

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

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PLR-112367-22

Date:

December 16, 2022

LEGEND

Taxpayer =

State =

Main Project =

Firm =

Director of _____ =

Finance

Controller =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Year 3 =

Operating Entity =

Dear _____ :

This ruling responds to Taxpayer's request for a letter ruling dated Date 1. Specifically, Taxpayer requests an extension of time under sections 301.9100-1 and 301.9100-3 of

the Procedure and Administration Regulations, to (1) make a timely election under section 1.1400Z2(d)-1(a)(2)(i) of the Income Tax Regulations 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 for its taxable year ended Date 3, effective as of Date 2, as provided by section 1400Z-2(d) and section 1.1400Z2(d)-1(a).

FACTS

According to the affidavits and additional information provided to us, Taxpayer has represented that the facts are as follows. Taxpayer is a limited liability company organized under the laws of State and was formed on Date 2. Taxpayer is classified as a partnership for U.S. federal income tax purposes and was formed for the purpose of investing in qualified opportunity zone property and serving as a QOF.

Due to Taxpayer's formation on Date 2, the entity's Year 1 tax period was less than 30 days. Taxpayer received no gross income, nor did it pay or incur any amount treated as a deduction or credit for federal tax purposes and was otherwise not required to file Form 1065, U.S. Return of Partnership Income, for its Year 1 tax year. However, Taxpayer needed to file Form 8996, *Qualified Opportunity Fund*, to certify as a QOF. Therefore, Taxpayer needed to file a Form 1065 for the sole purpose of attaching and filing its Form 8996.

Taxpayer is one entity in a larger group of entities, which were formed in Year 1 and Year 2 as part of a single development project. These entities are collectively known as the Main Project. Along with three other LLC's, Taxpayer is itself a member/partner of Operating Entity, which is the operating entity of Main Project. A group of employees (the "management team") jointly manage all entities in the Main Project

In July of Year 1, the Main Project retained Firm as its accounting firm. At that time, Main Project was in a development phase, and several entities, including Taxpayer, were not yet in existence. Therefore, Taxpayer and other entities, not yet developed, were not included in the statement of work.

However, the partner who signed the statement of work was not the Main Project representative who would be communicating with Firm going forward. Instead, the Director of Finance, a position that is part of the management team, was tasked with the duty to communicate with Firm regarding return preparation, and to provide Firm with information when requested. Because the Director of Finance was neither involved with the engagement of Firm nor the signing of the statement of work, he did not realize Firm's representation was limited to the two entities in existence at the time the statement of work was signed. The whole management team generally believed that Firm was engaged to serve as the accounting firm for all entities in the Main Project, especially those related to the Operating Entity.

Firm prepared Year 1 tax returns in the spring of Year 2 for the two Main Project entities listed in the statement of work agreement. Firm had become aware of the existence of Taxpayer as a partner of Operating Entity, and Firm prepared a Schedule K-1 for Taxpayer as part of Operating Entity's Year 1 Form 1065. However, Taxpayer was not listed in the statement of work, and the management team did not separately request that a return be prepared for Taxpayer. Therefore, Firm mistakenly thought that the Year 1 filing for Taxpayer was being handled internally or by another accounting firm.

While Firm was in the early stages of preparing the Year 1 returns, the Main Project restructured its finance team. At the beginning of Year 2, the position of Controller was added to the team and Controller was hired in February of Year 2. The Controller position would report to the Director of Finance and take over the primary responsibility of communicating with Firm regarding return preparation. The Controller assumed that all arrangements with Firm related to return preparation for specific entities had been made prior to him joining the Main Project. Consequently, the Controller never realized that a Year 1 Form 1065 and Form 8996 needed to be filed for Taxpayer, and he did not notice that Firm was not preparing these documents for Taxpayer. As a result of the communication issues, Firm did not file a Year 1 Form 1065 for Taxpayer. The Taxpayer, therefore, did not make a valid election to certify as a QOF on Form 8996.

In Year 3, the Director of Finance emailed Firm a list of entities for which the Main Project would engage Firm to prepare Year 2 tax filings. Taxpayer was included on that list. In response, Firm requested a copy of the Year 1 tax return for Taxpayer. Through this email exchange, the Director of Finance learned that Firm had not filed a Year 1 Form 1065 for Taxpayer, nor had Firm filed a Form 8996.

Upon learning that the Year 1 Forms 1065 and 8996 were not timely filed, Firm advised Taxpayer to file a private letter ruling request. Taxpayer then filed this ruling request seeking extension of time to file Form 8996 for Taxpayer's year ending Date 3, pursuant to sections 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations. Taxpayer has not yet filed its Forms 1065 and 8996 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(d)-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 Firm did not file Taxpayer's Form 8996 due to a communication error between Firm and Main Project representatives. .

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. Accordingly, based solely on the facts and information submitted, and the representations made in the ruling request, we grant Taxpayer an extension of 45 days from the date of this letter ruling to file a Year 1 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 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.

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.

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.

Sincerely,

Amy J. Pfalzgraf
Branch Chief (Acting), Branch 5
Office of Associate Chief Counsel
(Income Tax and Accounting)

CC: