

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202324007**
Release Date: 6/16/2023

Third Party Communication: None
Date of Communication: Not Applicable

Index Number: 1400Z.02-00, 9100.00-00,
9100.22-00

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-118763-22

Date:
March 24, 2023

LEGEND

Taxpayer =
Advisor =
Manager =
Tax Year =
Year 1 =
Year 2 =
Year 3 =
Date 1 =
Date 2 =
Month 1 =
Month 2 =
State Z =
X =

Dear :

This letter responds to Taxpayer’s request, dated Date 2, 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, *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 the month Taxpayer was formed, as provided under section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

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).

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.

FACTS

Taxpayer has represented that the facts are as follows.

Taxpayer was organized as a limited partnership under the laws of State Z on Date 1 for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2). Taxpayer is classified as a partnership for Federal income tax purposes. Taxpayer has a tax year end of Tax Year.

After formation, Taxpayer engaged Advisor to provide tax and accounting services for Taxpayer, including preparation of Taxpayer's Federal income tax returns for Year 1 and Year 2. According to the information and affidavits received, Advisor had provided Manager with Federal tax preparation services in connection with Manager's other businesses for X years. Advisor was tasked with the preparation and timely filing of Taxpayer's Federal income tax return and all related forms and elections to self-certify Taxpayer as a QOF, and to treat Taxpayer as a QOF as of the month Taxpayer was formed, Month 2 of Year 1.

According to the information and affidavits provided, Advisor timely filed Taxpayer's Year 1 and Year 2 Federal income tax returns. However, Advisor was not aware of the requirement to include a Form 8996 in order to self-certify Taxpayer as a QOF as of the month Taxpayer was formed.

In Month 1 of Year 3, Advisor became aware of the fact that Taxpayer was required to have filed a Form 8996 with its Year 1 and Year 2 Federal income tax returns in order to self-certify as a QOF. Advisor subsequently informed Taxpayer of this fact and of the fact that Taxpayer had not included Forms 8996 with its Year 1 and Year 2 tax returns.

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 Taxpayer did not file a Form 8996 with its timely filed income tax return due to fact that Advisor was

unaware of the requirement to include the completed form with Taxpayer's Year 1 or 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)(1) 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, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's late-filed Forms 8996, certifying Taxpayer as a QOF as of the month Taxpayer was formed, will be considered timely filed provided they are received by the appropriate service center no later than 60 days from the date of this letter ruling.

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 Taxpayer as a QOF by filing Form 8996 for Year 1 and Year 2.

Specifically, we have 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. We 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. Further, we express no opinion regarding whether Taxpayer has timely filed its original returns for any relevant tax year.

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 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 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.

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
(Income Tax & Accounting)

cc: