

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

Refer Reply To:
CC:ITA:B05
PLR-119888-23

Date:
March 04, 2024

Legend

Taxpayer	=
Member	=
Year	=
State	=
Firm	=
Entity	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=

Dear _____ :

This ruling responds to the Taxpayer's request dated Date 1. Specifically, Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to (1) make a timely election under section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations to be certified as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code; and (2) for the Taxpayer to be treated as a QOF, effective as of Date 2, as provided under section 1400Z-2(d) of the Code and section 1.1400Z2(d)-1(a).

FACTS

The Taxpayer represents the facts are as follows:

Taxpayer is a limited liability company organized under the laws of State and was formed on Date 2 by Entity and Member. Taxpayer is classified as a partnership for Federal income tax purposes and was formed for the purpose of investing in a qualified opportunity zone business and serving as a QOF. Member is the manager of Taxpayer.

On Date 3, Entity contributed capital gains to Taxpayer. Member contributed his services as consideration in exchange for a profits interests in Taxpayer.

Entity and Member (investors) have historically employed an external accounting firm to prepare all tax returns for investors and their activities. In Year, Taxpayer only received capital contributions from the investors. Taxpayer did not have income or expenses and thus, Member incorrectly assumed that the Taxpayer did not have a tax filing requirement for Year.

After inquiries from Member's accountant, Member, on behalf of Taxpayer, contacted Firm in Date 4 to determine whether Taxpayer had a filing obligation for Year. Firm informed Member that Taxpayer indeed was required to file a Form 8996, *Qualified Opportunity Fund*, with its timely filed return. As a result of the Taxpayer's incorrect assumption, the due date to file the Year Form 1065, *U.S. Return of Partnership Income*, and attached Form 8896, had passed.

On Date 5, Taxpayer submitted its Year Form 1065 and attached Form 8996.

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 that 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 Taxpayer did not file its Form 8996 by the due date of its tax return (including extensions) due to the incorrect assumption that a filing was not necessary.

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 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. Consequently, the Form 8996 attached to Taxpayer's return for Year, filed Date 5, is considered timely filed, and Taxpayer has thereby made the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year. 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 return.

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 also express no opinion whether any interest owned by the Taxpayer qualifies as qualified opportunity zone property. 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.

Sincerely,

Amy Pfalzgraf
Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

Cc: