

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-105324-23

Date:
September 08, 2023

TY:

Legend

- Taxpayer =
- LLC 2 =
- Manager =
- Accounting Firm =
- State =
- Year 1 =
- Year 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- N1 =
- N2 =

Dear :

This responds to the request by Taxpayer, dated Date 1 for relief under §§ 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations to file Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Internal Revenue Service (Service) grant to Taxpayer an extension of time to make an election under § 1400Z-2 of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to self-certify Taxpayer as a Qualified Opportunity Fund (QOF), effective as of Year 1.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer is a limited liability company, classified as a partnership for federal income tax purposes, which was formed under the laws of State on Date 2. The limited liability operating agreement of Taxpayer indicates that Taxpayer was organized to be a QOF under relevant Code provisions and invest in qualified opportunity zone property. During Year 1, Taxpayer received capital contributions from N1 investors totaling \$N2.

Manager, also a limited liability company formed under the laws of State, serves as the manager of Taxpayer and LLC 2. On Date 3, Manager retained Accounting Firm to provide tax compliance services for Taxpayer for Year 1. Accounting Firm prepared a tax return, Form 1065, *U.S. Partnership Return of Income*, for Year 1 for Taxpayer, which was filed with the Service on Date 4. Concurrently, Accounting Firm prepared a Year 1 tax return for LLC 2, and it was filed with the Service on Date 5.

The following year, Manager retained Accounting Firm to provide tax compliance services for Taxpayer for Year 2. While in the course of preparing Taxpayer's return for Year 2, Accounting Firm discovered that Taxpayer's Form 1065 for Year 1 was prepared incorrectly. More specifically, Taxpayer answered "no" to question 25 (Schedule B) on the Form 1065, which inquires whether the partnership attached a Form 8996 to the return to certify as a QOF. Taxpayer failed to include a completed Form 8996 with its return for Year 1. Accounting Firm's investigation of the matter determined that a Form 8996 was erroneously included with the Year 1 return of LLC 2. Accounting Firm notified Manager of the error on Date 6 and conferred with experts on the opportunity zone law about a way to rectify Taxpayer's situation. Accounting Firm thereafter advised Manager that Taxpayer would need to request that the Service allow an extension of time, pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration regulations, to make an election under § 1.1400Z-2(d)-1(a)(2) of the Income Tax Regulations for Taxpayer to self-certify as a QOF.

Manager represents that Taxpayer relied upon the advice and counsel of Accounting Firm and has always intended that Taxpayer satisfy the Code's requirements to be a QOF. Taxpayer accordingly requests that the Service rule that Taxpayer qualifies under § 301.9100-3 of the Procedure and Administration Regulations for an extension of time to make an election pursuant to § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to be certified as a QOF and accept Taxpayer's Year 1 amended Form 1065 with a Form 8996 attached.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including rules 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 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 tax return (including extensions).

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) 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 § 301.9100-3(b) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although 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 an election. A taxpayer may alternatively demonstrate good faith actions if he reasonably relies on a qualified tax professional and the professional failed to make, or advise the taxpayer to make, the election.

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was 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) 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 will not prejudice the interests of the Government. Manager reasonably relied on a qualified tax professional and the professional failed to make, or advise Taxpayer to make, the election. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, 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 section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996 attached to the Taxpayer's amended tax return or administrative-adjustment request for Year 1 (as applicable).

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 Taxpayer meets the requirements under § 1400Z-2 of the Code 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.

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.

The rulings contained in this letter are based upon information and representations submitted by 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.

Sincerely,

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

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