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IRS Opportunity-Zone Letter Ruling Grants Relief on Certification.

The IRS allowed a qualified opportunity fund to file a late self-certification because it saw no prejudice to the government's interests.

In what appears to be the [first publicly issued letter](#) ruling of its kind on the Opportunity Zone program, the IRS found that the taxpayer had "acted reasonably and in good faith, and that the granting of relief would not prejudice the interests of the government."

The program, which was created by the Tax Cuts and Jobs Act, allows investors to defer, reduce, and in some cases eliminate tax on capital gains by investing in QOFs. In order to self-certify as a QOF, the fund must file a Form 8996, "Qualified Opportunity Fund."

As the ruling released May 8 noted, the form must be filed by the due date of the tax return, including any applicable extensions.

In this case, the IRS said that the taxpayer and its adviser were aware of the requirement to file Form 8996 along with the federal income tax return. The adviser was expected to file a request for an automatic extension of time to file the tax return but failed to do so because of an administrative error. Neither the tax return nor the Form 8996 was filed by the applicable due date.

The taxpayer filed the tax return and the QOF form by the date that would have applied if the extension had been sought and submitted a request for relief under reg. sections 301.9100-1 and 301.9100-3.

The election to self-certify as a QOF is a regulatory election as defined in reg. section 301.9100-1(b), the IRS said.

"According to Treasury Regulation section 301.9100-3(a), requests for extensions of time for regulatory elections that do not meet the requirements of Treasury Regulation section 301.9100-2 (automatic extensions) must be made under the rules of Treasury Regulation section 301.9100-3," the ruling said. "Additionally, requests for relief subject to section 301.9100-3 will be granted when the taxpayer provides evidence to establish that the taxpayer acted reasonably and in good faith, and that the granting of relief will not prejudice the interests of the government."

The IRS concluded that the taxpayer had met those requirements — although it didn't specifically elaborate on this point — and deemed that the form certifying the taxpayer as a QOF as of the month it was formed was timely filed.

Final regulations (T.D. 9889) on the Opportunity Zone program were released at the end of 2019. The IRS issued guidance in the wake of the coronavirus pandemic that provided some relief to Opportunity Zone investors, but some practitioners say more relief may be needed.

TAX NOTES

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