

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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Telephone Number:

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CC:ITA:B04
PLR-124848-23

Date:
June 03, 2024

Re:

LEGEND

Taxpayer =

State =

Managing Member =

Member A =

Member B =

Tax Group =

Advisor =

Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Month 1 =
Year 1 =
Year 2 =

Dear :

This letter responds to Taxpayer's request, dated Date 5, for a letter ruling pursuant to §§ 301.9100-1 and 301.9100-3,¹ Specifically, Taxpayer requests an extension of time to make a regulatory election to (1) self-certify Taxpayer as a Qualified Opportunity Fund (QOF) as defined in § 1400Z-2(d); and (2) treat Taxpayer as a QOF, effective as of the month Taxpayer was formed, as provided under § 1400Z-2 and § 1.1400Z2(d)-1(a).

FACTS

According to the facts and representations provided, Taxpayer was organized as a limited liability company under the laws of State on Date 1 and is treated as a partnership for federal income tax purposes. Taxpayer's annual accounting period is the calendar year, and it uses the accrual method of accounting. Taxpayer was formed for the purpose of investing in qualified opportunity zone property as such term is defined in § 1400Z-2(d)(2).

Taxpayer has six members. On Date 2, Taxpayer was capitalized with initial contributions from Member A, Member B and three other members. Managing Member was responsible for timely filing Taxpayer's federal income tax returns. Managing Member did not have expertise in federal tax laws and relied on Tax Group to identify and make necessary tax filings.

¹ Unless otherwise specified, all section references are to sections of the Internal Revenue Code of 1986, as amended, Title 26 U.S.C., or the Income Tax Regulations or Procedure and Administration Regulations, Title 26 C.F.R. pt. 1 or Title 26 C.F.R. pt. 301.

Although Tax Group consisted of qualified tax professionals and regularly prepares federal tax returns and provides other services for Taxpayer, Tax Group had not previously worked with a QOF. Tax Group determined in early Year 2 that Taxpayer did not have an obligation to file a Form 1065, *U.S. Return of Partnership Income*, for Year 1. Tax Group was unaware that a Form 1065 must be filed for Year 1 solely for the purpose of filing a Form 8996, *Qualified Opportunity Fund*, to self-certify as a QOF as of Month 1 of Year 1 and concluded, erroneously, that a Form 8996 could be included with Taxpayer's Form 1065 for Year 2.

Member A engaged Advisor to prepare a Form 1040, *U.S. Individual Income Tax Return*, for Year 1. On Date 3, when reviewing Member A's investments for Year 1, Advisor noted that a Schedule K-1 was not issued to Member A for the initial contribution to Taxpayer on Date 2. Advisor raised this issue with Tax Group. After discussions with Advisor, Tax Group determined that a Form 1065 should have been filed for Year 1. Due to Tax Group's misunderstanding as to when the Form 1065 should have been filed, Tax Group did not request an extension of time to file Taxpayer's Form 1065 for Year 1.

On Date 4, shortly after learning that a Form 1065 for Year 1 should have been filed, Taxpayer filed a Form 1065 for Year 1 and included a Form 8996 with a statement that Taxpayer was in the process of seeking an extension of time to file Form 8996 to elect to be treated as a QOF, effective as of the month Taxpayer was formed. Taxpayer thereafter filed this request for an extension of time.

LAW AND ANALYSIS

Section 1.1400Z2(d)-1(a)(2)(i) provides that the self-certification of a QOF must be timely-filed and effectuated annually in such form and manner as may be prescribed by the Commissioner of Internal Revenue (Commissioner) in the forms or instructions, or in publications or guidance of the Internal Revenue Service (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). The information provided indicates that Taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) as Taxpayer was unaware that of the requirement to file the Form 8996 for Year 1.

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 changes 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 granting relief will not prejudice the interests of the Government.

Section 301.9100-1(b) defines the term “regulatory election” as including any election whose due date is prescribed by a regulation published in the Federal Register. Section 1.1400Z2(d)-1(a)(2)(i) sets forth the manner and timing for electing to be a QOF and to self-certify as a QOF. Accordingly, these elections are regulatory elections, as defined in § 301.9100-1(b).

Section 301.9100-3(b)(1) provides that a taxpayer is 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 Service;
- (ii) failed to make the election because of intervening events beyond the taxpayer's control;
- (iii) failed to make the election because, after exercising reasonable diligence, the taxpayer was unaware of the necessity for the election;
- (iv) reasonably relied on the written advice of the Service; or
- (v) reasonably relied on a qualified tax professional, and the professional failed to make, or advise the taxpayer to make, the election.

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 will be 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).

CONCLUSION

Based solely on the 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. Taxpayer has satisfied the requirements of the regulations for the granting of relief, and the Form 8996 filed on Date 4 shall be considered timely filed. Accordingly, Taxpayer has elected to self-certify as a QOF under § 1400Z-2 and § 1.1400Z2(d)-1(a)(2)(i) as of Month 1 of Year 1. Taxpayer should submit a copy of this letter ruling to the IRS Service Center where Taxpayer files its income tax returns, together with a cover letter requesting that the Service Center associate this letter ruling with Taxpayer's Year 1 Form 1065.

CAVEATS

This ruling is based upon the representations made and information 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. As part of an examination process, the Service may verify the information, representations and other data submitted.

This ruling addresses the granting of relief under § 301.9100-3 as applied to the election to self-certify the Taxpayer as a QOF by filing Form 8996 for Year 1.

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 have 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) or whether Taxpayer meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. In addition, we express no opinion on whether any interest owned in any entity by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z-2(d)(2), or whether such entity would be treated as a qualified opportunity zone business, as defined in § 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 Internal Revenue Code or Treasury 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. We express no opinion as to whether Taxpayer's Year 1 federal income tax return is considered timely filed.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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.

This letter ruling is being issued electronically in accordance with Rev. Proc. 2023-1. A paper copy will not be mailed to the taxpayer.

Sincerely,

Mon L. Lam
Senior Counsel, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: