

Internal Revenue Service

Department of the Treasury
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Person To Contact:

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December 07, 2021

Legend

- Taxpayer =
- Year 1 =
- Year 2 =
- State Z =
- Managing Member =
- Investment Member =
- Accountant =
- Real Estate Collective =
- Accounting Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =

Dear :

This ruling responds to the Taxpayer’s request dated Date 1. Specifically, the taxpayer requests an extension of time under sections 301.9100-1 and 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 first month of 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

The Taxpayer was organized as a limited liability company under the laws of State Z on Date 2 and is classified as a partnership for federal income tax purposes. The Taxpayer was organized for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2). Taxpayer is owned by Managing Member and Investment Member, a married couple.

For Year 1, Accountant was hired to prepare and file the Taxpayer's Federal income tax return. Accountant is a licensed CPA with forty years of experience in public and private accounting. Accountant has served as the tax preparer for Real Estate Collective since Year 2, of which the Managing Member is a part. According to the affidavits and information provided to us, Accountant was aware of the Taxpayer's intent to self-certify as a QOF. However, Accountant erroneously believed that the Taxpayer had no activity for Year 1 and that the Taxpayer did not need to self-certify as a QOF in Year 1. Therefore, the Taxpayer's Form 1065 for Year 1 was filed on Date 3 without the Form 8996, *Qualified Opportunity Fund*.

When Managing Member and Investment Member had their personal income tax returns prepared, they were made aware of the error, and informed Accountant that the Taxpayer had activity in Year 1. Accountant filed an amended return for the Taxpayer on Date 4 and corrected the lack of activity shown on the original return, but again failed to attach the Form 8996, *Qualified Opportunity Fund*. As a result, Taxpayer failed to self-certify as a QOF.

On Date 5, Accounting Firm was hired to prepare federal income tax returns for the Taxpayer. While reviewing the Taxpayer's Form 1065 for Year 1, Accounting Firm discovered that the Form 8996 was not included with the return.

After Taxpayer became aware of the consequences of failing to timely file the Form 8996, this request for relief was promptly submitted under sections 301.9100-1 and 301.9100-3. Taxpayer represents that it relied on Accountant to timely file Form 8996. 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.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Internal Revenue 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 that the rules for an entity to self-certify as a QOF. Section 1.1400Z2(a)-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 the taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to Accountant's failure to attach the Form 8996 to Taxpayer's timely filed return.

Because section 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 section 301.9100-1(b).

Sections 301.9100-1 through 301.9100-3 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 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.

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, 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 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 § 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 the 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 90 days from the date of this letter ruling to either file an amended return or an Administrative Adjustment Request (whichever is appropriate) to make the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election is to be made on Form 8996.

This ruling is based upon facts and representations submitted by the 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 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 also express no opinion whether any interest owned in any entity by the Taxpayer qualifies as qualified opportunity zone property or whether such entity would be treated as a qualified opportunity zone business. 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,

Erika Reigle
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax and Accounting)

Cc: