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OBBB Act Brings Significant Changes to Section 1202 QSBS Gain Exclusion



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On July 4, President Donald Trump signed the One Big Beautiful Bill Act (“OBBB”) into law. Among many changes, the OBBB included an expansion of the qualified small business stock (“QSBS”) gain exclusion under Section 1202 of the Internal Revenue Code. This is important to practitioners, investors and owners of small businesses because the gain exclusion presents a valuable incentive for founders when raising capital and for investors when structuring their capital deployment.

Background

Section 1202 provides a tax benefit for non-corporate investors to exclude the greater of 10 times the invested capital or \$10,000,000 (now \$15,000,000) in gains that would otherwise be subject to capital gains tax upon sale of the QSBS if certain requirements are met. This tax benefit encourages the investment in early-stage domestic C Corporations, and it is a valuable tool for those in the emerging companies and venture capital space. QSBS eligibility requires examination of shareholder-level and corporate-level requirements. Prior to enactment of the OBBB, non-corporate investors had the ability to exclude up to 100% of gain from the sale or exchange of QSBS when those certain shareholder-level and corporate-level requirements were met. For QSBS acquired prior to enactment of the OBBB, the pre-OBBB limitations and rules still apply.

OBBB Expansion

The expansion in the OBBB incorporates (i) a phased increase in exclusion for gain from QSBS, (ii) an increase in the per-issuer limitation and an annual inflation adjustment, and (iii) an increase in the aggregate gross assets limit and an annual inflation adjustment. Each is described further below.

1. Phased Increase in Exclusion for Gain from QSBS

For QSBS issued after enactment, the holding period is modified to provide a phased-in exclusion benefit beginning at three years. A taxpayer can exclude 50% of the gain from the sale or exchange of QSBS if the QSBS is held for at least three years, and the exclusion percentage increases by 25% each year until reaching 100% if the QSBS is held for at least five years. The phased increase can help taxpayers yield some tax savings in the event QSBS is not held long enough to receive the full 100% exclusion. A summary of the applicable percentage of tiered exclusion is shown in the chart below.

Holding Period	Applicable Percentage of Exclusion
3 years	50%
4 years	75%
5 years	100%

2. Increase in the Per-Issuer Limitation

Section 1202 provides a limitation of excludible gain per issuer, meaning per each corporation that issues QSBS eligible stock, not per taxpayer. QSBS that is acquired by a taxpayer after enactment of OBBB is subject to a \$15,000,000 limitation per-issuer, an increase from the previous \$10,000,000 limitation. Beginning after taxable year 2026, the \$15,000,000 amount is increased for inflation annually. The alternative limitation of 10 times the aggregate adjusted bases of the QSBS was unaffected by the changes in the OBBB and remains applicable whether QSBS was acquired prior to, on, or after the enactment of the OBBB. Taxpayers can add meaningful tax savings with the increase in the per-issuer limitation if \$15,000,000 exceeds the 10 times cap limitation.

3. Increase in the Limit in Aggregate Gross Assets

A corporate-level consideration of QSBS eligibility is the limitation in the aggregate gross assets of the corporation. Previously, the aggregate gross assets of the corporation could not exceed \$50 million before the QSBS issuance and immediately after the QSBS issuance. The OBBB increases the limitation to \$75 million, which applies to QSBS issued after the date of enactment. Similar to the per-issuer limitation, beginning after taxable year 2026, the \$75,000,000 amount is increased for inflation annually. The increase in limitation will allow taxpayers to invest in corporations at later stages and continue to qualify for QSBS treatment. Moreover, the full expensing of certain business properties could favorably contribute to reducing a corporation's aggregate gross assets, which could also preserve eligibility for QSBS treatment in later stages.

Please do not hesitate to [contact a Gould & Ratner attorney](#) to discuss the expansion of the QSBS gain exclusion under Section 1202.