

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:

CC:ITA:B08

PLR-122862-23

Date:

March 19, 2024

LEGEND

Taxpayer	=
State	=
Accounting	=
Firm 1	
Accounting	=
Firm 2	
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Year	=

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 Qualified Opportunity Fund (QOF), 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. Taxpayer was formed on Date 2. Year is the first year of Taxpayer's operation and filing obligation.

Accounting Firm 1 had been engaged to satisfy tax compliance obligations for Taxpayer for Year. On or about Date 3, Taxpayer's managing member had a meeting with Accounting Firm 1 to discuss the plans and overall tax structure for Taxpayer to qualify as a QOF during Year. They decided during this discussion to have Taxpayer own a subsidiary entity that would qualify as a qualified opportunity zone business. Taxpayer felt confident that Accounting Firm 1 could successfully qualify Taxpayer as a QOF, given Accounting Firm 1's knowledge of the tax code and long-term business relationship with Taxpayer's managing member.

Following this initial meeting to discuss the plans for Taxpayer to qualify as a QOF, Taxpayer's managing member met with Accounting Firm 1 multiple times to confirm the tax structure, qualifications, and criteria of a QOF. Accounting Firm 1 indicated that it understood the criteria associated with qualifying Taxpayer as a QOF as well as the associated tax return preparation and tax filing requirements.

In early Date 4, Accounting Firm 1 filed an extension for Taxpayer's managing member's personal tax returns for the Year tax year but did not file an extension for Taxpayer or its subsidiary entity's tax returns for Year. Taxpayer's managing member was not aware that a return was due for Taxpayer or that an extension of time was needed to make a timely QOF election for Taxpayer. Accounting Firm 1 had erroneously concluded that there were no tax filings required for Taxpayer or its subsidiary entity because no income had been generated during Year.

On Date 5, Taxpayer's managing member decided to reach out to a different certified public accountant, given the overall complexity associated with QOFs and what

appeared to be a lack of experience on the part of Accounting Firm 1. On Date 6, Taxpayer reached out to Accounting Firm 1 to request a copy of Year tax returns for Taxpayer and its subsidiary. Accounting Firm 1 indicated that no tax returns had been filed for Year for Taxpayer. At all times prior to this consultation with Accounting Firm 2, Taxpayer was unaware that a tax return, QOF election, or extension was required for the Taxpayer for Year and relied on Accounting Firm 1 for purposes of filing all returns, elections, and extensions to properly qualify Taxpayer as a QOF for the Year tax year.

Accounting Firm 2 told Taxpayer's managing member that Taxpayer was not a valid QOF during Year, and that the only potential means to resolve the issue would be to file for a Private Letter Ruling.

As a result of the missed filing and election for Taxpayer, Taxpayer has not yet filed the tax return for Taxpayer. As of the date of Taxpayer's submission of this ruling request, there has been no notice from the IRS with respect to Taxpayer's tax return for Year.

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 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 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: