

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:B05
PLR-103902-23

Date:
July 18, 2023

TY:

Taxpayer =
Submission Date =
Date 1 =
State Z =
Year 1 =
Members =
Tax Preparer 1 =
Tax Preparer 2 =
Year 2 =

Dear :

This ruling responds to Taxpayer’s request for a letter ruling requested on Submission Date. Taxpayer requests relief under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests that its Form 8996, *Qualified Opportunity Fund*, filed on Date 2 with its Form 1065, *US Return of Partnership Income*, be treated as timely filed for purposes of making an election: (1) to self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations, and (2) for Taxpayer to be treated as a QOF effective as of Date 1, as provided by section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

FACTS

Taxpayer was organized as a limited liability company under the laws of State Z in Year 1 and is treated as a partnership for Federal income tax purposes. Taxpayer’s Operating Agreement was entered into on Date 1 in Year 1, with contributions from its Members. Taxpayer has a December 31 tax year end.

Taxpayer was formed as a qualified opportunity fund within the definition found in section 1400Z-2(d) and to hold qualified opportunity zone partnership interests (within the meaning of section 1400Z-2(d)(2)(A)(ii)) in a qualified opportunity zone business (QOZB) as defined in section 1400Z-2(d)(3). The QOZB, classified as a partnership for Federal income tax purposes, was formed to acquire, develop, and lease real estate, and to invest in real estate in a designated opportunity zone.

According to the affidavits and information provided to us, the Members engaged the services of Tax Preparer 1, a certified public accountant (CPA) with decades of tax experience, to handle the Members' individual tax filings. The Members also provided Tax Preparer 1 with information regarding the formation of Taxpayer.

Sometime in early Year 2, Tax Preparer 1 informed the Members that it did not have the skills or experience to prepare Taxpayer's return, not being familiar with QOFs or QOZBs, and would therefore not be able to assist in filing returns for Taxpayer. Tax Preparer 1 recommended Tax Preparer 2, a CPA at a different firm, to assist in filing returns for Taxpayer.

Meanwhile, the Members knew that all their information would not be ready for timely filing of their individual tax returns and thus requested that Tax Preparer 1 prepare the necessary extensions for their Federal and state *individual* income tax returns. Tax Preparer 1 filed the necessary extensions.

Tax Preparer 2 accepted the engagement to file Taxpayer's return after the original filing date of Taxpayer's return. Tax Preparer 2 later agreed to accept the engagement to file the Members' individual Federal and state returns, by which point the Members' individual returns were on extension.

Later in Year 2, as Tax Preparer 2 began to work on Taxpayer's return and on the Members' individual returns then on extension, Tax Preparer 2 discovered that the prior firm and Tax Preparer 1 had not filed a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*. Form 7004 would have provided an extension for filing Taxpayer's first Form 1065, *U.S. Return of Partnership Income*, for the Year 1 tax year (due March 15, Year 2, unless on extension), along with the self-certification Form 8996, *Qualified Opportunity Fund*.

Tax Preparer 2 informed the Members that it was likely the Internal Revenue Service would view the Form 8996 as not timely filed, as no extension had been filed for Taxpayer's Form 1065. This was the first time that Taxpayer was aware (that its Members were aware) that an extension and/or a Form 8996 was required, and that its election as a QOF could be jeopardized by the failure to file the Form 8996 timely.

Late in Year 2, Tax Preparer 2 filed on the Taxpayer's behalf the late return for Year 1, the Form 1065, along with the Form 8996.

The Members erroneously assumed that no return was necessary for Taxpayer, as it did not have any revenue or expenses for Year 1, and thus inadvertently failed to file timely the Form 1065 (and thus did not file timely the Form 8996), or file timely a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*. Tax Preparer 1 apparently assumed the Members would timely file Form 7004 for Taxpayer, extending the time to file, while Tax Preparer 2 apparently assumed Tax Preparer 1 had already filed for an extension of time to file for Taxpayer.

Soon thereafter, Taxpayer submitted this letter ruling requesting relief under section 301.9100-3.

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) 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 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).

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 section 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 section 6501(a) before the taxpayer's receipt of a ruling granting relief under this section.

Based on the facts and information submitted, including affidavits 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: Taxpayer has satisfied the requirements for the granting of relief under section 301.9100-3(b).

Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, the Form 8996 attached to Taxpayer's return for Year 1 is considered timely filed, and Taxpayer has thereby made the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year 1 as of Date 1. Taxpayer should submit a copy of this letter ruling to the Service

Center where Taxpayer files its returns along with a cover letter requesting the Service associate this ruling with the Year 1 return.

This ruling is based upon facts and representations submitted on behalf of the Taxpayer by one of the Members and Tax Preparer 1 and Tax Preparer 2 and accompanied by a penalty of perjury statement executed by each of the 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 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 section 1.1400Z2 (a)–1(b)(34) or whether Taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. Further, we also express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in section 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in section 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 & Accounting)

cc: