

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
PLR-110237-22
Date:

Taxpayer =

X% =

Y% =

Entity A =

Entity B =

Individual X =

Firm A =

Firm B =

Tax Advisor =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Tax Year 1 =

Dear :

This responds to Taxpayer’s request dated Date 1. Specifically, Taxpayer requests relief under Treasury Regulation §§ 301.9100-1 and 301.9100-3 granting an extension of time for Tax Year 1 to make a timely election under Treasury Regulation § 1.1400Z-2(a)-1(a)(2)(i) to be certified as a Qualified Opportunity Fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code (Code).

This letter ruling is being issued electronically in accordance with Rev. Proc. 2022-1, 2022-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

On Date 3, Taxpayer was organized as a limited liability company under the laws of State, and it is classified as a partnership for United States federal income tax purposes. Taxpayer's organizational documents state that Taxpayer was formed for the purpose of qualifying as a QOF and investing in qualified opportunity zone property. Taxpayer is owned X% by Entity A and Y% by Entity B. Individual X is Taxpayer's manager. Individual X had not previously formed or managed a QOF and was not familiar with the requirements for Taxpayer to be a QOF.

On Date 2, Individual X, engaged Firm A to provide consulting services for a proposed qualified opportunity zone investment. On Date 4, Firm A issued a memorandum to Individual X discussing a proposed organizational structure, transactional steps and required documentation with respect to an investment into a QOF. The memorandum stated that an election must be made on Form 8996, *Qualified Opportunity Fund*, in order for an entity to certify itself as a QOF.

After reviewing the memorandum issued by Firm A, Individual X hired Firm B to draft an operating agreement for Taxpayer. The operating agreement provides that Taxpayer is to be a partnership formed for the purpose of being a QOF and investing in qualified opportunity zone property. Individual X engaged Tax Advisor to prepare his business and personal income tax returns for Tax Year 1. Tax Advisor failed to file a Form 1065 for Taxpayer and to timely file Form 8996, *Qualified Opportunity Fund*, for Tax Year 1. Tax Advisor represents that the failure to file Forms 1065 and 8996 was an inadvertent mistake and non-intentional.

Individual X reported an investment into a QOF on his individual tax return for Tax Year 1, and Individual X's investment into Taxpayer was reported on Form 8997, *Initial and Annual Statement of QOF Investments*, for Tax Year 1.

On Date 5, Individual X, Firm A and Tax Advisor discovered the failure to file Forms 1065 and 8996 for Taxpayer and shortly thereafter prepared this request for relief. Taxpayer represents that it to be certified as a QOF effective as of the month that Taxpayer was formed.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treasury Regulation § 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). The information provided indicates that Taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to Tax Advisor's failure to attach the form to the timely filed return, even though Tax Advisor was aware of the need to attach Form 8996.

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).

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 § 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) 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) 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 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 Taxpayer an extension of 45 days from the date of this letter ruling to file a return for Tax Year 1 to make the election under § 1400Z-2 and § 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 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 § 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.

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.

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

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: