

Internal Revenue Service

Number: **202202009**

Release Date: 1/14/2022

Index Number: 1400Z.02-00

Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

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CC:ITA:5

PLR-111015-21

Date:

October 20, 2021

Legend

Taxpayer	=
Member	=
State	=
Accounting Firm	=
Entity	
Date 1	
Date 2	=
Date 3	=
Date 4	=
Date 5	=
X%	=
Year 1	=

Dear

This ruling responds to Taxpayer's request for a letter ruling dated Date 1. Specifically, Taxpayer requests an extension under sections 301.9100-1 and 301.9100-3 of the Income Tax Regulations to (1) make a timely election under section 1.1400Z2(a)-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 the month Taxpayer was formed in Year 1, as provided by section 1400Z-2 and section 1.1400Z2(d)-1(a).

FACTS

Taxpayer is a limited liability company organized under the laws of State and was formed on Date 3. Taxpayer is treated as a partnership for Federal income tax purposes. Taxpayer's overall method of accounting is the accrual method of accounting and has a tax year end of Date 2.

Taxpayer owns X% of Entity. Entity is a limited liability company classified as a partnership for Federal income tax purposes and was formed for the purpose of operating as a Qualified Opportunity Zone Business as defined in § 1400Z-2(d)(3).

Taxpayer engaged the services of Accounting Firm in Year 1. Accounting Firm had prepared and timely filed income tax returns for owners and affiliates of Taxpayer for three years prior to Year 1. According to the affidavits and additional information provided to us, Taxpayer knew Accounting Firm to be competent and sophisticated in handling Federal income tax matters, including the handling and filing of Federal income tax returns and self-certifications with respect to qualified opportunity funds. However, Accounting Firm failed to file Form 8996, *Qualified Opportunity Fund*, and the Taxpayer's Year 1 Federal income tax return by the due date of Date 4. As a result, Taxpayer failed to file Form 8996 and its Form 1065, *U.S. Return of Partnership Income*, for Year 1 by the due date. Accounting Firm also failed to timely file Form 7004, *Application for Automatic Extension of Time to File Certain Business Income Tax, Information and Other Returns*. Accounting Firm discovered that it had failed to file Taxpayer's Federal income tax return and Form 8996 on Date 5. After discovering that the election had not been timely filed, Member subsequently authorized Accounting Firm to file a private letter ruling request for relief under sections 301.9100-1 and 301.9100-3 on Date 1. Taxpayer has not yet filed its Form 1065 for Year 1.

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(a)-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). The information provided indicates that Accounting Firm did not file Taxpayer's Federal income tax return and the Form 8996 by Date 4 due to a mistake.

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 § 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 § 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. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, we grant the taxpayer an extension of 45 days from the date of this letter ruling to file a Federal income tax return to make the election to self-certify as a QOF under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election is to be made on a completed Form 8996.

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 section 1.1400Z2 (a)–1(b)(34) or whether the taxpayer meets the requirements under section 1400Z-2 and the regulations thereunder to be a QOF. Further, we also express no opinion on whether Entity is a qualified opportunity zone business, as defined under 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,

Erika C. Reigle
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: