

Internal Revenue Service

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

Telephone Number:

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Date:
March 15, 2021

Via E-fax

Legend

Taxpayer =

Business =

Manager =

Accountants =

State =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Year 1 =

Dear _____ :

This ruling responds to Taxpayer's request dated Date 1. Specifically, Taxpayer requests relief under § 301.9100-3 of the Income Tax Regulations for Taxpayer's Form 8996, *Qualified Opportunity Fund*, as filed on Date 2, to be treated as timely for purposes of the election: (1) to self-certify Taxpayer as a Qualified Opportunity Fund (QOF), as 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 the month Taxpayer was formed, as provided under section 1400Z-2 and Treasury Regulation 1.1400Z2(d)-1(a).

FACTS

The information and affidavits submitted reflect the following facts.

Taxpayer, a limited liability company formed under the laws of State on Date 3, was created for the purpose of serving as a QOF as defined by section 1400Z-2(d)(1) of the Code, and was formed for the purpose of investing in qualified opportunity zone property.

Specifically, Taxpayer used a portion of the funds contributed by investors to acquire an interest in Business. Business is expected to qualify as a qualified opportunity zone business, as defined in section 1400Z-2(d)(3).

Manager was appointed as Taxpayer's manager under the limited liability company agreement of Taxpayer. Manager's responsibilities include ensuring all required tax returns for Taxpayer are prepared and timely filed, including annually certifying Taxpayer's status as a QOF pursuant to section 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations.

Consistent with his past practices, Manager retained Accountants to prepare Taxpayer's Year 1 Federal tax return. Manager intended that the Accountants prepare the Form 8996, *Qualified Opportunity Fund*, as part of the Federal income tax return. Manager, however, erroneously believed that the due date for Taxpayer's Year 1 return was Date 4. Manager's error stemmed primarily from the confusion and dislocation from the emerging impact of the Covid-19 virus and pandemic.

On Date 5, Manager began providing Accountants with documents related to the preparation of Taxpayer's return. Manager was aware that the IRS extended the due date for filing Year 1 returns that would have otherwise been required to be filed by Date 4. Manager accordingly believed that the deadline for filing Taxpayer's Year 1 tax return was extended.

On Date 6, Manager received an email from Accountants indicating that the due date for Taxpayer's Year 1 Federal income tax return was actually Date 7. Because of

Manager's erroneous belief respecting the due date for Taxpayer's Year 1 tax return, Taxpayer failed to timely file such return with an attached Form 8996 self-certifying as a QOF.

Upon learning that Taxpayer's Year 1 return and Form 8996 would not be filed timely, Manager immediately contacted counsel for advice on whether, and how, Taxpayer could elect QOF status for the month it was formed. On Date 2, Taxpayer filed its Year 1 return and attached a completed Form 8996 electing to be treated as a QOF. The Taxpayer now seeks relief pursuant to sections 301.9100-1 and 301.9100-3 of the Regulations.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations for the purposes of carrying out the statute's purposes, including rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) of the 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 8996 by the due date of its Year 1 income tax return (including extensions) because Manager did not know the correct due date for such return.

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 § 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's request for extension of time to elect to be a QOF and to self-certify as a QOF is a regulatory election governed by § 301.9100-3. Further, 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, Taxpayer has satisfied the requirements for the granting of relief. Consequently, Taxpayer's Form 8996, certifying Taxpayer as a QOF as of the month Taxpayer was formed, is considered timely filed.

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. 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 Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant.¹ 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.

The rulings contained in this letter are based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Erika C. Reigle
Assistant to the Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc:

¹ Because Taxpayer has already filed a Year 1 return with an attached completed Form 8996, Taxpayer should send a cover letter and a copy of this letter ruling to the IRS Service Center where the return was filed. The cover letter should request that the IRS associate the letter ruling with Taxpayer's Year 1 return