

Internal Revenue Service

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

Telephone Number:

Refer Reply To:
CC:ITA:B05
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Date:
May 25, 2022

TY:

Legend

- Taxpayer =
- Manager =
- State Z =
- Firm =
- Tax Advisor =
- Law Firm =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Date 8 =
- Month =
- Year 1 =

Dear :

This ruling responds to Taxpayer’s request for a letter ruling dated Date 1. Specifically, Taxpayer requests relief under sections 301.9100-1 and 301.9100-3 of the Income Tax Regulations, for an extension of time to file Taxpayer’s Federal income tax return for the taxable Year 1, including Form 8996 *Qualified Opportunity Fund* (QOF) for purposes of the election under Treasury Regulations section 1.1400Z2(d)-1(a)(2)(i): (1) to self-certify Taxpayer as a QOF as defined in section 1400Z-2(d) of the Internal Revenue Code, and (2) for Taxpayer to be treated as a QOF, effective as of Month in Year 1.

FACTS

Taxpayer was organized as a limited liability company under the laws of State Z on Date 8 and is treated as a partnership for Federal income tax purposes. Taxpayer's overall method of accounting is cash, and has a tax year end of Date 2. Pursuant to Taxpayer's LLC agreement, Manager is the managing member and partnership representative of Taxpayer.

According to the affidavits and information provided to us, Manager engaged the services of Firm and Tax Advisor, a certified public accountant and tax senior manager of Firm, on or around Date 3. Manager expected Tax Advisor to provide accounting and tax preparation return services for Manager and certain entities affiliated with Manager for the Year 1 tax year. Tax Advisor knew at the time of engagement that Manager had eligible gain as defined in Treasury Regulations section 1.1400Z-2(a)-1(a)(11), but believed Manager had invested such gain in a QOF other than Taxpayer. Tax Advisor believed that Taxpayer would receive a Schedule K-1 from the other QOF. Manager, however, believed that Tax Advisor had been informed of Taxpayer's existence and that Manager's investment was in Taxpayer.

On or about Date 5, Manager informed Tax Advisor of Taxpayer's existence and that Manager had invested the eligible gain in Taxpayer, and that Taxpayer had intended to qualify as a QOF. Tax Advisor informed Manager that neither Tax Advisor, nor any of the associates at Firm were aware of Taxpayer's existence until after the Date 4 deadline. As a result, Firm failed to file Taxpayer's Federal income tax return or Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns*, for Year 1.

On Date 6, Taxpayer and Law Firm discussed what actions, if any, must be taken in connection with Taxpayer's certification as a QOF for Year 1. On Date 7, Manager, on behalf of the Taxpayer, engaged Law Firm to prepare a private letter ruling. Taxpayer has not yet filed its Year 1 tax return or Form 8996 as of the date of this letter.

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, *Qualified Opportunity Fund*, 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 Firm did not file Taxpayer's Form 8996 due to a misunderstanding between Taxpayer and Tax Advisor.

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 the taxpayer an extension of 45 days from the date of this letter ruling to file a Federal income tax return 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 is to be made on a completed Form 8996.

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 the 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 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.

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 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.

The rulings contained in this letter are based upon information and representations submitted by the 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 Reigle
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: