

Internal Revenue Service

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

Telephone Number:

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PLR-113161-24

Date:
January 16, 2025

LEGEND

Taxpayer	=
Managers	=
Date 1	=
Date 2	=
Date 3	=
Month 1	=
Month 2	=
Year 1	=
Year 2	=
Tax Counsel	=
Advisor	=
State Z	=

Dear _____ :

This letter responds to Taxpayer’s request dated Date 3. Specifically, Taxpayer requests a private letter ruling granting relief pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time for its late-filed Form 8996, *Qualified Opportunity Fund*, to be treated as timely for purposes of making the election to (1) self-certify Taxpayer as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code (Code) for Year 1; and (2) to be treated as a QOF, effective as of Month

1, as provided under § 1400Z-2(d) and section 1.1400Z2(d)-1(a) of the Income Tax Regulations.

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

According to the representations made and additional information provided, Taxpayer is a limited liability company organized under the laws of State Z on Date 1 and classified as a partnership for Federal income tax purposes.

The operating agreement of Taxpayer states that Taxpayer was formed for the purposes of qualifying as a QOF and of investing in Qualified Opportunity Zone Property as defined in § 1400Z-2(d)(2). Taxpayer elected out of the centralized partnership audit regime under § 6221 of the Code for Year 1. Taxpayer uses the cash method of accounting and has a calendar tax year end.

Taxpayer is owned and managed by Managers, a married couple, neither of whom have a background in tax law. Managers engaged Tax Counsel to assist in the organization of Taxpayer due to Tax Counsel's familiarity with qualified opportunity zone issues. In connection with this engagement, Tax Counsel explained the tax filing requirements for a QOF. However, Managers did not understand the explanation or terminology used, and further, were not aware that they had misunderstood. Instead, Managers erroneously believed that because Taxpayer was owned by themselves as a married couple, all activity related to Taxpayer would be reportable on Managers' jointly filed Year 1 Form 1040, *U.S. Individual Income Tax Return*.

Subsequently in Month 2, Managers met with Tax Counsel again to discuss the Taxpayer's progress, as well as the relevant tax requirements. As a result of this meeting, Managers ultimately realized that Taxpayer was required to file, for Year 1, a Form 1065, *U.S. Return of Partnership Income*, and to include a Form 8996. Managers immediately engaged Advisor, a certified public accountant, to assist with satisfying Taxpayer's Federal income tax filing requirements for Year 1. Advisor confirmed to Managers that Taxpayer's Year 1 tax-filing obligations required Taxpayer to timely file a Form 1065 with a Form 8996 attached. Additionally, Advisor informed Managers that the due date for Taxpayer's Year 1 Form 1065, as well as the deadline to file a timely Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, had elapsed. On Date 2, Advisor late-filed Taxpayer's Year 1 Form 1065 and Form 8996.

Taxpayer subsequently applied to the IRS for abatement of penalties for Taxpayer's late Year 1 return and later received such abatement. Upon being granted

the penalty abatement, Managers erroneously believed that Taxpayer's tax issue had been resolved. Later, Managers again met with Tax Counsel for a compliance review on their qualified opportunity zone project and were informed by Tax Counsel that the Year 1 Form 8996 was not effective because of its late filing and that Taxpayer had, thus, not timely self-certified as a QOF. Taxpayer then engaged Tax Counsel to file for this relief.

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 effected annually in such form and manner as may be prescribed by the Commissioner of Internal Revenue (Commissioner) in the Internal Revenue Service (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 8996 by the due date of its income tax return due to Managers' mistaken belief that a separate Year 1 tax return was not required to be filed for Taxpayer.

Because Treas. Reg. § 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 Treas. Reg. § 301.9100-3(b)(1).

Sections 301.9100-1 through 301.9100-3 provides 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 Treas. Reg. § 301.9100-2) will be granted when the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government.

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.

Under Treas. Reg. § 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 section 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 Commissioner will grant a reasonable extension of time 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).

Additionally, Treas. Reg. § 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.

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, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and the Form 8996 attached to Taxpayer's tax return for Year 1, filed on Date 2, is considered timely filed. Taxpayer has thereby made the election under § 1400Z-2 and Treas. Reg. § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF as of Month 1, the month in which Taxpayer was formed.

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.

This ruling addresses the granting of Treas. Reg. § 301.9100-3 relief as applied to the election to self-certify Taxpayer as a QOF by filing Form 8996 for Year 1. 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 have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in Treas. Reg. § 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 also express no opinion on whether any interest owned in any entity owned 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) 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. Additionally, 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 Taxpayer's Year 1 return.

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

Sincerely,

Alexa T. Dubert
Senior Technician Reviewer
Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: