

Internal Revenue Service

Number: **202324006**
Release Date: 6/16/2023
Index Number: 9100.00-00

Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Attn:

Refer Reply To:
CC:ITA:B05
PLR-118328-22

Date:
March 24, 2023

TY:

Taxpayer =
Individual =
Manager =
Individual =
Preparer =
Attorney =
LLC 2 =
LLC 3 =
LLC 4 =
LLC 5 =
Law Firm =
Law Firm 2 =
State =
Address 1 =
Address 2 =
Year 1 =
Year 2 =
Year 3 =
Year 4 =
Month 1 =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Class 1 =
Class 2 =
N1 =
N2 =

N3 =
N4 =
N5 =

Dear :

This responds to Taxpayer's request dated Date 1 for relief under § 301.9100-3 of the Procedure and Administration Regulations in regard to the Form 8996, *Qualified Opportunity Fund*, Taxpayer filed with an amended return for Year 1. Specifically, Taxpayer requests that the Internal Revenue Service (Service): (1) grant to Taxpayer an extension under § 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to make a timely election under § 1400Z-2 of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to self-certify as a Qualified Opportunity Fund (QOF), as defined in § 1400Z-2(d) of the Code; and (2) treat Taxpayer as a QOF, effective as of Date 2.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer, a limited liability company formed pursuant to the laws of State, is treated as a partnership for federal income tax purposes. Taxpayer uses the accrual method of accounting and reports income on a calendar year basis. Taxpayer has N1 Class 1 non-managing members and N2 Class 2 members. LLC 2 is a Class 2 member. Individual Manager is the managing partner of LLC 2 and also served as a managing partner during Year 1 and Year 2. LLC 2 through LLC 3, serves as the manager of Taxpayer.

Taxpayer's operating agreement states that Taxpayer's purpose is to be a QOF that invests in qualified opportunity zone property either directly or indirectly through the ownership of qualified opportunity zone partnership interests, within the meaning of § 1400Z-2(d) of the Code. Taxpayer's qualified opportunity zone property is comprised of membership interests, which are qualified opportunity zone partnership interests as defined by § 1400Z-2(d)(2)(C) of the Code, in LLC 4. LLC 4 intends to own, develop, improve, sell, exchange and otherwise manage the properties at Address 1 and Address 2, upon which LLC 4 intends to construct a N3-story apartment building.

Individual Manager met several times with Law Firm and their discussions centered on ensuring that Taxpayer would be structured as a QOF. Individual Manager communicated that Taxpayer intended to report its activities as a QOF and was aware that Taxpayer was required to elect to self-certify itself as a QOF for Year 1. Individual Manager, though, was not informed of the requirement to file a Form 8996 with Taxpayer's Form 1065, *U.S. Return of Partnership Income* for Year 1 in order to make the election.

Taxpayer retained LLC 5, an affiliate of LLC 2, to prepare and file Taxpayer's Form 1065 for Year 1. LLC 5 receives a management fee annually from Taxpayer to manage Taxpayer's assets and oversee tax filing obligations. Individual Manager believed that LLC 5 was qualified to inform Taxpayer of the forms required to be filed with the Service in order for Taxpayer to be a QOF for Year 1, and Taxpayer relied upon LLC 5 to prepare all of the required forms for such purpose.

Individual Preparer, who holds a college degree with a focus on accounting, is the tax manager of LLC 5 and has worked on tax returns since joining LLC 5 during Year 3. On Date 3 Individual Preparer was informed of Taxpayer's intention to meet the requirements to be a QOF and knew that Taxpayer was required to make an election to self-certify as a QOF. Individual Preparer, however, was unaware of the requirement to include a completed Form 8996 with a filed tax return. Additionally, the tax software used by LLC 5 for the preparation of tax returns, which had been used by LLC 5 for a N5-year period, did not provide warnings or prompts pertaining to QOFs when Individual Preparer was preparing Taxpayer's Year 1 return. Because of these factors, Individual Preparer did not manually complete a Form 8996 for Taxpayer and thus failed to include such form with Taxpayer's 2019 Form 1065.

In Month 1, Year 4 approximately N4 of Taxpayer's non-managing members sent to LLC 2 copies of notices they received from the Service, which suggested Taxpayer was not a QOF. The notices informed the receiving members that the employer identification number reported on the members' Forms 8997, *Initial and Annual Statement of Qualified Opportunity Fund (QOF) Investments*, was not associated with a certified QOF. Individual Manager thereafter requested that LLC 5 address Taxpayer's missed election and then learned that a Form 8996 was required to be attached to Taxpayer's timely filed Form 1065 Year 1 in order for Taxpayer to elect to self-certify as a QOF. In the course of discussions with personnel from LLC 5, Individual Manager learned that the tax software used by LLC 5 in preparing Taxpayer's return for Year 1 did not support the filing of a Form 8996; such form would have been required to be manually generated.

Taxpayer attempted to rectify its untimely election to self-certify as a QOF by filing with the Service an amended Form 1065 with an attached Form 8996 on Date 4.

Individual Preparer contacted Attorney from Law Firm 2 about the notices non-managing members of Taxpayer received from the Service. As a result of discussions with Law Firm 2, Individual Preparer advised Taxpayer to submit a private letter ruling request. Individual Manager also communicated with Law Firm 2 in regard to the method for correcting the Taxpayer's missed election and was advised to submit a private letter ruling request to the Service.

Taxpayer represents that it is subject to the centralized partnership audit regime under Code §§ 6221-35 for Taxpayer's year ending Year 1.

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 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 prepare and include a Form 8996 for filing with the Taxpayer's Year 1 Form 1065. 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 amended return for Year 1, filed Date 4, 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 1. 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 1 amended 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,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: