

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-116597-23

Date:

December 20, 2023

LEGEND

Taxpayer	=
State	=
Accounting Firm	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Year 1	=
Year 2	=

Dear _____ :

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 Income Tax Regulations, to (1) make a timely election under section 1.1400Z2(d)-1(a)(2)(i) 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) of the Income Tax Regulations.

FACTS

According to the affidavits and additional information provided to us, Taxpayer has represented that the facts are as follows. Taxpayer is a limited liability company organized under the laws of State. Taxpayer is classified as a partnership for U.S. Federal income tax purposes and was formed for the purpose of investing in qualified opportunity zone property and serving as a QOF. Taxpayer's annual accounting period is the calendar year and uses the accrual method of accounting. Year 1 is the first year of Taxpayer's operation and filing obligation.

Taxpayer knew Accounting Firm to be competent and sophisticated in handling Federal income tax matters, including the handling and filing of Federal income tax returns and self-certifications with respect to QOFs. Accounting Firm had been engaged to satisfy tax compliance obligations of other entities controlled by Taxpayer's members and affiliates. Accounting Firm provided Taxpayer's members and financial advisors with general business, structuring, and investment guidance on the preferred methods of forming a QOF as well as advice as to how to qualify as a QOF under IRS and Treasury guidance.

Accounting Firm has prepared federal income tax returns for Taxpayer's parent company since Year 2. In Year 1, Taxpayer's parent underwent a restructuring that resulted in the creation of Taxpayer, which was formed for the purpose of qualifying as a QOF, and the creation of another entity intended to be a qualified opportunity zone business. Taxpayer has provisions in its operating agreement that state that its purpose is to be a QOF and to invest in "qualified opportunity zone property" as defined in section 1400Z-2(d)(1).

Accounting Firm was included on emails and videoconference meetings with representatives of Taxpayer regarding the structuring of this transaction in a way that would enable it to qualify as a QOF. Tax legal counsel for Taxpayer noted on one of these calls that Taxpayer needed to elect QOF status effective as of Year 1, and Accounting Firm agreed that this was correct. Based on these communications with Accounting Firm, Taxpayer believed that Accounting Firm would prepare and file Year 1 tax returns for Taxpayer. As such, Taxpayer's financial advisors believed that Accounting Firm had filed an extension for the Year 1 tax return for Taxpayer prior to Date 4 and that Accounting Firm would prepare its tax return, including Form 8996 for Taxpayer to self-certify as a QOF for the taxable year ending Date 3.

Based on discussions with Taxpayer's financial advisors, Accounting Firm prepared an engagement letter for new entities for which Accounting Firm would prepare Year 1 tax returns. There was, however, a miscommunication between Accounting Firm and Taxpayer, and Taxpayer was not included on the list of entities in that engagement letter. As a result, while Accounting Firm timely filed extensions for the Year 1 tax

returns with respect to the entities for which it was engaged, Accounting Firm did not file extensions for the Year 1 tax returns for Taxpayer, and Taxpayer's election to self-certify as a QOF for the Year 1 tax year was not timely filed.

Taxpayer represents that granting of the relief under section 301.9100-3 will not result in a lower tax liability for the years affected by the election.

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) 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 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 its Form 1065 and Form 8996 by the due date of its federal income tax return (including extensions) due to miscommunication between Accounting Firm and Taxpayer.

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. 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 tax return. This letter ruling grants an extension of time to file a Form 8996. This letter ruling does not grant an extension of time to file Taxpayer's Form 1065.

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. Further, we also express no opinion on whether any interest owned by Taxpayer qualifies as qualified opportunity zone property, as defined in section 1400Z(d)(2), or whether such interest 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 Powers 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,

Erika C. Reigle
Senior Technician Reviewer, Branch 8
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: