

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

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Date:
June 25, 2024

Legend:

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
State	=
Manager Member	=
Individual	=
Accountant	=
Year 1	=

Dear _____ :

This ruling responds to Taxpayer’s request. dated Date 1, for relief under §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations to file Form 8996, *Qualified Opportunity Fund*. Specifically, Taxpayer requests that the Service grant an extension of time to make an election under section 1400Z-2 of the Internal Revenue Code and § 1.1400Z2(d)-1(a)(2) of the Income Tax Regulations to self-certify as a qualified opportunity fund (QOF), effective Date 3.

FACTS

Taxpayer is a limited liability company organized under the laws of State on Date 2. Taxpayer uses the calendar year as its taxable year and uses the cash method of

accounting as its overall method of accounting. For purposes of Federal income taxation, Taxpayer is treated as a partnership.

Taxpayer was formed for the purpose of making investments in Qualified Opportunity Zones and operating as a QOF as defined in § 1.1400Z-2(d)(1) of the Income Tax Regulations. Pursuant to the operating agreement entered into in Date 3, Taxpayer was managed by Manager Member at all times relevant to Taxpayer's ruling request. Individual, the manager of Manager Member, operated Taxpayer.

Recognizing that Taxpayer needed to self-certify as a QOF by filing Form 8996 with a Form 1065, *U.S. Return of Partnership Income*, for Year 1, Individual engaged the services of Accountant, who had prepared tax returns for business entities associated with Individual. Individual and Accountant determined that Taxpayer should file a Form 7004, *Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns*, for Year 1, because the requisite information to file Form 1065 was not available by the due date of Date 4. Although Accountant was properly authorized to file a Form 7004 on Taxpayer's behalf, Accountant failed to do so. Accountant discovered this failure shortly before Date 5.

Taxpayer's Form 1065, along with Form 8996, was filed on Date 5, six months after the due date. In addition, as soon as Accountant notified Taxpayer of the failure to file a Form 7004 timely, Taxpayer engaged the services of a law firm to request a letter ruling granting an extension of time to make a QOF election.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) 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 an 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, 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) 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 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), a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer 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.

Under § 301.9100-3(b)(3), 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 § 301.9100-3.

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. Manager Member and

Individual reasonably relied on a qualified tax professional who failed to file a Form 7004 timely and, as a result, caused the late filings of Taxpayer's Form 8996 as well as of its Form 1065. Consequently, the Form 8996 attached to the Form 1065 that Taxpayer filed on Date 5 is considered timely filed. Taxpayer has thereby made the election under section 1400Z-2 and § 1.1400Z2(d)(1)-1(a)(2) to self-certify as a QOF effective as of Date 3. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns along with a cover letter and request that the Service associate this ruling with the Form 1065 filed 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 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) or whether Taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. We express no opinion on whether any interest in any entity owned 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 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.

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 Taxpayer's authorized representative.

Sincerely,

Sue-Jean Kim
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: