

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:ITA:5
PLR-108455-23
Date:
October 17, 2023

Dear

LEGEND

Taxpayer	=
State	=
Taxpayer's General Partner	=
Firm	=
CPA	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Year 1	=

This ruling responds to Taxpayer's request for a letter ruling dated Date 1. Specifically, Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to (1) make a timely election under section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to be certified as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code, and (2) for Taxpayer to be treated as a QOF, effective for its taxable year ended Date 3, effective as of Date 2, as provided by section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

FACTS

According to the affidavits and additional information provided to us, Taxpayer has represented that the facts are as follows. Taxpayer is a limited partnership organized under the laws of State and was formed on Date 2. Taxpayer is classified as a partnership for Federal income tax purposes and was formed for the purpose of investing in qualified opportunity zone property and serving as a QOF.

On Date 4, Taxpayer's General Partner emailed CPA regarding the preparation of Taxpayer's Federal income tax return for Year 1, the year Taxpayer was formed. Taxpayer's General Partner requested that CPA file a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for Year 1. On Date 5, an employee of CPA contacted Taxpayer's General Partner requesting Taxpayer's EIN, which was not received. Because Taxpayer was a new entity, it was not in CPA's tax return tickler list to check off that an extension had been filed by Date 5 and, consequently, was overlooked by CPA's tax manager. CPA did not file an extension for Taxpayer on or before Date 5, the due date for filing Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*. Consequently, Taxpayer's Forms 1065 and 8996, *Qualified Opportunity Fund*, were not timely filed.

CPA filed Taxpayer's Year 1 Form 1065, including Form 8996, on Date 6. Upon learning that the Year 1 Form 1065 and Form 8996 were not timely filed, Taxpayer engaged Firm to file a private letter ruling request. Taxpayer then filed this ruling request seeking extension of time to file Form 8996 for Taxpayer's year ending Date 3, pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Internal Revenue Code 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 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 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 CPA did not file Taxpayer's Form 8996 due to miscommunication between Taxpayer's General Partner and CPA.

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 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 reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise Taxpayer to make, the election. Consequently, the Form 8996 attached to Taxpayer's Form 1065 for Year 1, filed Date 6, is considered timely filed, and Taxpayer has thereby made the election under sections 1400Z-2 and 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year 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 that the Service associate this ruling with the Year 1 return.

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 section 1.1400Z2(a)-1(b)(34) or whether the taxpayer meets the requirements under section 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.

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

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,

Amy Pfalzgraf
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

CC: