

Internal Revenue Service

Department of the Treasury
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Date:
September 25, 2024

LEGEND

Taxpayer =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Project =

Partner =

State Z =

Dear :

This letter responds to Taxpayer’s request dated Date 3, requesting a private letter ruling granting relief to make a late regulatory election pursuant to Treas. Reg. §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file Form 8996, *Qualified Opportunity Fund*, to (1) self-certify as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code (Code) and (2) to be treated as a QOF, effective as of the first month of Year 2, as provided under section 1400Z-2(d) and Treas. Reg. § 1.1400Z2(d)-1(a).

This letter ruling is being issued electronically in accordance with Rev. Proc. 2024-1, 2024-1 I.R.B. 1. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer has represented that the facts are as follows. Taxpayer, organized as a limited liability company under the laws of State Z, was formed on Date 1 to be a QOF for the purpose of investing in Project, a qualified opportunity zone business as defined in section 1400Z-2(d)(3) and Treas. Reg. §§ 1.1400Z2(a)-1(b)(29) and 1.1400Z2(d)-1(d).

Beginning on Date 2, the partners in Taxpayer, including Partner, made various contributions to Taxpayer to invest in Project as it began construction. From Date 1 through Year 3, Taxpayer had no items of income, deduction, or credit, and did not file any tax returns for Year 1, Year 2, or Year 3.

Taxpayer believed that all of the contributions made by its partners through Year 3 were intended to be non-qualifying investments as defined in Treas. Reg. § 1.1400Z2(a)-1(b)(16). According to the information provided, Partner intended for certain of Partner's contributions during Year 2 and Year 3 to constitute qualifying investments as defined in Treas. Reg. § 1.1400Z2(a)-1(b)(34) but did not communicate this fact to Taxpayer. Partner was unaware that it was necessary for Taxpayer to make an election on Form 8996 in order for Partner to make a qualifying investment into Taxpayer.

According to the information provided, Taxpayer was aware that in order for one of its partners to make a qualifying investment, Taxpayer needed to timely file a return with a completed Form 8996 and would have done so if Partner had communicated the fact that Partner intended for certain of the Year 2 and Year 3 contributions to be qualifying investments.

Taxpayer represents that it did not receive any communication from the Internal Revenue Service indicating that they had discovered Taxpayer's failure to file a timely return and attach a Form 8996 for Year 2 or Year 3 prior to the submission of this request. Taxpayer became aware of the miscommunication between it and Partner after Partner's accountant began preparing Partner's Year 2 and Year 3 tax returns and discovered that Taxpayer had not filed a timely Form 8996. Partner then alerted Taxpayer to this fact.

Once Taxpayer became aware of the consequences to Partner, Taxpayer engaged legal counsel to prepare this private letter ruling.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for the certification of QOFs. Treas. Reg. § 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 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. Form 8996 must be filed by the due date of the tax return (including extensions). The information provided indicates that Taxpayer intended to self-certify as a QOF as of the first month of the year in which any partner in Taxpayer intended to make a qualifying investment. However, Taxpayer was not informed by a partner that the partner did intend for its contribution to constitute a qualifying investment by the date of Taxpayer's income tax return for such year.

Because Treas. Reg. § 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 § 301.9100-3(b)(1).

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards the Service will use to determine whether to grant an extension of time to make a regulatory election. Treas. Reg. § 301.9100-3(a) provides that requests for extensions of time for regulatory elections (other than automatic changes covered in Treas. Reg. § 301.9100-2) will be granted when the taxpayer acted reasonably and in good faith and granting relief will not prejudice the interests of the Government.

Treas. Reg. § 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.

Under Treas. Reg. § 301.9100-3(b)(3), a taxpayer will not be considered to have acted reasonably and in good faith if the taxpayer—

- (i) Seeks to alter a return position for which an accuracy-related penalty could be imposed under § 6662 at the time the taxpayer requests relief and the new position requires a regulatory election for which relief is requested;
- (ii) Was fully informed of the required election and related tax consequences, but chose not to file 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.

Treas. Reg. § 301.9100-3(c) provides that the Service will grant a reasonable extension of time only when the interests of the Government will not be prejudiced by the granting of relief. 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.

CONCLUSION

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. Accordingly, Taxpayer has satisfied the requirements of the regulations for the granting of relief, and Taxpayer's late-filed Form 8996, certifying Taxpayer as a QOF as of the first month of Year 2, as well as Taxpayer's late-filed Form 8996 for Year 3, will be considered timely filed provided they are received by the appropriate service center no later than 60 days from the date of this letter ruling.

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 addresses the granting of Treas. Reg. § 301.9100-3 relief as applied to the election to self-certify Taxpayer as a QOF, as of the first month of Year 2, and the late Form 8996 for Year 3. Specifically, we have no opinion, either express or implied, concerning whether any investments made into Taxpayer are qualifying investments as defined in Treas. Reg. § 1.1400Z2(a)-1(b)(34) or whether 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 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 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.

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

Sincerely,

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

cc: