

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
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PLR-118022-22

Date:
March 22, 2023

LEGEND

- Taxpayer =
- Advisor =
- LLC =
- Manager =
- Tax Year =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- Year 5 =
- Date 1 =
- Date 2 =
- Date 3 =
- Month 1 =
- Month 2 =
- Month 3 =
- Month 4 =
- State Z =
- X% =

Dear :

This letter responds to Taxpayer’s request, dated Date 3, for a private letter ruling. Specifically, Taxpayer requests an extension of time, under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations,¹ to file Form 8996,

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code (Code) or the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301).

Qualified Opportunity Fund (QOF), for purposes of: (1) making the election, under section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations, to be certified as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d), and (2) to be treated as a QOF, effective as of Month 4 of Year 1, as provided under section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

FACTS

Taxpayer has represented that the facts are as follows.

Taxpayer was organized as a limited liability company under the laws of State Z on Date 1. Taxpayer is classified as a partnership for Federal income tax purposes. Taxpayer's method of accounting is the accrual method of accounting and has a tax year end of Tax Year. Taxpayer is the X% owner of LLC, which is organized as a State Z limited liability company and is classified as a partnership for Federal income tax purposes. LLC's sole asset is real property located in a qualified opportunity zone in State Z.

Taxpayer did not file a Form 1065, *U.S. Return of Partnership Income*, for Year 1.

In Month 3 of Year 3, Manager engaged Advisor, a certified public accountant, to prepare and file Taxpayer's Forms 1065, including any forms and elections necessary to self-certify Taxpayer effective as of the month Taxpayer was formed.

Advisor prepared and timely filed Taxpayer's Form 1065 for Year 2 but inadvertently failed to include a completed Form 8996, with the return.

In Months 2 and 3 of Year 4, Manager and Advisor discovered Taxpayer's failures to timely self-certify as a QOF.

On Date 2, Advisor filed Taxpayer's amended Form 1065 and included a Form 8996 for Year 3. In Month 1 of Year 5, Advisor also filed Taxpayer's Form 1065 and included a Form 8996 for Year 1.

Subsequent to discovering the above-described failures, Taxpayer promptly made this request for relief under sections 301.9100-1 and 301.9100-3.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) 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 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 a Form 8996 with its timely filed income tax return due to Advisor's failure to timely file its Year 1 returns or include the completed Form 8996 with its timely filed Year 2 returns.

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 301.9100-1(b) defines the term "regulatory election" as including any election, whose due date is prescribed by a regulation published in the Federal Register. Because section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for an entity to self-certify as a QOF, this election is a regulatory election within the meaning of section 301.9100-1(b)

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in section 301.9100-2) will be granted when 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.

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.

Under section 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 has been or could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires 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 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.

Section 301.9100-3(c) provides that the Commissioner will grant a reasonable extension of time to make a 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.

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, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make the election to self-certify as a QOF for Year 2. This election must be made on a completed Form 8996 attached to the Taxpayer's amended tax return or Taxpayer's administrative adjustment request (whichever is appropriate) for Year 2. A copy of this letter ruling also should be included.

The Forms 8996, attached to Taxpayer's Forms 1065 for Years 1 and 3, will be considered timely filed. Accordingly, Taxpayer has thereby made the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Years 1 and 3. Taxpayer should submit copies of this letter ruling to the Service Center where Taxpayer filed its returns along with a cover letter requesting that the Service associate this ruling with Taxpayer's returns for Years 1 and 3.

This ruling is based upon facts 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 a ruling, it is subject to verification on examination.

This ruling addresses the granting of section 301.9100-3 relief as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Years 1 and 2. Specifically, we have no opinion, either express or implied, concerning whether any investments made into or by 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. 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.

Pursuant to the Form 2848, Power of Attorney and Declaration of Representation 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.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

Sincerely,

Alexa T. Dubert
Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: