

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
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CC:ITA:B04
PLR-109834-24

Date:
November 08, 2024

LEGEND

- Taxpayer =
- Date 1 =
- Date 2 =
- Date 3 =
- Date 4 =
- Date 5 =
- Month 1 =
- Month 2 =
- Year 1 =
- Year 2 =
- LLC =
- Manager =
- Attorney =
- Advisor =
- Successor Advisor =
- State Z =

Dear :

This letter responds to Taxpayer’s request dated Date 5, 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 for its filed Form 8996, *Qualified Opportunity Fund*, to be treated as timely for purposes of the election (1) to 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 month

Taxpayer was formed, 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. Manager is a limited liability company that is a non-member manager of Taxpayer. On Date 1, Manager engaged Attorney to advise and form Taxpayer as a QOF. Taxpayer was organized as a limited liability company under the laws of State Z on Date 2 to be a QOF for the purpose of investing exclusively in qualified opportunity zone property as defined in section 1400Z-2(d)(2) and to acquire membership interests in LLC. The sole purpose of LLC is to own and redevelop a qualified opportunity zone business.

In Month 1 Year 2, Taxpayer engaged Advisor to file its Year 1 income tax returns and self-certify Taxpayer as a QOF. Manager informed Advisor of Taxpayer's intention to self-certify as a QOF and provided Advisor with Taxpayer's operating agreements stating the business intent of Taxpayer. Advisor timely filed for an extension of the due date of Taxpayer's return. On Date 3, Advisor filed Taxpayer's Year 1 income tax return. However, Advisor erroneously failed to include Taxpayer's Form 8996.

After the conclusion of the Year 1 tax filing season, Taxpayer terminated its engagement with Advisor and hired Successor Advisor to file Taxpayer's Year 2 income tax returns. While reviewing Taxpayer's Year 1 returns in connection with that engagement, Successor Advisor discovered that the Year 1 returns were erroneously filed without a QOF election and self-certification on Form 8996.

Taxpayer subsequently engaged Successor Advisor to request this private letter ruling. Successor Advisors also prepared and filed Taxpayer's Year 2 returns inclusive of a Form 8996 and self-certified as a QOF.

Following a pre-submission conference with this office on Date 4, Successor Advisor timely filed on behalf of Taxpayer a Form 8082, *Administrative Adjustment Request*, in order to extend the period of limitations for Taxpayer's Year 1 tax return. Successor Advisor also included a late-filed Form 8996 for Year 1 with its submission of Taxpayer's Form 8082.

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 month Taxpayer was formed, Month 2 Year 1.

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 section 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 for Year 1, certifying Taxpayer as a QOF as of Month 2 Year 1, is considered timely filed.

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 Month 2 Year 1. 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 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 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 representatives.

Sincerely,

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

cc: