

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202441004**

Release Date: 10/11/2024

Index Number: 9100.00-00, 1400Z.02-00,
1400Z.01-00.

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-101160-24

Date:
July 17, 2024

Legend

Taxpayer =

A =

Year 1 =

Month 1 =

Date 1 =

Date 2 =

Date 3 =

State =

Dear :

This letter responds to Taxpayer's request, dated Date 3, requesting a private letter ruling granting relief to make a late regulatory election pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time 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 Month 1, the month Taxpayer was formed, as provided under section 1400Z-2(d) and Treas. Reg. § 1.1400Z2(d)-1(a).

This letter ruling is being issued electronically in accordance with Rev. Proc. 2024-1, 2024-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

According to the facts and representations provided, Taxpayer was organized as a limited liability company on Date 1 under the laws of State and is classified as a partnership for U.S. federal income tax purposes. Taxpayer was organized for the purpose of being a qualified opportunity fund and to invest in qualified opportunity zone property.

Taxpayer relied on A to handle Taxpayer's tax filings, including preparing and filing Taxpayer's Form 1065, U.S. Return of Partnership Income, along with Form 8996, to self-certify Taxpayer as a QOF for Year 1. Due to administrative oversight and inadvertence beyond Taxpayer's control, Taxpayer's Year 1 federal income tax return and accompanying Form 8996 was not filed by the due date of the Year 1 return. Taxpayer has represented that its Form 1065 with an accompanying Form 8996 for Year 1 was filed on or around Date 2.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations 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 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 in 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 Year 1 income tax return (including extensions) due to circumstances beyond Taxpayer's control.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards the Service will use to determine whether to grant an extension of time to make a regulatory election. Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treas. Reg. § 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 granting relief will not prejudice the interests of the Government.

Treas. Reg. § 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, Treas. Reg. § 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 could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) Was fully informed 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.

Treas. Reg. § 301.9100-3(c) provides that the Service 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)(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). Further, under § 301.9100-3(c)(ii), 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.

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 Year 1 Form 8996 filed on or about Date 2, shall be considered timely filed. Accordingly, Taxpayer has thereby made the election under section 1400Z-2 and Treas. Reg. § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF as of Month 1. Taxpayer should submit a copy of this letter ruling to the IRS Service Center where Taxpayer files its income tax returns, along with a cover letter requesting that the Service associate this ruling with Taxpayer's Year 1 federal income tax return.

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

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 Form 8996 for Year 1.

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 in Taxpayer are qualifying investments as defined in Treas. Reg. § 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. We express no opinion as to whether Taxpayer's Year 1 Federal income tax return is considered timely filed.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representative*, on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Lisa Mojiri-Azad
Senior Technician Reviewer, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: