

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

In Re:

Refer Reply To:
CC:ITA:B05
PLR-106237-21
Date:
July 12, 2021

Legend

Taxpayer =
Entity =
Date 1 =
Date 2 =
State B =
Lawyer =
Advisor =
Manager =
Date 4 =
Year 1 =

Dear :

This ruling responds to Taxpayer’s request for a letter ruling dated Date 1. Specifically, Taxpayer requests an extension under section 301.9100-1 and section 301.9100-3 of the Income Tax Regulations to (1) make a timely election under section 1.1400Z2(a)-1(a)(2)(i) to be certified as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code; and (2) for the taxpayer to be treated as a QOF, effective as of the month the taxpayer was formed in Year 1, as provided under section 1400Z-2(d) of the Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations.

FACTS

Taxpayer is a limited liability company, organized under the laws of State B on Date 2. Taxpayer is treated as a partnership for Federal income tax purposes. Taxpayer is an accrual method taxpayer with a tax year end December 31. Taxpayer was organized for the purpose of investing in qualified opportunity zone property as defined in section

1400Z-2(d)(2) of the Internal Revenue Code. Taxpayer's sole investment is in Entity. Taxpayer represents that Entity is a qualified opportunity zone business, as defined in section 1.1400Z2(d)-1(d)(1) of the Income Tax Regulations. In connection with the formation of Taxpayer, Manager employed Lawyer to provide legal services and sought Advisor's assistance by asking specific tax questions. Manager represents that they have significant experience within the real estate industry and are well-versed in matters of real estate taxation. According to the affidavits and additional information provided to us, Manager and Lawyer never discussed forming a QOF. Manager was unaware of the requirement to file Form 8996, *Qualified Opportunity Fund* with the Taxpayer's timely filed Year 1 Federal income tax return for Taxpayer to self-certify QOF status and be treated as a QOF as of the month Taxpayer was formed. Manager mistakenly believed that Taxpayer was not required to file a Federal income tax return for Year 1, as Taxpayer had no activity. As a result, Taxpayer failed to file its Federal income tax return and Form 8996 by the due date. Upon discovering that the election had not been timely filed, Advisor was enlisted by Taxpayer to file its Federal income tax return and pursue relief under sections 301.9100-1 and 301.9100-3. On Date 4, Advisor filed Taxpayer's Year 1 Federal income tax return and Form 8996.

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) of the Income Tax Regulations 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 Federal income tax return (including extensions). The information provided indicates that Taxpayer did not file its Form 8996 by the due date of its Federal income tax return (including extensions) due to Advisor's failure to file the income tax return.

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). According to section 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of section 301.9100-2 (automatic extensions) must be made under the rules of section 301.9100-3. Additionally, requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government.

Under section 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, failed to make the election, because after

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 the election, 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, 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 § 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 interest 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. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, Taxpayer has satisfied the requirements of the regulations for the granting of relief and Taxpayer's Form 8996, filed on Date 4, is considered timely filed.

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by all appropriate parties. 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 the taxpayer are qualifying investments as defined in section 1.1400Z2(a)-1(b)(34) or whether the 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.

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,

Shareen S. Pflanz
Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: