated that in addition to SM’s failure to confirm that he would prepare Taxpayer’s Form 1065 for Year 3, SM did not enter Taxpayer’s information into AF’s return preparation tracking system.

On Date 8 Taxpayer filed a Form 1065 and Form 8996 for Year 3 and elected Month D as Taxpayer’s first effective month as a QOF. Manager subsequently engaged Law Firm to prepare a request for a private letter ruling that would give Taxpayer permission to make an untimely election to self-certify itself as a QOF for Year 3.

LAW AND ANALYSIS

Section 13823(a) of Public Law 115-97, commonly known as the Tax Cuts and Jobs Act of 2017, added provisions to the Code authorizing taxpayers to defer eligible capital gain through reinvesting the funds into state-designated population census tracts in low-income communities, known as Qualified Opportunity Zones. Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute’s purposes, including rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations 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 forms or instructions, or in publications or guidance of the Service, published in the Internal Revenue Bulletin.

To self-certify as a QOF, a taxpayer must file Form 8996 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).

Because § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations sets forth the manner and timing for an entity to self-certify as a QOF, these elections are regulatory elections, as defined in § 301.9100-1(b) of the Procedure and Administration Regulations.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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.

Under § 301.9100-3(b) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although 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 an election. A taxpayer may also establish that it acted in good faith if the taxpayer reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election. § 301.9100-3(b)(1)(v).

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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 has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government. Taxpayer reasonably relied on a qualified tax professional who failed to file timely Taxpayer's Year 3 Form 1065 and Form 8996. Accordingly, 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, the Form 8996 attached to Taxpayer's return for Year 3, filed Date 8, is considered timely filed, and Taxpayer has thereby made the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year 3. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns along with a cover letter requesting that the Service associate this ruling with the Year 3 return.

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 § 1.1400Z2(a)-1(b)(34) of the Income Tax Regulations or whether Taxpayer meets the requirements under § 1400Z-2 of the Code 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.

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 representative.

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.

The rulings contained in this letter are based upon information and representations submitted by 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.

Sincerely,

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

cc: