

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202445007**
Release Date: 11/8/2024
Index Number: 9100.00-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

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Refer Reply To:
CC:ITA:B04
PLR-102718-24

Date:
August 06, 2024

Taxpayer =
Controller =
Firm =
CPA =

LLC 1 =
Individual =
State A =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Month 1 =
Month 2 =
Month 3 =
Year 1 =

Dear :

This letter responds to Taxpayer’s request for a private letter ruling, dated Date 4. Specifically, Taxpayer requests relief, pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, for its Form 8996, *Qualified Opportunity Fund*, filed on Date 3, to be treated as timely for purposes of the election for Taxpayer: (1) to 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 of the month Taxpayer was formed, as provided under section 1400Z-2(d) of the Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations. 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

Taxpayer was organized, on Date 1, as a limited liability company, under the laws of State A and is classified as a partnership for Federal income tax purposes. Taxpayer was organized for the purpose of qualifying as a QOF and investing indirectly in qualified opportunity zone property as defined in § 1400Z-2(d)(2). Taxpayer represents that it is eligible to make an election to be recognized as a QOF for Year 1. Taxpayer's overall method of accounting is the cash method. Taxpayer employs a calendar tax year.

LLC 1 is Taxpayer's manager and designated partnership representative for Federal Tax matters. Individual is a member of Taxpayer. In addition, Individual is also the manager of LLC 1 and the chief executive officer of Firm.

Controller is the controller of Firm. Controller represents that in his role he was responsible for coordinating the timely preparation and filing Taxpayer's Form 1065, *U.S. Return of Partnership Income*, and its Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for Year 1. In Month 2, Controller engaged CPA to supervise the preparation and filing Federal income tax returns and extensions for various entities, including Taxpayer.

The filing deadline for Taxpayer's Year 1 Form 1065 and accompanying Form 8996 was Date 2. It was Controller's intention for CPA to prepare and file of Taxpayer's Year 1 Form 7004 by Date 2. Controller provided CPA with a list of entities for which income tax returns and extensions were to be prepared and filed but failed to include Taxpayer on the list due to a clerical error. In Month 3, CPA provided Controller with a list of entities for which CPA had successfully filed Forms 7004 for Year 1. Controller noticed Taxpayer was not included on the list and informed Individual that a timely Year 1 Form 7004 had not been filed for Taxpayer. Firm shortly thereafter began the process of submitting this request. On Date 3, Taxpayer filed its Form 1065 with an accompanying Form 8996 for Year 1.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Section 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 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 Year 1 income tax return (including extensions) as a result of a clerical error by Controller.

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 section 301.9100-1(b).

Sections 301.9100-1 through 301.9100-3 provide the standards 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 section 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, section 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.

Taxpayer represents that Taxpayer has not engaged in acts described in section 301.9100-3(b)(3). Taxpayer further represents that granting of the relief under section 301.9100-3 will not result in a lower tax liability for the years affected by the election.

CONCLUSION

Based solely on the facts and information submitted and the representations made in this ruling request, 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 Form 8996, filed on Date 3, shall be considered timely filed. Taxpayer has thereby made the election under section 1400Z-2 and section 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 return, along with a cover letter requesting that the Service associate this ruling with Taxpayer's Year 1 federal income tax return.

CAVEATS

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 section 301.9100-3 relief as applied to the election to self-certify Taxpayer as an 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 have no opinion, either express nor implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in section 1.1400Z-2(a)-1(b)(34), or whether Taxpayer met or meets the requirements under section 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 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). Nor do we express any opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Internal Revenue Code or Treasury 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) 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 § 6110.

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 representatives.

Sincerely,

Alexa Dubert
Senior Technician Reviewer, Branch 4
Office of the Associate Chief Counsel
(Income Tax & Accounting)

cc: