

Internal Revenue Service

Department of the Treasury
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Person To Contact:
, ID No.

Telephone Number:

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PLR-105392-24

Date:
July 25, 2024

LEGEND

- Taxpayer =
- State =
- Accounting Firm =
- Tax Advisor =
- Date 1 =
- Month 1 =
- Date 3 =
- Date 4 =
- Accounting Firm 2 =
- Year 1 =
- Year 2 =

Dear :

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

FACTS

According to the information and representations provided, Taxpayer is a limited liability company organized under the laws of State. Taxpayer is classified as a partnership for U.S. Federal income tax purposes and was formed for the purpose of investing in qualified opportunity zone property and serving as a QOF. Taxpayer's annual accounting period is the calendar year and uses the accrual method of accounting. Year 1 is the first year of Taxpayer's operation and filing obligation.

Taxpayer represents that Taxpayer engaged Accounting Firm to prepare its federal income tax returns for his real estate entities. Taxpayer provided information to Accounting Firm so that it could draft Taxpayer's return and provided Accounting Firm with a copy of its operating agreement reflecting its intent to be a QOF. Taxpayer has provisions in its operating agreement that state that its purpose is to be a QOF and to invest in "Qualified Opportunity Zone Property" as defined in section 1400Z-2(d)(1).

As Taxpayer did not generate income in Year 1 or Year 2, Accounting Firm did not prepare a Form 1065, U.S. Return of Partnership Income for either year. Accounting Firm was unaware of the requirement to file Form 8996 to annually self-certify as a QOF.

Taxpayer's managing member also regularly engages Tax Advisor to assist with his various individual and trust tax obligations. Around Date 4, during a conversation about Taxpayer's recent real estate transactions, Tax Advisor asked if Taxpayer had filed Form 8996 to self-certify as a QOF. Taxpayer's managing member was not familiar with the requirement to file Form 8996. After Taxpayer became aware of the consequences of failing to timely file the Form 8996, Taxpayer asked Tax Advisor about possible remediation options for late filing. Taxpayer subsequently engaged the services of Accounting Firm 2 to submit a request for a letter ruling on its behalf.

Taxpayer further represents that the tax liabilities of Taxpayer (or its investors) would not be lower in the aggregate for Year 1 and subsequent taxable years affected by the election than if the election had been timely made.

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 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).

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) of the Procedure and Administration Regulations 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 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 this section.

CONCLUSION

The information and representations provided indicates that Taxpayer did not timely file its Form 8996 by the due date of its federal income tax return for Year 1 due to Taxpayer's reasonable reliance on Accounting Firm and Accounting Firm's failure to file the Form 8996 with Taxpayer's Form 1065. Based on the information provided, including affidavits and representations under penalties of perjury, we conclude that Taxpayer has acted reasonably and in good faith, and that granting a reasonable extension of time for Taxpayer to file Form 8996 will not prejudice the interests of the Government. Consequently, the Form 8996 attached to Taxpayer's amended return for Year 1, filed on Date 1, 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 amended return.

CAVEATS

The granting of an extension of time in this letter ruling is not a determination that Taxpayer is otherwise eligible to self-certify as a QOF. See § 301.9100-1(a).

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 § 1.1400Z2(a)-1(b)(34) or whether the taxpayer meets the requirements under § 1400Z-2 and the regulations thereunder to be a QOF. Further, we also express no opinion on

whether any interest owned by Taxpayer qualifies as qualified opportunity zone property, as defined in § 1400Z(d)(2), or whether such interest would be treated as a qualified opportunity zone business, as defined in § 1400Z-2(d)(3). We also express no opinion on whether any property owned by the qualified opportunity zone businesses is qualified opportunity zone business 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.

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

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. Taxpayers that have previously filed a return or administrative adjustment requests attaching Form 8996 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 previous filing(s).

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. Enclosed is a copy of the letter ruling showing the deletions proposed to be made when it is disclosed under section 6110.

Sincerely,

Shareen S. Pflanz
Branch Chief, Branch 8
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: