

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

[Third Party Communication:

Date of Communication: Month DD, YYYY]

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PLR-118301-22

Date:

March 27, 2023

VIA FAX

Dear :

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Year 1 =

Year 2 =

Year 3 =

State A =

Member A =
Member B =
Member C =
Trust A =
Manager =
Advisor =
Advising Firm =

This letter responds to Taxpayer's request dated Date 8. Specifically, Taxpayer requests relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3 to file Form 8996, *Qualified Opportunity Fund*, to (1) self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) to be treated as a QOF, effective as Date 1, as provided under section 1400Z-2(d) and Treas. Reg. § 1.1400Z2(d)-1(a).

According to the information and representations provided, Taxpayer was organized as a limited liability company under the laws of State A on Date 2 and is classified as a partnership for U.S. federal income tax purposes. Taxpayer was organized for the purpose of operating as a QOF and investing in properties located in a qualified opportunity zone (QOZ). Taxpayer's operating agreement states the Taxpayer's intention to be a QOF by filing Form 8996. Taxpayer has three members, Member A, Member B, and Member C. Member A and Member B are wholly-owned by Trust A, which is for the benefit of Manager. Manager is also the manager of Taxpayer and is authorized to make tax elections on behalf of Taxpayer.

Manager previously engaged Advisor, a certified public accountant with Advising Firm, to advise on tax matters and prepare all tax returns for Manager and their businesses. On Date 2, Taxpayer retained Advisor to prepare and file its tax returns in accordance with all requirements to be QOF under the Code. Manager instructed Advisor that Taxpayer was formed for the purpose of operating as a QOF to facilitate investments in QOZs.

Taxpayer's Year 1 tax return, for the period ending Date 3, was due on or before Date 4. Advisor prepared and timely filed Taxpayer's Year 1 Form 1065 tax return but failed to include a Form 8996 to self-certify Taxpayer as a QOF. For Year 2 and Year 3, Advisor prepared and filed Taxpayer's tax returns consistent with its intended treatment

as a QOF but again failed to attach a Form 8996 with each respective tax return. Taxpayer represents that its Year 2 and Year 3 tax returns were timely filed, due on Date 5 and Date 6 respectively. According to the information and representations provided, the failure to file a Form 8996 for all three taxable years was due to Advisor being unaware of the requirements for Taxpayer to self-certify as a QOF.

On Date 7, Manager notified Advisor that one of the members of Taxpayer received a notice from the Internal Revenue Service (IRS) indicating that its claimed opportunity zone investments were not associated with an employer identification number (EIN) of a QOF. Taxpayer then proceeded to prepare this private letter ruling request.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treas. Reg. § 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 IRS 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 Taxpayer did not file its Forms 8996 by the due dates of its income tax returns (including extensions), due to Advisor being unaware of the requirements to self-certify as a QOF, for Year 1, Year 2, and Year 3.

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).

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 section 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

CONCLUSION

Based on the facts and information submitted in connection with this request, we conclude 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 for Year 1, Year 2, and Year 3, certifying Taxpayer as a QOF, will be considered timely filed provided it is 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 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 Treas. Reg. § 301.9100-3 relief as applied to the election to self-certify Taxpayer as a QOF by filing Forms 8996 for Year 1, Year 2, and Year 3.

Except as expressly provided herein, no opinion is either expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in Treas. Reg. § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements and structure under section 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 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. We express no opinion as to whether Taxpayer's Year 1, Year 2, and Year 3 Federal income tax returns are considered timely filed.

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 section 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 section 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 representative.

This letter 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 the taxpayer.

Sincerely,

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

cc: