

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-117194-20

Date:
October 27, 2020

TY:

Legend

- Taxpayer =
- Tax Advisor =
- State Z =
- Date 1 =
- Affiliates =
- Year 1 =
- Year 2 =
- Date 2 =
- Firm =
- Year 3 =

Dear :

This ruling responds to the taxpayer's request dated . Specifically, the taxpayer requests an extension of time 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 (Code); and (2) for the taxpayer to be treated as a QOF, effective as of the month the taxpayer was formed in Year 2 as provided under section 1400Z-2(d) of the Code and section 1.1400Z2(d)-1(a) of the Income Tax Regulations.

FACTS

The taxpayer was organized as a limited liability company under the laws of State Z in Date 1 and is classified as a partnership for Federal income tax purposes. The taxpayer was organized for the purpose of investing in qualified opportunity zone property as defined in section 1400Z-2(d)(2). On or shortly after the date of the taxpayer's organization, members in the taxpayer made contributions of cash to the capital of the taxpayer. Certain of those contributions were intended by the members to be a qualifying investment, as defined in section 1.1400Z2(a)-1(b)(34).

Since Date 1, the principal owners of the taxpayer have been engaged in starting its business, located within a qualified opportunity zone, which include obtaining permits and licenses, and executing a lease for space. The principal owners of taxpayer are also the principal owners of Affiliates.

Since Year 1, Tax Advisor, a qualified tax advisor, has prepared the Federal tax returns for Affiliates. Tax Advisor timely filed the Year 2 tax returns of Affiliates on or before Date 2. Further, Tax Advisor has, since Year 3, prepared the individual income tax returns for the principal owners of the taxpayer. Tax Advisor timely filed the principals' individual income tax returns timely for Year 2.

According to the affidavits and information provided to us, the taxpayer and the Tax Advisor were aware of the requirement to file Form 8996, *Qualified Opportunity Fund*, with the taxpayer's timely filed Federal income tax return for Year 2 for the taxpayer to elect to certify itself as a QOF. The taxpayer and the Tax Advisor were aware of the taxpayer's desire to be certified as a QOF for the entire tax year. However, according to the information submitted, Tax Advisor failed to attach the Form 8996 to the taxpayer's timely filed return.

After becoming aware of the consequences of failing to timely file the Form 8996 after Date 2, the taxpayer directed Firm to promptly to submit this request for relief under sections 301.9100-1 and 301.9100-3. Taxpayer represents that it relied on Tax Advisor to timely file Form 8996. Taxpayer further represents that granting of the relief under section 301.9100-3 will not result in a lower tax liability for Year 2.

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 that 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 the taxpayer did not file its Form 8996 by the due date of its income tax return (including extensions) due to Tax Advisor's failure to attach the form to the timely filed return, even though Tax Advisor was aware of the need to attach Form 8996.

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 the 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 an amended return to make the election under section 1400Z-2 and section 1.1400Z2(d)-1(a)(2)(i). The election is to be made on Form 8996.

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.

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 the 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. 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 representative.

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.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Shareen S. Pflanz
Senior Technician Reviewer, Branch 5
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: