

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

[Third Party Communication:
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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-122254-22

Date:
May 11, 2023

TY:

LEGEND

- Taxpayer =
- Member-Manager =
- Member 2 =
- CPA =
- CPA 2 =
- CPA 3 =
- CFO =
- AF 1 =
- AF 2 =
- AF 3 =
- State =
- Year 1 =
- Year 2 =
- Month 1 =
- Month 2 =
- Month 3 =
- Month 4 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- N1 =
- N2 =

L1 =

Dear :

This letter responds to Taxpayer's request dated Date 1 for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file a Form 8996, *Qualified Opportunity Fund*, for Taxpayer to make an election to self-certify Taxpayer as a Qualified Opportunity Fund (QOF) under § 1400Z-2(d) of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations as of Month 2, Year 1.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer, a limited liability company classified as a partnership for federal income tax purposes, was formed pursuant to the laws of State on Date 2. Taxpayer's limited liability agreement indicates that Taxpayer and its members intend for Taxpayer to be organized for the purpose of investing in qualified opportunity zone property and would make the appropriate elections to become a QOF.

Member-manager owns N1 percent of Taxpayer's class L1 membership interests, and he has been one of Taxpayer's members since Taxpayer's inception. Member 2, also an owner of Taxpayer, is the spouse of Member-Manager.

During the N2 years preceding Date 3, AF 1, an accounting firm, served as Member-Manager's personal and business income tax return preparer. Effective Date 3, AF 1 merged with AF 2, which created a new accounting firm called AF 3 following the merger.

In the fall of Year 1, Member-Manager had a telephone conversation with CPA, an accountant and partner at AF 1, about Member-Manager's desire to form a QOF to invest in qualified opportunity zone property. CPA described the mechanics of setting up and funding a QOF, the benefits of a QOF and related topics, but did not discuss the procedural requirements to qualify an entity as a QOF for federal tax purposes. At a later date in Year 1, Member-Manager and CPA had a second telephone conversation during which they discussed the necessary language to be included in an entity's operating agreement to indicate the purpose and intent to qualify as a QOF. They again did not discuss the procedural requirements for an entity to become a QOF.

CPA 2, a certified public accountant from AF 1, served as Member-Manager's principal tax return preparer. During Month 1, Year 2, Member-Manager informed CPA 2 that a new entity was formed as a QOF in Month 2, Year 1. Member-Manager also indicated that he opened a bank account for the entity and transferred cash to the entity in Month 2, Year 1. CPA 2 requested that Member-Manager send to CPA 2 the entity's

organizational documents and taxpayer identification number so that a tax return could be filed for the entity. Member-Manager responded by indicating that the information would be provided by CFO, the chief financial officer of a business of Member-Manager. Member-Manager directed CFO to provide the information to CPA 2. At that time, CPA 2 was generally familiar with QOFs, but was not aware of the specific procedures by which an entity is required to elect to self-certify itself as a QOF.

On Date 4, AF 1 sent an engagement letter to Member-Manager which listed the federal, state, and local tax returns which AF 1 intended to prepare and file for Member-Manager's numerous business entities for the tax year ending Date 5. At the time CPA 2 reviewed and approved the engagement letter, he had not yet received documentation regarding Taxpayer and did not notice that Taxpayer was not included in the engagement letter. Member-Manager signed the engagement letter on Date 6, but inadvertently did not notice that Taxpayer was missing from the list. He promptly returned the signed engagement letter to AF 1. Member-Manager signed a separate letter engaging AF 1 to prepare his individual income tax returns for Year 1.

In the early part of Month 3, Year 2, AF 1 calculated the federal income tax liability to be paid by Member-Manager and Member 2 with their request for an extension of time to file a Form 1040, *U.S. Individual Income Tax Return* for Year 1. The tax calculation included capital gain from sales of stock to third-parties unrelated to Member-Manager and Manager 2. Upon reviewing the tax calculation furnished by AF 1, Member-Manager informed CPA 2 that Member-Manager and Member 2 invested funds equal to the capital gain in Taxpayer in Month 2, Year 1, resulting in the gain being excluded from Member-Manager's and Manager 2's gross income under the rules applicable to QOFs. While discussing relevant facts with Member-Manager, CPA 2 realized that an extension of time to file a Form 1065, *U.S. Partnership Return of Income* for Taxpayer's short period ending Date 5 should have been filed by Date 7. Because no extension request was filed, Taxpayer's Form 1065 for Year 1 would be filed late. CPA 2 did not earlier receive the EIN and organizational documents for Taxpayer.

In Month 4, Year 2, AF 1 prepared Taxpayer's Form 1065 for Year 1 and the draft return was sent through AF 1's internal quality review process. The return included a completed Form 8996 self-certifying Taxpayer as a QOF and identifying Month 2, Year 1 as the first month in which Taxpayer elected to be a QOF. CPA 3, a certified public accountant, reviewed the draft Form 1065 for Year 1 and noticed that it did not include an extension of time to file. CPA 3 informed CPA 2 that the Form 8996 included with Taxpayer's Form 1065 for Year 1 was required to be filed with a timely filed return (taking into account extensions) to make the election pursuant to § 1.1400Z2(d)-1(a)(2)(i) to self-certify Taxpayer as a QOF as of Month 2, Year 1. Because the Form 1065 would be filed late, the election to self-certify Taxpayer as a QOF would not be valid.

CPA 3 recommended that AF 1 file Taxpayer's Year 1 Form 1065 with an attached Form 8996 and then assist Taxpayer in requesting that the Internal Revenue Service

(Service) grant an extension of time pursuant to Treas. Reg. § 301.9100-3 to file Form 8996 so that the election would be treated as timely. Member-Manager directed CPA 2 to proceed in accordance with CPA 3's recommendation.

AF 1 filed Taxpayer's Year 1 Form 1065 with a completed Form 8996, identifying Month 2, Year 1 as Taxpayer's first month as a QOF, with the Service on Date 8.

LAW AND ANALYSIS

Section 13823(a) of Public Law 115-97, commonly known as the Tax Cuts and Jobs Act, added provisions to the Code authorizing taxpayers to defer eligible capital gain through reinvesting the funds into state-designated population census tracts in low-income communities, known as Qualified Opportunity Zones. Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including 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 forms or instructions, or in publications or guidance of the Service, 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).

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) of the Procedure and Administration Regulations.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for an election.

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

(i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits 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 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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 will not prejudice the interests of the Government. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements for the granting of relief. Consequently, the Form 8996 attached to Taxpayer's return for Year 1, filed with the Service on Date 8 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 as of Month 2, 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.

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) of the Income Tax Regulations or whether Taxpayer meets the requirements under § 1400Z-2 of the Code 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.

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 Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

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.

The rulings contained in this letter are based upon information 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 rulings, it is subject to verification on examination.

Sincerely,

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

cc: