

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

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PLR-121111-24

Date:

April 02, 2025

LEGEND

Taxpayer =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Month 1 =
Month 2 =
Year 1 =
Year 2 =
State Z =
Accountant =

Dear :

This letter responds to Taxpayer's request dated Date 1, requesting a private letter ruling granting relief to make a late regulatory election pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 8996, *Qualified Opportunity Fund*, to (1) self-certify Taxpayer as a Qualified Opportunity Fund (QOF) defined in section 1400Z-2(d) of the Internal Revenue Code (Code); and (2) for Taxpayer to be treated as a QOF, effective as of Month 1, Year 1, as provided under Code section 1400Z-2 and Treasury Regulation § 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

According to the facts and representations provided, Taxpayer was organized as a limited liability company under the laws of State Z on Date 2 and is classified as a partnership for federal income tax purposes. As stated in Taxpayer's operating agreement, executed on Date 3, Taxpayer was formed for the purpose of being a QOF and to invest in qualified opportunity zone property as defined in section 1400Z-2(d)(2). Taxpayer's annual accounting period is the calendar year and uses the accrual method of accounting.

Taxpayer retained Accountant to handle Taxpayer's tax filings, including preparing and timely filing Taxpayer's Form 1065, *U.S. Return of Partnership Income* and extension. Due to Accountant's misapplication of the requirement to file Form 8996, Accountant failed to file Form 8996 with Taxpayer's Form 1065 for Year 1, which was filed on Date 4.

The error of failing to file Form 8996 for Year 1 was discovered between Month 2 and Month 1, Year 2. Taxpayer subsequently filed this request for an extension of time to file the Form 8996 for Year 1 so Taxpayer can be considered a QOF as of Month 1, Year 1.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for the certification of QOFs. Treas. Reg. § 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 to which the certification applies. Form 8996 must be filed by the due date of the tax return (including extensions). The information provided indicates that Taxpayer intended to self-certify as a QOF as of Month 1, Year 1.

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 § 301.9100-3(b)(1).

Treas. Reg. §§ 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. Treas. Reg. § 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.

Treas. Reg. § 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.

Treas. Reg. § 301.9100-3(c)(1) provides that the Service 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)(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).

CONCLUSION

Based solely 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, 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 § 1.1400Z2(d)-1(a)(2)(i). The election must be made on a completed Form 8996 attached to Taxpayer's amended tax return or to an administrative-adjustment request (as applicable).

CAVEATS

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. 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 section 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 section 1400Z-2(d)(2), or whether such entity 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. We express no opinion as to whether Taxpayer's Year 1 federal income tax return is considered timely filed.

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 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.

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: