

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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Date:
August 26, 2024

Legend:

Taxpayer	=
Date 1	=
Date 2	=
Date 3	=
Date 4	=
Date 5	=
Date 6	=
Year 1	=
State	=
Member A	=
Firm 1	=
Firm 2	=
Accountant	=

Dear _____ :

This responds to Taxpayer's initial request dated Date 1, as supplemented on Date 2, for an extension of time under § 301.9100-3 of the Procedure and Administration Regulations to file Form 8996, *Qualified Opportunity Fund* (Form 8996) to be certified as a qualified opportunity fund (QOF) as defined in section 1400Z-2(d) of the Internal Revenue Code (Code) effective as of Date 3.

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. The operating agreement of Taxpayer, dated Date 4, states that Taxpayer is formed as a QOF primarily for the purpose of investing in, holding, managing, and disposing of, Qualified Opportunity Zone Property. Taxpayer is managed by Member A. Taxpayer's management was not knowledgeable about the tax compliance requirements for this type of transaction and consequently relied upon professionals, tax and legal, to ensure the necessary returns and documents were filed with the Internal Revenue Service (Service).

On or about Date 5 Member A engaged Firm 1 to provide consulting services that included planning advice on a proposed opportunity zone investment. Firm 1 was to analyze the tax consequences of the potential transaction and advise on structuring the transaction. After forming Taxpayer, on or about Date 6 Member A engaged Firm 2 to prepare Taxpayer's Year 1 tax return which was to include Form 8996. Member A had earlier communicated to Firm 2 that Taxpayer was formed for the purpose of being treated as a QOF. Firm 2 was given a copy of Taxpayer's LLC operating agreement and timely provided with Taxpayer's financial information. Taxpayer relied upon Firm 2 to properly make the QOF election. Taxpayer requested that Firm 1 speak with the tax preparer employed by Firm 2 regarding the contents of Form 8996 prior to the filing deadline. Nevertheless, the tax return preparer from Firm 2 inadvertently failed to identify Taxpayer as a QOF on Schedule B of the return, and such tax return did not include Form 8996.

The submission includes an affidavit from Accountant who confirmed that Firm 2 was provided with Taxpayer's financial information and organization documents for the purpose of preparing the tax return. The affidavit states that prior to filing the tax return emails were exchanged between Firm 1 and Firm 2 and the correspondence identified Taxpayer as a QOF that was required to make a certification on its tax return. Accountant acknowledged that the tax return preparer from Firm 2 inadvertently failed to identify Taxpayer on the Form 1065, *U.S. Return of Partnership Income*, Schedule B as a QOF and did not include Form 8996.

After discovering that Taxpayer did not make the election, Taxpayer submitted the instant private letter ruling request.

LAW AND ANALYSIS

Section 13823(a) of Public Law 115-97 (2017), commonly known as the Tax Cuts and Jobs Act, 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, he exercised reasonable diligence (taking into account the taxpayer's experience and the complexity of the return or issue) but was unaware of the necessity for the election, or 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)(iii), (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 that 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 amended return or administrative-adjustment request (as applicable).

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.

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 form on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Gerald Semasek
Assistant to the Branch Chief, Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

cc: