

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

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CC:ITA:B05
PLR-106470-22

Date:
November 15, 2022

LEGEND

- Taxpayer =
- State =
- Member =
- Advisor =
- Attorney =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Year 1 =
- Year 2 =

Dear :

This letter responds to Taxpayer’s request dated March 7, 2022, seeking a private letter ruling granting relief to make a late election pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 8996, Qualified Opportunity Fund, to (i) self-certify that it is a qualified opportunity fund as defined in section 1400Z-2(d) (“QOF”),

and (ii) to be treated as a QOF for its taxable year ended Date 2, effective as of Date 1, as provided under section 1400Z-2 and Treas. Reg. §§ 1.1400Z2(d)-1(a).

FACTS

Taxpayer has represented that the facts are as follows.

In the summer of Year 1, Member learned about the ability to establish a QOF to defer recognition of gain realized on the disposition of property. Member spoke to an attorney and Advisor about undertaking a project involving a QOF, but did not formally engage either at that time.

Formed on Date 1, Taxpayer is a limited liability company organized under the laws of State. Taxpayer is classified as a partnership for U.S. Federal income tax purposes and was formed for the purpose of investing in qualified opportunity zone property and serving as a QOF. Member is the majority owner of Taxpayer and manager of Taxpayer's day-to-day operations.

Apart from Taxpayer, Member has other business ventures that were reported on schedules C and F of Member's individual tax return. Member was initially unaware that Taxpayer was to be treated as a partnership for U.S. Federal income tax purposes and therefore, was unaware of the need to file Form 1065 partnership return and Form 8996 for Taxpayer apart from Member's individual tax return. Member assumed that any filings for Taxpayer would be made with his individual tax return.

Member timely filed Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return, for his Year 2 individual tax return.

On Date 3, Member spoke to Advisor about filing his Year 2 individual tax return and they spoke about the QOF entities. Advisor advised Member that a return for Taxpayer had to be filed apart from Member's individual tax return. Further, Advisor told Member that Taxpayer's Year 2 Form 1065 partnership return and Form 8996 were late.

On Date 4, Member formally engaged Advisor to assist him regarding Taxpayer. Advisor informed Member that Taxpayer had failed to file an extension of time to allow for a timely Year 2 Form 1065 and election to self-certify as a QOF using Form 8996. Member assumed Form 4868 requesting an extension of time to file his individual tax return would cover Taxpayer's extension as well.

Upon learning that the Year 2 Form 1065 partnership return and Form 8996 were not timely filed, Advisor advised Member to file a private letter ruling request. Member then engaged Attorney and filed this ruling request seeking an extension of time to file Form 8996 for Taxpayer's year ending Date 2, pursuant to §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations.

On or about Date 5, Taxpayer filed its Year 2 Form 1065 partnership return and attached a completed Form 8996 electing to be treated as a QOF as of Date 1.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations setting forth 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, 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).

Sections 301.9100-1 through 301.9100-3 provide the standards that the Service uses to determine whether to grant an extension of time to make an election. Under § 301.9100-1(b), the election to self-certify as a QOF is a regulatory election, because § 1.1400Z2-1(d)-1(a)(2)(i) sets forth the manner and timing for an entity to make that election. Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treasury Regulation § 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 that granting relief will not prejudice the interests of the Government.

Section 301.9100-3(b)(1)(iii) provides that a taxpayer will be deemed to have acted reasonably and in good faith if the taxpayer failed to make an 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.

Under § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer –

(i) seeks to alter a return position for which an accuracy-related penalty could be imposed under section 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;

(ii) was fully informed of the required election and related tax consequences, but chose not to file 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) provides that interests of the Government are prejudiced if (i) 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, or (ii) the taxable year in which the regulatory election should have been made or any affected tax year is closed by the period of limitations on assessment under section 6501(a) before the taxpayer's receipt of a ruling granting relief.

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. Member was unaware that Taxpayer was to be treated as a partnership for U.S. Federal income tax purposes and therefore, was unaware of the need to file a Year 2 Form 1065 partnership return and Form 8996 for Taxpayer apart from Member's individual tax return.

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. Taxpayer's Year 2 Form 1065 partnership return and attached Form 8996, filed Date 5, 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 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) or whether 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.

A copy of this letter must be attached to any 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.

This ruling is based upon information and representations submitted by the Taxpayer and accompanied by a penalty of perjury statement signed by an appropriate party.

Although this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

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.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being faxed to your authorized representative.

Sincerely,

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

CC: