

Internal Revenue Service

Department of the Treasury
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Person To Contact:
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July 06, 2023

Legend

- Taxpayer =
- State =
- Member 1 =
- Member 2 =
- Member 3 =
- Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Month 1 =
- Year 1 =
- Year 2 =
- X =
- Y =

Dear :

This ruling responds to Taxpayer’s request for a letter ruling dated Date 1. Specifically, Taxpayer requests an extension of time under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administrations Regulations to (1) make a timely election under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to be certified as a qualified opportunity fund (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 the month

Taxpayer was formed in Year 1, as provided under § 1400Z-2(d) of the Code and § 1.1400Z2(d)-1(a) of the Income Tax Regulations.

FACTS

Taxpayer, a limited liability company classified as a partnership for Federal income tax purposes, organized under the laws of State on Date 2. Taxpayer is a cash method taxpayer and reports income on a calendar year basis. Taxpayer was formed, as one part of X entities, to meet the definition of § 1400Z-2(d) of the Code and to hold qualified opportunity zone partnership interests, as defined in code § 1400Z-2(d)(2)(A)(ii), in a qualified opportunity zone business ("QOZB"). Taxpayer is comprised of 3 members: Member 1, Member 2, and Member 3. Taxpayer is managed by Member 1.

Member 1 discussed the formation of Taxpayer and several other entities with Firm during Month 1. Firm was officially engaged to provide services related to the creation and the tax filing obligations of Taxpayer and the Y other entities. In Year 1, Member 1 provided Firm with the names of the Taxpayer and Members, the EIN of Taxpayer, and Taxpayer's operating agreement. However, when Member 1 transmitted the list of entities that Firm was to perform tax filing services for, Taxpayer was mistakenly omitted. As a result, Firm requested extensions of time to file for the other entities but did not request an extension for Taxpayer. In the absence of an extension, Taxpayer was required to file its initial Federal income tax return, including the Form 8996, on or before Date 3. Due to the miscommunication, Taxpayer failed to file its Federal income tax return and Form 8996, *Qualified Opportunity Fund*, by the due date, and consequently, the election to self-certify as a QOF on the Form 8996 was not timely made. In Year 2, Firm received financial statements from the X entities for which they were engaged to file returns. At that time, Firm discovered that it had failed to file an extension of time to file for Taxpayer.

Upon discovering that Taxpayer's Year 1 Federal income tax return and accompanying election had not been timely filed, Member 1 instructed Firm to file Taxpayer's Year 1 Federal income tax return and Form 8996. On Date 4, Firm electronically filed Taxpayer's Year 1 Form 1065, including Form 8996, with a disclosure statement identifying that Taxpayer would pursue relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

Taxpayer represents that granting of the relief under § 301.9100-3 of the Procedure and Administration 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 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 of the Service, 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).

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 Procedure and Administration Regulations.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration 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 section § 301.9100-3(b) a taxpayer is deemed to have acted reasonably and in good faith if, among other things not relevant here, 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 provides that a taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) 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 Procedure and Administration 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 Procedure and Administration 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 Procedure and Administration 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, 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 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 in any QOZB owned by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether any business 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.

Sincerely,

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

cc: