

Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

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Person To Contact:

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CC:ITA:B04

PLR-119190-21

Date:

November 09, 2021

LEGEND

Taxpayer	=
Company	=
Advisor 1	=
Advisor 2	=
Advisors	=
Year 1	=
Season 1	=
Month 1	=
Date 1	=
State Z	=

Dear :

This letter responds to Taxpayer's request dated September 9, 2021, seeking 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 month the 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. 2020-29, 2020-21 I.R.B. 859. A paper copy will not be mailed to Taxpayer.

FACTS

Taxpayer has represented that the facts are as follows. Taxpayer, a company organized as a limited liability company under the laws of State Z, was formed as a QOF on Date 1 for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2). During Season 1, Taxpayer's representatives communicated with Advisor 1 (the tax advisor for a separate company owned by a member of Taxpayer) and Advisor 2 (an outside tax advisor) regarding investment in Qualified Opportunity Zones, with the anticipation that Advisors would work together on the preparation of Taxpayer's Federal income tax return for Taxpayer's first year of operation – Year 1, the year Taxpayer was formed. The information provided by Taxpayer indicates that Advisors were tasked with preparing and timely filing Taxpayer's Federal income tax return and all related forms and elections to self-certify Taxpayer as a QOF, and to treat Taxpayer as a QOF as of the month Taxpayer was formed.

According to the affidavits and additional information provided to us, Taxpayer and Advisors were aware of the requirement to file Form 8996 with the Taxpayer's timely filed Federal income tax return for Year 1 for the Taxpayer to self-certify QOF status and to be treated as a QOF as of the month Taxpayer was formed. Advisors were retained by Taxpayer so that Taxpayer could comply with the Form 8996 requirements and Advisors were expected to timely file Taxpayer's Federal income tax returns and all related forms and elections to self-certify Taxpayer as a QOF. However, Advisor 1 mistakenly believed that the tax preparation firm retained by Company (the entity to be invested in as the Qualified Opportunity Zone property) would be preparing Taxpayer's Federal income tax returns. Advisor 2 mistakenly believed that Advisor 1 would be preparing Taxpayer's Federal income tax returns. As such, Advisors failed to timely file Taxpayer's Year 1 Federal income tax return and Form 8996. During Month 1 Advisors discovered the failure to file the Year 1 federal income tax return and Form 8996. Thereafter, Advisors informed Taxpayer that the Federal income tax return and Form 8996 had not been timely filed.

Shortly thereafter, Taxpayer submitted this request seeking relief under Treas. Reg. §§ 301.9100-1 and 301.9100-3.

LAW AND ANALYSIS

Section 1400Z-2(e)(4)(A) directs the Secretary to prescribe regulations for rules 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, 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 the Taxpayer did not file its Form 8996 by the due date of its income tax return due to Advisors' failure to timely file the Year 1 income tax return or the Form 8996.

Treas. Reg. §§ 301.9100-1 through 301.9100-3 provide the standards that 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 provides evidence (including affidavits) to establish that 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, certifying the Taxpayer as a QOF as of the month the Taxpayer was formed, will be considered timely filed provided it is 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 the 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 the Taxpayer as a QOF by filing Form 8996 for 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. 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.

A copy of this letter must be attached to any 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.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representatives.

Sincerely

Ronald J. Goldstein
Senior Technician Reviewer
(Income Tax & Accounting, Branch 4)