

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:

PLR-110695-24
Date: October 22, 2024

Taxpayer =
Submission Date =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
State Z =
Year 1 =
Year 2 =
Year 3 =
Members =

=
=

Taxpayer
Representative =
CPA =
Firm =
Operating
Agreement =

N1 =

Dear :

This ruling responds to Taxpayer’s request for a letter ruling requested on Submission Date and supplemented on Date 3. Taxpayer requests relief under section 301.9100-3 of the Procedure and Administration Regulations. Specifically, Taxpayer requests an extension of time to file a self-certifying election on Form 8996, *Qualified Opportunity Fund*, (Form 8996) for Taxpayer to be treated as a qualified opportunity fund (QOF), as defined in section 1400Z-2(d) of the Internal Revenue Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations effective as of Date 1.

FACTS

Taxpayer was organized as a limited liability company under the laws of State Z on Date 1 and is treated as a partnership for federal income tax purposes. Taxpayer was formed with contributions from its Members. The majority Member represents that it had eligible gain as defined in section 1400Z-2 and the regulations thereunder from Year 1 that it timely contributed to Taxpayer.

Taxpayer's overall method of accounting is the cash receipts and disbursements method of accounting, and Taxpayer has a Date 4 tax year-end. Taxpayer was formed to invest in qualified opportunity zone property within the meaning of section 1400Z-2(d). Operating Agreement, section N1.

According to the affidavits and information provided to us, Taxpayer Representative engaged CPA to handle the tax filings for Taxpayer, including filing Taxpayer's first filed Form 1065, *U.S. Return of Partnership Income*. During late Year 1 and early Year 2, Taxpayer Representative told CPA that Taxpayer intended to purchase real estate in an Opportunity Zone and that Taxpayer had no business activity in Year 1. Taxpayer Representative was not aware of the requirement to make an election on Form 8996 for the first tax year of Taxpayer's existence, and CPA did not inform Taxpayer Representative that such an election was required.

CPA, despite agreeing to handle the tax filings of Taxpayer, mistakenly believed that Taxpayer had no filing obligation for Year 1 due to Taxpayer not having any assets or having conducted any business activity for Year 1. As a result, CPA failed to file the Form 1065 and Form 8996 for Year 1.

In Year 3, Taxpayer retained Firm for assistance related to QOF tax filings. As part of its onboarding process, a representative of Firm determined that Taxpayer had a filing obligation for Year 1, and that Taxpayer should have filed a Form 8996 for Year 1.

After this discovery, Taxpayer and Firm moved as expeditiously as possible to seek this letter ruling, requesting relief under section 301.9100-3. Taxpayer also filed its required Year 1 tax forms, including Form 8996, on Date 2, and has requested that the Internal Revenue Service (Service) grant additional time to file Form 8996 for Year 1.

Taxpayer represents that granting of the relief under section 301.9100-3 is proper, as it acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the government.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations or rules for the certification of QOFs. Section 1.1400Z2(d)-1(a)(2) 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 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). The information provided indicates that CPA did not file Taxpayer's Form 8996 because CPA mistakenly believed that Taxpayer had no filing obligation for Year 1.

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) 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.

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. Taxpayer has satisfied the requirements for the granting of relief under section 301.9100-3(b). Consequently, the Form 8996 attached to Taxpayer's return for Year 1, filed Date 2, is considered timely filed and Taxpayer has thereby made the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i) to self-certify as a QOF for Year 1. This letter ruling does not grant an extension of time to file Taxpayer's Form 1065. Taxpayer should submit a copy of this letter ruling to the Service Center where Taxpayer files its returns along with a cover letter requesting the Service associate this ruling with the Year 1 return.

This ruling is based upon facts and representations submitted on behalf of the Taxpayer, by Taxpayer Representative and CPA and accompanied in each case by a penalty of perjury statement executed by the appropriate parties. 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 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 section 1.1400Z2 (a)-1(b)(34) or whether Taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. Further, we also express no opinion on whether any interest owned in any entity 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.

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

Sincerely,

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

cc: