

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **202243004**
Release Date: 10/28/2022
Index Number: 1400Z.02-00

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.
Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-103511-22
Date:
August 3, 2022

TY:

Legend

- Taxpayer =
- Date 1 =
- Month =
- Year 1 =
- State Z =
- Date 2 =
- Date 3 =
- Firm =
- Advisor 1 =
- Date 4 =
- Year 2 =
- Advisor 2 =

Dear :

This ruling responds to Taxpayer’s request for a letter ruling dated Date 1. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations (Regulations), for an extension of time to file Taxpayer’s Form 8996, *Qualified Opportunity Fund (QOF)*, for purposes of the election under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations: (1) to timely self-certify Taxpayer as a QOF as defined in § 1400Z-2(d) of the Internal Revenue Code (Code), and (2) for Taxpayer to be treated as a QOF, effective as of Month in Year 1. Taxpayer is subject to the centralized partnership audit regime under section 6221 of the Code for its taxable year ending in Year 1.

FACTS

Taxpayer was organized as a limited liability company under the laws of State Z on Date 2 and is treated as a partnership for Federal income tax purposes. Taxpayer's overall method of accounting is accrual, and has a tax year end of Date 3.

According to the affidavits and information provided to us, Taxpayer engaged Firm to prepare the Year 1 Federal tax return Form 1065, *U.S. Return of Partnership Income*. Advisor 1 prepared Taxpayer's Form 1065, and was aware of Taxpayer's intention to be a QOF. As an experienced tax professional, Advisor 1 knew that part Taxpayer was required to file Form 8996 but mistakenly failed to attach the Form 8996 to the return. Advisor 1 represents that though the mistake was an unintentional oversight. Taxpayer timely filed its Year 1 Federal tax return by Date 4, its due date. Taxpayer represents that it was not aware of the necessity to file the Form 8996 and trusted Advisor 1 and Firm to properly make the election to self-certify as a QOF.

During the preparation of the Taxpayer's Year 2 return, Advisor 2 became aware of Advisor 1's error in failing to attach the Form 8996 to the timely filed return. Upon this discovery, Advisor 2 informed Taxpayer of the mistake and advised Taxpayer to request an extension of time under § 301.9100-3 of the Regulations.

Taxpayer represents that granting of the relief under § 301.9100-3 of the Regulations will not result in a lower tax liability for the years affected by the election.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the 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 Advisor 1 failed to file Taxpayer's Form 8996 for the Year 1 tax year. Taxpayer was unaware of the requirement, and reasonably relied on Advisor 1 for tax advice.

Because § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations 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 Regulations.

Sections 301.9100-1 through 301.9100-3 of the 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 Regulations, 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) of the Regulations 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) of the 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 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 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) of the Code 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. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, we grant the taxpayer an extension of 45 days from the date of this letter ruling to file an amended return, or an Administrative Adjustment Request (whichever is appropriate) to make an election to self-certify as a QOF under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations. The election is to be made on a completed Form 8996.

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) of the Income Tax Regulations or whether the taxpayer meets the requirements under § 1400Z-2 of the Code and the regulations thereunder to be a QOF. Further, we also 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.

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 the 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,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: