

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

ID No.

Telephone Number:

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PLR-107239-24

Date:
June 26, 2024

Legend:

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Date 7	=
Date 8	=
Date 9	=
Date 10	=
Date 11	=
State	=
Member A	=
Member B	=
Member C	=
Attorney	=
Accountant	=

Dear :

This responds to Taxpayer's request dated Date 1 under § 301.9100-3 of the Procedure and Administration Regulations for an extension of time to file Form 8996, *Qualified Opportunity Fund*, to (i) self-certify as a qualified opportunity fund ("QOF") as defined in § 1400Z-2(d) of the Internal Revenue Code (Code), and (ii) to be treated as a QOF for its taxable year ended Date 2, effective as of Date 3, as provided under § 1400Z-2 of

the Code and § 1.1400Z2(d)-1(a) of the Income Tax Regulations.

FACTS

The information and affidavits submitted reflect the following facts:

Taxpayer is a limited liability company organized under the laws of State, classified as a partnership for Federal income tax purposes, and files its return on a calendar year basis. The operating agreement of Taxpayer, executed on Date 4, states that the primary purpose of Taxpayer is to acquire investments which may be treated as qualified opportunity zone property to enable Taxpayer to be treated as a QOF. Member A is the initial member of Taxpayer, and is treated as owned by Member B and Member C. The operating agreement was amended effective Date 5 to add Member B directly as an additional member of Taxpayer.

In Date 6, Member A contemplated the sale of an asset at a gain. Prior to forming Taxpayer, Member B consulted Attorney on the possibility of creating a QOF. Member B also discussed the possible sale of Member A's asset and the tax implications with Accountant. Member B and Member C were long-term clients of Accountant. Member B told Accountant that they were working with an attorney and broker familiar with QOFs.

After forming Taxpayer and purchasing property, Member B and Attorney A recall having a telephone conversation with Accountant in Date 7 concerning Taxpayer and the purchased properties. Due to a miscommunication, Taxpayer's Forms 1065 and Form 8996 for Date 6 were not filed by Date 8, the due date.

In Date 9, Member B met with Accountant regarding their personal income taxes for Date 6. During this meeting, Member B and Accountant also discussed Taxpayer's operations. Accountant represents that, at that time, they first learned that Taxpayer was established, and that Taxpayer had purchased property with the intention of being a QOF. Accountant then realized that Taxpayer had not timely filed Forms 1065 and 8996 for Date 6. Accountant investigated the possibility of filing a private letter ruling and consulted with a tax attorney during Date 10. In Date 11, Accountant informed Member B that the Form 8996 for Date 6 had not been filed.

Member B represents that they did not know that Taxpayer was required to file Forms 1065 and 8996 for Date 6. Member B further represents they relied upon Accountant and Attorney to comply with tax filing requirements.

LAW AND ANALYSIS

Section 13823(a) of Public Law 115-97, commonly known as the Tax Cuts and Jobs Act of 2017, added provisions to the Code authorizing taxpayers to defer eligible capital gain through reinvesting the funds into state-designated population census tracts in low-income communities, known as Qualified Opportunity Zones. 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 reasonably relied on a qualified tax professional and the tax professional failed to make, or advise the taxpayer to make, the election. § 301.9100-3(b)(1)(v).

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, we grant Taxpayer an extension of 60 days from the date of this letter ruling to file a Form 8996 to make the election to self-certify as a QOF under § 1400Z-2 of the Code and § 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations. The election must be made on a completed Form 8996 attached to Taxpayer's return. This letter ruling grants an extension of time to file a Form 8996. This letter ruling does not grant an extension of time to file Taxpayer's Form 1065.

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.

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.

In accordance with the Power of Attorney forms on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

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

cc: