

Internal Revenue Service

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B04
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Date:
February 23, 2024

Legend

Taxpayer =

Manager =

Accounting Firm =

Year 1 =

Year 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

State Z =

X =

Dear _____ :

This letter responds to Taxpayer's request, dated Date 6, for a private letter ruling. Specifically, Taxpayer requests an extension of time, under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, to file Form 8996, *Qualified Opportunity Fund*, for purposes of: (1) making the election, under § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations, to self-certify as a qualified opportunity fund (QOF), as defined in § 1400Z-2(d) of the Internal Revenue Code ("Code"), and (2) to be treated as a QOF, effective as of the month Taxpayer was formed in Year 1, as provided under § 1400Z-2(d) and § 1.1400Z2(d)-1(a). This letter ruling is being issued electronically in accordance with Rev. Proc. 2024-1, 2024-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

Based on the provided information and representations, Taxpayer was organized on Date 1 as a limited liability company under the laws of State Z and is classified as a partnership for federal income tax purposes. Taxpayer was formed for the purpose of investing in qualified opportunity zone property as defined in § 1400Z-2(d)(2). On Date 2, Manager was designated as the partnership representative of Taxpayer. Manager oversaw the day-to-day operations and accounting matters for Taxpayer but did not have expertise or experience with federal tax matters.

With over X years of experience, Accounting Firm is a national public accounting firm, providing businesses and individuals with an array of financial and tax services. On Date 3, Manager engaged Firm, on behalf of Taxpayer and other entities, to provide audit and tax-compliance services for Year 1. Throughout the engagement, Accounting Firm understood that Taxpayer was relying upon it to prepare its Year 1 tax return and to include all required elections.

The statutory due date for Taxpayer's Year 1 Form 1065, *U.S. Return of Partnership Income*, and accompanying Form 8996 was Date 4. Due to multiple miscommunications among its employees, Accounting Firm failed to prepare and timely file by Date 4 either Taxpayer's Form 1065 or a Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*.

On Date 5, Manager inquired about the status of Taxpayer's Year 1 tax return. As a result of this inquiry, Accounting Firm became aware of the failures to timely file Taxpayer's Year 1 tax return and to attach thereto a completed Form 8996. Shortly thereafter, Accounting Firm notified Taxpayer of these failures and advised Taxpayer to request relief under § 301.9100-3. Once becoming aware of these failures, Taxpayer promptly submitted this ruling request.

Taxpayer represents that granting relief under § 301.9100-3 will not result in a lower tax liability in the aggregate for all tax years affected by the election. Taxpayer further represents that its actions are not described in § 301.9100-3(b)(3).

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations 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 in 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 failed to timely file a Form 8996 with a timely filed Year 1 tax return due to administrative errors on the part of Accounting Firm.

Sections 301.9100-1 through 301.9100-3 provide the standards the Service 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 changes 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 granting relief will not prejudice the interests of the Government.

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).

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.

For purposes of paragraph (b), 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. See § 301.9100-3(b)(2).

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 could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) Was fully informed of the required election and related tax consequences, but chose not to file 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) provides that the Service 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)(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). Further, under § 301.9100-3(c)(ii), 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 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 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 is to be made on a completed Form 8996 attached to the Taxpayer's tax 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 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 in Taxpayer are qualifying investments as defined in § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. In addition, we express no opinion regarding any other sections of the Code or regulations that may be applicable, or the tax treatment of any conditions existing at the time of, or effects resulting from, Taxpayer's election.

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.

In accordance with the Form 2848, *Power of Attorney and Declaration of Representative*, on file with this office, a copy of this letter is being sent to Taxpayer's 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.

Sincerely,

Alexa T. Dubert
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: