

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Date:
November 15, 2023

TY:

Legend

- Taxpayer =
- QOZB =
- Member 1 =
- Member 2 =
- Accountant 1 =
- Accountant 2 =
- State =
- Year 1 =
- Year 2 =
- Year 3 =
- Month 1 =
- Month 2 =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- N1 =
- N2 =

Dear :

This responds to the request by Taxpayer, dated Date 1, as supplemented, 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 Month 1, Year 1.

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer, a limited liability company, was organized under the laws of State on Date 2. The limited liability company agreement governing Taxpayer expressly provides that Taxpayer was organized to be a QOF under relevant Code provisions and to invest in qualified opportunity zone property, including the stock of QOZB. Member 1 holds a N1 percent interest in Taxpayer and serves as the manager and partnership representative of Taxpayer. Member 2 owns the remaining ownership interest in Taxpayer. On Date 3, they contributed \$N2 to Taxpayer, which Taxpayer used to purchase shares in QOZB.

Early in Year 2, both Member 1 and Member 2 contacted Accountant 1, a certified public accountant specializing in income tax matters, for preparation of their individual and business tax returns. They informed Accountant 1 that they intended Taxpayer to be a QOF, effective Month 1, Year 1, and provided Accountant 1 with a copy of a Letter CP 575B in which the Service assigned an employer identification number to Taxpayer and reminded that it should file Form 1065, *U.S. Return of Partnership Income*. Nevertheless, Accountant 1 erroneously concluded that Taxpayer was not required to file a return of its own for Year 1. Accountant 1 neither prepared a Form 1065, with an attached Form 8996 for Year 1, nor advised Member 1 or Member 2 to make the QOF election for Taxpayer in accordance with the Service's published guidance. As a result, Taxpayer made no election pursuant to § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to certify as a QOF.

In Month 2 Year 2 Accountant 1 realized that Taxpayer was required to file a Form 1065 for Year 1. Even then, Accountant 1 did not know how to address the delinquent QOF election and self-certification by Taxpayer, which should have been included with a timely filed Form 1065 for Year 1.

Only in late spring of Year 3 did Accountant 2, who had taken over as a return preparer for Member 1 and Member 2 after Accountant 1's retirement, determine that Taxpayer needed to obtain a private letter ruling from the Service in order to cure its failure to make a timely QOF election and self-certification. On Date 4, Accountant 2's team e-filed Taxpayer's delinquent Forms 1065 with attached Forms 8996 for Year 1 and Year 2.

Taxpayer represents that it is subject to the centralized partnership audit regime under § 6221(a) of the Code for Year 1. Taxpayer also represents that, apart from the correspondence exchanged between this office and Taxpayer in connection with

Taxpayer's request for this ruling, as of Date 5 the Service has not notified Taxpayer concerning its failure to make an election to self-certify as a QOF for Year 1.

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 an 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 the taxpayer 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 provisions 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 is 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 Taxpayer has acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the Government. Member 1 reasonably relied on qualified tax professionals, and they 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, as supplemented, the Form 8996 attached to Taxpayer's return for Year 1, filed Date 4, is considered timely filed, and Taxpayer has thereby made the election under § 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.

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.

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.

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.

Sincerely,

Sue-Jean Kim
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc