

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID. No.

Telephone Number:

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Date:
February 03, 2022

Legend

Taxpayer =
Year 1 =
Year 2 =
State Z =
Manager =
Accountant =

Accounting Firm =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =

Dear :

This ruling responds to Taxpayer's request dated Date 1, for an extension of time under Treas. Reg. §§ 301.9100-1 and 301.9100-3 to (1) make an election under Treas. Reg. § 1.1400Z2(d)-1(a)(2)(i) to be certified as a qualified opportunity fund (QOF), as defined in Internal Revenue Code (IRC) § 1400Z-2(d); and (2) for Taxpayer to be treated as a

QOF, effective as of the June of Year 1, as provided under IRC § 1400Z-2(d) and Treas. Reg. § 1.1400Z2(d)-1(a).

FACTS

According to information submitted, 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 tax purposes. Taxpayer was organized for the purpose of investing in qualified opportunity zone property as defined in IRC § 1400Z-2(d)(2). Taxpayer is owned by Manager and several other members.

In anticipation of organizing Taxpayer, Manager researched the requirements for QOFs, including attending several seminars on the topic. Additionally, Manager met with Accountant about organizing a QOF. Accountant was an experienced public accountant who was in the process of selling his business, Accounting Firm. Manager believed Accountant to have a fantastic reputation and trusted him based on his experience. In Year 1, Manager and the other members of Taxpayer organized and capitalized Taxpayer. Certain of those capital contributions were intended by the members to be qualifying investments.

Accountant was hired to prepare and file Taxpayer's Federal income tax return for Year 1. According to the affidavits and information provided to us, Accountant was aware of Taxpayer's intent to self-certify as a QOF. And both Manager and Accountant knew of Taxpayer's requirement to submit Form 8996, *Qualified Opportunity Fund*, with Taxpayer's timely-filed Form 1065, *U.S. Return of Partnership Income*, for Year 1. Towards the end of Year 1, Manager prepared a Form 8996. On Date 3, Manager and Accountant met regarding Taxpayer's Form 1065 for Year 1. Because Accountant's tax software did not yet have updates with respect to Form 8996, Manager provided Accountant the Form 8996 that Manager had prepared. However, when Accountant later timely-filed Taxpayer's Form 1065 on Date 4, Accountant inadvertently neglected to attach the Form 8996 that Manager provided and did not check the box on the Form 1065 that Taxpayer intended to certify as a QOF. As a result, Taxpayer failed to self-certify as a QOF for Year 1.

After Taxpayer's Year 1 Form 1065 was filed, the purchaser of Accounting Firm contacted Manager, stating that Accounting Firm would no longer provide any services to Taxpayer, because the purchaser of Accounting Firm did not want to develop the expertise to deal with issues related to QOFs. Manager sought a new tax advisor and tax preparer for Taxpayer. However, nobody working on behalf of Taxpayer went back to review the Year 1 Form 1065 until it was time to prepare Taxpayer's Form 1065 for Year 2. On Date 5, an employee of Taxpayer discovered that the Form 8996 was not submitted with Taxpayer's Year 1 Form 1065, and on Date 6, verified that understanding. Taxpayer represents that it relied on Accountant to timely file Form 8996. Taxpayer further represents that granting of the relief under Treas. Reg. §

301.9100-3 will not result in a lower tax liability for the years affected by the election than Taxpayer would have had if the election had been timely made.

LAW AND ANALYSIS

IRC § 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules for the certification of QOFs. Treas. Reg. § 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 (Commissioner) in the Internal Revenue Service (IRS) 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 for 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 timely file Form 8996 due to Accountant's mistake in neglecting to attach the Form 8996 to Taxpayer's timely-filed return.

The Commissioner has discretion to grant a reasonable extension of time to make a regulatory election pursuant to the standards set forth in Treas. Reg. §§ 301.9100-1 through 301.9100-3. Treas. Reg. § 301.9100-1(b) defines the term "regulatory election" as including any election the due date for which is prescribed by a regulation published in the Federal Register. 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, such elections are regulatory elections, as defined in Treas. Reg. § 301.9100-1(b).

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 provides evidence (including affidavits) to establish that 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 will be 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 IRS;
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising due diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the IRS; or

- (v) reasonably relied on a qualified tax professional, and the tax professional failed to make, or advise the taxpayer to make the election.

Under Treas. Reg. § 301.9100-3(b)(2), a taxpayer will not be considered to have reasonably relied on a qualified tax professional if the taxpayer knew or should have known that the professional was not —

- (i) competent to render advice on the regulatory election; or
- (ii) Aware of all relevant facts.

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 § 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 IRS will not ordinarily grant relief.

Treas. Reg. § 301.9100-3(c) provides that the IRS will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. 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 tax years affected by the election than the taxpayer would have had if the election had been timely made. Treas. Reg. § 301.9100-3(c)(1)(i). 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 material submitted, 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 45 days from the date of this letter ruling to either file an amended return or an Administrative Adjustment Request (whichever is appropriate) to make an election under Treas. Reg. § 1.1400Z2(d)-1(a)(2)(i) to be certified as a QOF. The election is to be made on Form 8996.

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 Treas. Reg. § 1.1400Z2(a)-1(b)(34) or whether Taxpayer meets the requirements under IRC § 1400Z-2 and the regulations thereunder to be a QOF. We also express no opinion regarding the tax treatment of the instant transaction under the provisions of any other sections of the IRC 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. IRC § 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.

This ruling is based upon information and representations submitted by Taxpayer and Attorney and accompanied by a penalty of perjury statement signed by an appropriate party. Although this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

In accordance with the provisions of a power of attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representatives.

Sincerely,

Erika Reigle
Senior Technician Reviewer
Office of Associate Chief Counsel
(Income Tax and Accounting)

Cc: