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## Tax-Free Qualified Small Business Stock Break Jumps From \$10M To \$15M



The ink on the One Big Beautiful Bill is dry, and some of the targeted tax benefits are, well, big. For decades, founders and investors in startups in Silicon Valley and elsewhere have counted on Qualified Small Business Stock (QSBS) treatment if they sell stock issued by their fledgling company, getting up to \$10 million per shareholder free of federal tax. With the trick known as “stacking,” they could benefit friends and family too, *each* with up to \$10 million of tax-free moola.

This tax code darling of Silicon Valley has been amended several times over the years. There was even a serious threat to [targets this \\$10M tax break](#), or at least cut it back materially. But neither happened, and the tax-free gravy train continued to roll along. Now, the One Big Beautiful Bill has made this tax bonanza even bigger and better. First, a few basics.

### QSBS Has Many Rules

Tax-free treatment only applies to shares acquired upon original issuance by a C corporation. This [tax break causes some to reject S corporations and LLCs](#). But some types of business don’t qualify, including those in the fields of health, engineering, architecture, law, farming, banking, consulting, and operating hotels. There’s a size limit too. Until now, the company could not have had more than \$50 million in assets at any time up through the *issuance* of the shares in question. (But notably, it is okay if the company is worth billions when the shares are eventually *sold*.)

But as of July 4, 2025, the size of the corporations eligible to issue QSBS was expanded from \$50 million of gross assets to \$75 million. What’s more, a new inflation adjustment to increase that amount even further each year was enacted. There was always a minimum holding period a shareholder had to meet to qualify for the exclusion. For decades, the required holding period was

five years to have a tax-free sale. But now, the required holding period to get tax-free treatment has been slashed from five years to three, with a phased-in exclusion amount if the holding period is between three and five years.

The \$10 million per shareholder cap was also increased to \$15 million, again with an inflation adjustment so the \$15 million cap will keep going up annually. It is worth explaining that the \$10 million cap—now increased to \$15 million, could be even larger for shareholders who paid a lot for their shares. The shorthand reference that most people use is that it is an up to \$10 million (now \$15 million) exclusion. But, actually, the exclusion is the *greater* of two amounts: (a) \$10 million (or \$15 million for QSBS issued after July 4, 2025); or (b) 10 times the shareholder's aggregate adjusted basis in the QSBS sold during the tax year.

This tax basis rule, which was not changed in the recent law, means that if the shareholder's investment in the QSBS is large, they may be able to exclude gain *exceeding* the \$10 million (or \$15 million) limit. Many people who hold QSBS are founders or early employees who pay little for their shares, but not all. Suppose that a V.C. firm pays \$8 million for its shares. Ten times that basis of \$8 million is \$80 million, all of which could be fair game for the QSBS exclusion.

### Shorter Holding Period

The new rule still includes the five-year holding requirement for a 100% exclusion. But if you hold qualifying shares for more than three years, you get a 50% exclusion. Hold shares for more than four years but less than five, and you get a 75% exclusion. But the rule is not retroactive. The shortened holding period requirement applies to stock *acquired* after July 4, 2025. This means

that QSBS that was *already issued* on or prior to July 4, 2025, will still need to satisfy the five-year holding period requirement.

It wasn't changed by the new law, but it's worth noting the so-called rollover rule too. If you hold QSBS, but you have only held it for say a year or two, are you out of luck if you sell? Not necessarily. A QSBS rollover (also known as a Section 1045 rollover) allows you to defer capital gains taxes when selling QSBS if you reinvest the sale proceeds in *new* QSBS within 60 days of the sale.

Think of it like an IRA rollover. Your original holding period and tax basis of the original QSBS (reduced by any unrecognized gain from the sale) carry over to the replacement stock, so you can hopefully qualify for a tax-free sale later. To qualify for a rollover, the original QSBS must have been held for more than six months, and you have to elect rollover treatment on your tax return for the year of the sale.

The recent tax law did not change the rollover rules, so that benefit and planning opportunity is still there. Of course, with the reduced holding period now, perhaps there will be fewer people rolling over their gains.

### Bigger Company Size

The increased limit on the size of businesses that are eligible to issue QSBS to \$75 million of gross asset value significantly expands the companies that qualify. It is worth noting that this test is generally *not* based on the fair market value of the company's assets. Instead, the amount of a company's aggregate gross assets is calculated as the sum of its cash and its adjusted tax basis in its properties—i.e., their historical cost net of depreciation or amortization. So, the fact that the company has a \$200 million *market* valuation does not necessarily mean it is ineligible to issue QSBS.

## Questions Remain

One set of things the new tax law did not address is resolving all of the numerous interpretive questions and seem to come up about sales of stock seeking to qualify as QSBS. To be sure, [founders want tax savings](#), but there are often questions about company values and whether any assets or holdings can be excluded. For example, what if some funds are being held for someone else, does that value count toward the \$75 million limit?

There are other questions too. Exactly which varieties of businesses do and do not come within the excluded fields of health, finance, consulting and so forth can also be surprisingly nuanced, since those terms are not defined in the Code or the tax regulations.. And there are enough other interpretive questions that arise that the seemingly simple tax-free sales can often require tax lawyers to interpret and vet particular facts. A formal tax opinion to green light the qualifying nature of a sale before the selling shareholder's tax return is filed is not a bad idea.

## Bottom Line

The new tax law made three big changes:

- It reduced the minimum holding period from five to three years, with a phased-in exclusion of 50 percent (for a three-year holding period), 75 percent (for a four-year holding period) and 100 percent (for a holding period of five or more years);
- It increased the maximum aggregate gross asset value from \$50 million to \$75 million, indexed for inflation; and

- It increased the flat cap on capital gains subject to exemption from \$10 million to \$15 million, indexed for inflation.