

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202426009**
Release Date: 6/28/2024

Third Party Communication: None
Date of Communication: Not Applicable

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

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-119526-23

Date:
April 02, 2024

Legend:

- Taxpayer =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Year 1 =
- Year 2 =
- Year 3 =
- State =
- Managing Member =
- Tax Preparer =
- Accounting Firm =

Dear :

This ruling responds to Taxpayer’s request dated Date 1, and Taxpayer’s supplemental correspondence dated Date 2 and Date 3. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, granting an extension of time to make a timely election under § 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 Internal Revenue Code (Code).

FACTS

Taxpayer represents the facts as follows:

Taxpayer is a limited liability company organized under the laws of State on Date 4. Taxpayer is treated as a partnership for Federal income tax purposes and is subject to the centralized partnership audit regime under § 6221 of the Code. Taxpayer uses the cash method of accounting and the calendar year as its taxable year.

Taxpayer was formed for the purpose of investing in a qualified opportunity zone business and operating as a QOF as defined in § 1400Z-2(d). Taxpayer's Managing Member engaged Tax Preparer to prepare its Year 1 Form 1065, *U.S. Return of Partnership Income*, and all related forms and elections to self-certify Taxpayer as a QOF for its Year 1 tax year. Taxpayer's Managing Member had previously relied on Tax Preparer for accurate tax advice in other matters for multiple years.

Tax Preparer filed the Year 1 Form 1065 by the extended due date, on or before Date 5. However, Tax Preparer failed to include a Form 8996, *Qualified Opportunity Fund*, to self-certify Taxpayer as a QOF. Taxpayer ended its professional relationship with Tax Preparer in Year 2, after the Year 1 return was filed.

Taxpayer engaged Accounting Firm to prepare the Taxpayer's partnership return for Years 2 and 3, and all forms related to Taxpayer being treated as a QOF for those years.

Taxpayer discovered there was an error relating to its QOF status when one of Taxpayer's investor-members received Letter 6502 from the Internal Revenue Service. The Letter 6502 informed the investor-member that their investment in a QOF was not a qualifying investment, because the identification number reported was not associated with a certified QOF.

Upon discovery, Accounting Firm prepared an administrative adjustment request (AAR) for Year 1 and remitted it to the Internal Revenue Service on Date 6. Accounting Firm included the Taxpayer's Form 8996 with the Year 1 AAR.

After filing the Year 1 AAR, the Accounting Firm learned that Form 8996 is only valid when timely filed with the original return. Taxpayer then retained a law firm to prepare the ruling request.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Internal Revenue Code directs the Secretary to prescribe regulations for 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 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, *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 Form 8996 by the due date of its income tax return due to the Tax Preparer's failure to make the necessary elections and to include the Form 8996 with the Taxpayer's Year 1 tax return.

Because § 1.1400Z2(d)-1(a)(2)(i) 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).

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.

Under § 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or reasonably relied on a qualified tax professional, and the tax 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.

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 § 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 § 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 would not prejudice the interests of the government. Taxpayer reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make, the election. Consequently, the Form 8996 attached to Taxpayer's Year 1 AAR, filed Date 6, 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 return.

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. 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.

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) or whether Taxpayer meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF.

Further, we express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2),

or whether such entity would be treated as a qualified opportunity zone business, as defined in § 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.

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.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being faxed to your authorized representative.

Sincerely,

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

cc: