

Internal Revenue Service

Department of the Treasury
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Person To Contact: _____, ID No. _____

Telephone Number: _____

Refer Reply To:
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PLR-106087-24

Date:
September 06, 2024

Legend:

- Taxpayer =
- Date 1 =
- Date 2 =
- Date 3 =
- Month 1 =
- Month 2 =
- Year 1 =
- Year 2 =
- Year 3 =
- Year 4 =
- State =
- Tax Preparer =
- Accounting Firm =
- Law Firm =

Dear _____ :

This ruling responds to Taxpayer’s request dated Date 1. Specifically, Taxpayer requests relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations, granting an extension of time to make a timely election under § 1.1400Z-2(a)-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), effective the month Taxpayer was formed in Year 1.

FACTS

Taxpayer represents the facts as follows:

Taxpayer is a limited liability company organized under the laws of State on Date 2. Taxpayer is treated as a partnership for Federal income tax purposes. Taxpayer uses the accrual method of accounting and the calendar year as its taxable year.

Taxpayer was formed for the purpose of investing in a Qualified Opportunity Zone Property and operating as a QOF as defined in § 1400Z-2(d)(1). Taxpayer intended to be treated as a QOF from its inception but relied upon its tax advisors to ensure that any needed forms to obtain QOF status were prepared and timely filed.

In the years prior to Taxpayer's formation, Taxpayer's partners, as well as Taxpayer's affiliated companies, employed Tax Preparer for their tax compliance work. Taxpayer was not aware of the requirement to file Form 8996 with Taxpayer's timely filed tax return and believe Tax Preparer was engaged to properly prepare and file its Year 1 tax return along with any needed forms to obtain QOF status.

Taxpayer also engaged Accounting Firm and Law Firm to advise Taxpayer and Tax Preparer on the QOF rules and requirements in preparing and filing its 2020 return. Tax Preparer was integrated in all discussions and copied on all communications with Accounting Firm and Tax Firm relating to Taxpayer and its QOF status.

Tax Preparer mistakenly believed that Accounting Firm had been engaged to prepare Taxpayer's initial Year 1 return and Form 8996. Accounting Firm was engaged only to advise Taxpayer on the QOF requirements, not to prepare and file the return. Due to this misunderstanding, Tax Preparer did not prepare or file Taxpayer's Year 1 return.

In Month 1 of Year 3, Tax Preparer asked Accounting Firm for a copy for the Taxpayer's Year 1 Form 8996 to aid in the preparation of the Year 2 returns for owners of Taxpayer. Accounting Firm informed Tax Preparer that they did not prepare or file the Year 1 return. Tax Preparer realized the Year 1 return, including any elections necessary to become a QOF, had not been prepared or filed and informed Taxpayer of such.

Upon realization of the failure to file, Taxpayer engaged Accounting Firm to prepare its Year 1 and subsequent returns as well as corresponding Forms 8996. Accounting Firm filed Taxpayer's Year 1 Form 1065 and Form 8996 on Date 3, intending to make the election to self-certify as a QOF as of the month Taxpayer was formed.

After preparing and filing the Year 1 and subsequent returns, and because the intended election was not timely made, Accounting Firm proceeded to draft the ruling request that Taxpayer is granted an extension of time to make a timely election under § 1.1400Z-2(a)-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), effective the month Taxpayer was formed in Year 1.

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, *Qualified Opportunity Fund*, 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 8996 by the due date of its income tax return due to the Tax Preparer's misunderstanding of which part was responsible for filing the Year 1 return.

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).

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 § 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) 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, § 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 § 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 § 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. Consequently, the Form 8996 attached to Taxpayer's return for Year 1, filed Date 3, 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.

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 § 1.1400Z2 (a)–1(b)(34) or whether Taxpayer meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF.

Further, we express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in § 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.

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.

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

Sincerely,

Kyle Griffin
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: