

Internal Revenue Service

Department of the Treasury
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Refer Reply To:
CC:ITA:B05
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Date:
February 03, 2023

Via fax:

TY:

LEGEND

- Taxpayer =
- Capital Investors =
- State =
- Individual Manager =
- Legal Counsel =
- =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Date 6 =
- Date 7 =
- Year 1 =
- Year 2 =

Dear :

This letter responds to Taxpayer’s request dated Date 1 for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file a Form 8996, *Qualified Opportunity Fund*, for Taxpayer to make an election to self-certify Taxpayer as a Qualified Opportunity Fund (QOF) under § 1400Z-2(d) of the Internal Revenue Code (Code) and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations for Year 1.

FACTS

The information and affidavit submitted reflect the following facts.

The Capital Investors formed Taxpayer, a limited liability company, pursuant to the laws of State on Date 2. Taxpayer, a partnership for federal tax purposes with a taxable year that ends Date 3, was formed for the primary purpose of acquiring, developing, and managing real estate projects located in qualified opportunity zones established pursuant to Public Law 115-97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act.

The Capital Investors made initial investments of capital gains into Taxpayer during Year 1. Capital Investors engaged the services of Individual Manager to raise additional capital and oversee Taxpayer's investment portfolio after the capital was deployed. Individual Manager had experience in raising capital for real estate investments, possessed a professional network of potential investors and could manage Taxpayer's day-to-day activities.

During the final four months of Year 1 Individual Manager sought to raise additional capital from third-party investors interested in investing eligible capital gains in a QOF. Individual Manager also actively searched for potential properties that Taxpayer could purchase for the purpose of development, but Individual Manager had no success as of the end of Year 1. Additionally, at the end of Year 1 Taxpayer had not deployed capital or earned any income, although Taxpayer incurred minimal organizational and management expenses.

On Date 4, Individual Manager contacted Legal Counsel and informed him that Taxpayer had raised and transferred funds to Taxpayer's QOF account. Due to Taxpayer not earning income for Year 1, Individual Manager was not aware Taxpayer had a filing requirement for such year. Individual Manager also inquired whether Taxpayer was obligated to file any forms or documents to certify that Taxpayer intended to be a QOF. Legal Counsel informed Taxpayer that it was required to file Form 8996 with Taxpayer's timely filed income tax return. Taxpayer incorrectly believed the filing deadline for Taxpayer's Year 1 partnership return was Date 5, Year 2, rather than Date 6, Year 2. On the date Individual Manager learned that Taxpayer was required to include a Form 8996 with a timely filed partnership return for Year 1, the due date for filing such return (and the date for requesting an extension) had already passed. As a result, Taxpayer failed to take the required steps to timely self-certify as a QOF.

Upon discovering the error, Taxpayer immediately contacted Legal Counsel and requested the preparation of a ruling request. Taxpayer filed a Year 1 return and attached Form 8996, on Date 7, Year 2. Taxpayer represents that to the best of its knowledge, the Internal Revenue Service (Service) did not discover that Taxpayer failed to make the election to self-certify itself as a QOF pursuant to § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations for Taxpayer's year ending Date 3, Year 1 as of the date Taxpayer responded to the Service's request for additional information.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) of the Code directs the Secretary to prescribe regulations to carry out the statute's purposes, including 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 forms or instructions, or in publications or guidance of the Service, 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).

Because § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations sets forth the manner and timing for an entity to self-certify as a QOF, these elections are regulatory elections, as defined in § 301.9100-1(b) of the Procedure and Administration Regulations.

Sections 301.9100-1 through 301.9100-3 of the Procedure and Administration Regulations 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 § 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 § 301.9100-3(b) of the Procedure and Administration Regulations, a taxpayer is deemed to have acted reasonably and in good faith if, among other circumstances not relevant here, the taxpayer requests relief before the failure to make the regulatory election is discovered by the Service, or although exercising reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue), the taxpayer was unaware of the necessity for an election.

A taxpayer is deemed not to have acted reasonably and in good faith pursuant to the provision in § 301.9100-3(b)(3) of the Procedure and Administration Regulations if the taxpayer—

- (i) seeks to alter a return position for which an accuracy-related penalty has been or could be imposed under § 6662 of the Code at the time the taxpayer requests relief, and the new position requires or permits a regulatory election for which relief is requested;
- (ii) was 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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) of the Procedure and Administration Regulations 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 has acted reasonably and in good faith, and that the granting of relief will 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, the Form 8996 attached to Taxpayer's return for Year 1, filed Date 7, Year 2, is considered timely filed and Taxpayer has thereby made the election under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year 1. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns along with a cover letter requesting that the Service associate this ruling with the Year 1 return.

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 § 1.1400Z2(a)-1(b)(34) of the Income Tax Regulations or whether Taxpayer meets the requirements under § 1400Z-2 of the Code 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. 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,

Christina M. Glendening
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: