

Internal Revenue Service

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

Telephone Number:

Refer Reply To:

CC:ITA:B04
PLR-101926-23

Date:
July 24, 2023

LEGEND

State Z =
State Y =
X =
Tax Year =
Month A =
Taxpayer =

Advisor =
Accounting Firm =
Year 1 =
Date 1 =
Date 2 =
Date 3 =

Dear :

This responds to Taxpayer’s request, dated Date 3, for a private letter ruling. Specifically, Taxpayer requests relief, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations,¹ for an extension of time to file Taxpayer’s Form 8996, *Qualified Opportunity Fund*, for purposes of making the election to: (1) self-certify Taxpayer as a qualified opportunity fund (“QOF”), as defined in § 1400Z-2(d); and (2) be treated as a QOF, effective as of the month Taxpayer was formed, as provided under § 1400Z-2 and § 1.1400Z(d)-1(a).

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code (“Code”) or the Treasury Regulations (26 CFR Part 1) or (26 CFR Part 301) as applicable.

FACTS

Taxpayer was organized on Date 1 as a limited liability company, (“LLC”), under the laws of State Z and is classified as a partnership for Federal tax purposes. As stated in Taxpayer’s LLC operating agreement, Taxpayer was organized for the purpose of qualifying as a QOF and investing in qualified opportunity zone property as defined in § 1400-2(d)(2). Taxpayer has a tax year end of Tax Year.

Taxpayer engaged Accounting Firm, a certified public accountant firm licensed in State Y with more than X years of experience, to provide Taxpayer’s tax and accounting services for Year 1. Accounting Firm was aware of Taxpayer’s intent to be a QOF at the time of engagement.

Taxpayer relied upon Accounting Firm to timely file Taxpayer’s required Year 1 Federal income tax return and all accompanying forms, including any necessary to be treated as a QOF. Accounting Firm, however, was unaware of the specific filing requirements for a QOF. Particularly, Accounting Firm was unaware of the requirement to file a completed Form 8996 with Taxpayer’s timely filed Year 1 Federal income tax return in order for Taxpayer to self-certify as a QOF and be treated as a QOF as of the month Taxpayer was formed. Taxpayer had no knowledge that Accounting Firm was unfamiliar with the filing requirements of a QOF.

On Date 2, Accounting Firm timely filed Taxpayer’s Year 1 Form 1065, *U.S. Return of Partnership Income*, but failed to attach a completed Form 8996. Advisor, a certified public accountant of Accounting Firm, learned that Taxpayer was required to file Form 8996 with Taxpayer’s Year 1 Federal income tax return when Advisor attended a continuing education session in Month A. After the continuing education session, Advisor informed Taxpayer of Accounting Firm’s failure to attach the required Form 8996 with Taxpayer’s Federal income tax return. Taxpayer then instructed Accounting Firm to prepare this ruling request.

On Date 3, Accounting Firm submitted this request for relief on behalf of Taxpayer.

Taxpayer represents that granting of the relief under § 301.9100-3 will not result in a lower tax liability for the years affected by the election than Taxpayer would have had if the election had been timely made (taking into account the time value of money).

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)(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 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 a Form 8996 by the due date of its income tax return for Year 1 due to Accounting Firm's failure to advise Taxpayer of the requirement of the Form 8996 to self-certify as a QOF. Taxpayer relied upon Accounting Firm for all Federal income tax matters in Year 1.

Section 301.9100-3(a) provides that requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 (automatic extensions) must be made under the rules of § 301.9100-3.

Section 301.9100-1(b) defines the term "regulatory election" as including any election whose due date is prescribed by a regulation published in the Federal Register. Section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for electing to be a QOF and electing to self-certify as a QOF. As such, these elections are regulatory elections, as defined in § 301.9100-1(b)(1).

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.

Section 301.9100-3(b)(1) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer—

- (i) requests relief before the failure to make the regulatory election is discovered by the Service;
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Service; or
- (v) reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

Under § 301.9100-3(b)(2), a taxpayer, however, 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.

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 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 a 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.

CONCLUSION

Based on the facts and information submitted and the representations made, we conclude that (1) Taxpayer's request for an extension of time to elect to be a QOF and to self-certify as a QOF is a regulatory election governed by § 301.9100-3; (2) that Taxpayer has acted reasonably and in good faith; and (3) that the granting of relief would not prejudice the interests of the Government.

Accordingly, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make the election to self-certify as a QOF under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996

attached to the Taxpayer's amended Year 1 tax return or administrative-adjustment request (as applicable).

CAVEATS

This ruling is based upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by the appropriate parties. 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.

This ruling addresses the granting of § 301.9100-3 relief as applied to the election to self-certify Taxpayer as an QOF by filing Form 8996 for Year 1. Specifically, we have no opinion, neither express nor implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in § 1.1400Z-2(a)-1(b)(34), or whether, at any time, Taxpayer met or meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. We also express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the Code or Treasury Regulations that may be applicable, nor 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 directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under § 6110.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representative* on file with this office, we are sending a copy of this letter to Taxpayer's authorized representative.

Sincerely,

James Yu
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: