

**Alert | Tax**



**July 2025**

## **Qualified Small Business Stock (QSBS) Regime Expanded Under ‘One Big Beautiful Bill Act’**

On July 4, 2025, President Donald Trump signed into law H.R. 1, known as the One Big Beautiful Bill Act (the Act), which includes sweeping tax provisions. The Act introduces several significant, taxpayer-favorable enhancements to the qualified small business stock (QSBS) regime under Internal Revenue Code (IRC) Section 1202, generally effective for Qualified Small Business Stock acquired after July 4, 2025. Existing rules (including the 100% exclusion after five years and the \$10 million cap) continue to apply to Qualified Small Business Stock acquired on or before that date.

### **QSBS Regime – In General**

The QSBS regime under IRC Section 1202 allows U.S. individual taxpayers (and other non-corporate taxpayers, such as U.S. trusts and estates) to exclude from U.S. federal income tax up to 100% of eligible capital gains, subject to certain caps, realized upon the sale of stock of a U.S. C corporation that qualifies as a “Qualified Small Business.” To qualify:

- The taxpayer must generally have acquired the stock when the corporation originally issued it (i.e., not purchased on the secondary market), in exchange for money, other property (excluding stock), or as compensation for services, and
- The corporation must satisfy certain active business and asset thresholds.

## Key Changes Under the Act

### 1. Shorter Holding Periods for Partial Exclusions

- **Old Law:** For QSBS acquired on or before July 4, 2025, taxpayers must hold the stock for more than five years to be eligible for up to a 100% capital gains exclusion. No partial exclusion is available for shorter holding periods.
- **New Law:** For QSBS acquired after July 4, 2025, taxpayers may benefit from tiered exclusion and are allowed to exclude up to:
  - 50% of the QSBS capital gain after a holding period of at least three years;
  - 75% of the QSBS capital gain after a holding period of at least four years;
  - 100% of the QSBS capital gain after a holding period of at least five years.
- Gain subject to the partial 50% and 75% exclusions are subject to tax at a 28% federal income tax rate and the net investment income tax of 3.8%. As a result, QSBS capital gain subject to the 50% exclusion is subject to tax at an effective federal rate of 15.9% and QSBS capital gain subject to the 75% exclusion is subject to tax at an effective federal tax rate of 7.95%.
- **Note:** Excluded QSBS gain continues to be exempt from alternative minimum tax (AMT) calculations, both before and after the Act.

### 2. Increased Per-Issuer Gain Exclusion Cap

- **Old Law:** The capital gain exclusion is capped, for each taxpayer (the Per-Issuer Gain Exclusion Cap), at the greater of \$10 million (\$5 million for married filing separately) or 10 times the aggregate adjusted basis in QSBS sold during the year.
- **New Law:** For QSBS acquired after July 4, 2025, the Per-Issuer Gain Exclusion Cap increases to the greater of \$15 million (indexed for inflation after 2026; \$7.5 million for married filing separately) or 10 times the aggregate adjusted basis. Inflation adjustments do not retroactively increase the cap for gains realized in prior years.
- As before:
  - Prior gain exclusions reduce the taxpayer's available Per-Issuer Gain Exclusion Cap (the Act provides rules for such reductions with respect to stock acquired on or prior and after July 4, 2025);
  - The Per-Issuer Gain Exclusion Cap is divided equally between married spouses filing jointly; and
  - The 10 times the aggregate adjusted basis cap is determined without regard to any addition to basis after the date on which such stock was originally issued.

### 3. Higher Asset Threshold for Qualified Small Business Status

- **Old Law:** The issuing corporation (and any predecessor) must not have had aggregate gross assets exceeding \$50 million before and immediately after stock issuance. This amount was not indexed for inflation.
- **New Law:** For QSBS acquired after July 4, 2025, this threshold increases to aggregate gross assets exceeding \$75 million, indexed for inflation after 2026.

## Taxpayer Implications

These legislative changes may offer enhanced flexibility, greater potential tax savings, and new planning opportunities for founders of and investors in qualified small businesses that are structured as domestic C corporations.

In particular, the introduction of the ability for taxpayers to exclude up to 50% or 75% of their QSBS capital gains after a holding period of at least three or four years, respectively, instead of a holding period of at least five years prior to the Act, would enable QSBS corporate issuers to plan for an earlier exit that would still provide some tax benefits to their eligible QSBS investors. The Act has not changed IRC Section 1045, and QSBS investors may still reinvest the taxable portion of their QSBS gain into a new QSBS within 60 days of disposition without recognizing such gain.

The increases to \$15 million of the per-issuer exclusion cap and to \$75 million of the asset threshold for Qualified Small Business status may attract more investments into qualifying businesses that are structured as domestic C corporations and may encourage certain pass-through businesses to be converted into C corporations to allow their founders and investors to access the QSBS benefits.

The Act now also permits taxpayers to deduct domestic research or experimental expenditures in the year they are paid or incurred in the taxpayer's trade or business rather than capitalize and amortize such expenditures as was the case under prior law. See [July 2025 GT Alert, 2025 Tax Act: Key Changes for Businesses and Individuals](#). This change, combined with the increase to the \$75 million asset threshold, is expected to permit more corporate issuers to remain under the aggregate gross asset cap, even if they have raised an aggregate amount of capital in excess of the aggregate gross asset cap.

As prior to the Act, to further enhance tax benefits to founders and investors of certain businesses, the QSBS tax regime may be used in combination with [the Qualified Opportunity Zone \(QOZ\) tax regime](#) under IRC 1.1400-2, which has been made permanent under the Act.

### Comparison Chart: QSBS Regime (IRC Section 1202) Before vs. After the Act

Feature	Prior Law (QSBS acquired on or before July 4, 2025)	New Law (QSBS acquired after July 4, 2025)
<b>Holding Period for Exclusion</b>	<ul style="list-style-type: none"> <li>0% gain exclusion if QSBS held <math>\leq</math> 5 years</li> <li>100% gain exclusion if QSBS held <math>&gt;</math> 5 years</li> </ul>	Tiered exclusions: <ul style="list-style-type: none"> <li>0% gain exclusion if QSBS held <math>&lt;</math> 3 years</li> <li>50% gain exclusion if QSBS held <math>\geq</math> 3 years</li> <li>75% gain exclusion if QSBS held <math>\geq</math> 4 years</li> <li>100% gain exclusion if QSBS held <math>\geq</math> 5 years</li> </ul>

Feature	Prior Law (QSBS acquired on or before July 4, 2025)	New Law (QSBS acquired after July 4, 2025)
<b>Per-Issuer Gain Exclusion Cap for Each Taxpayer</b>	Greater of: <ul style="list-style-type: none"> <li>\$10 million (\$5 million if married filing separately)</li> <li>10× aggregate adjusted basis</li> </ul>	Greater of: <ul style="list-style-type: none"> <li>\$15 million (\$7.5 million if married, filing separately), indexed annually for inflation beginning after 2026</li> <li>10× aggregate adjusted basis</li> </ul>
<b>Allocation Between Spouses on Joint Return</b>	\$10 million cap split equally (\$5 million each)	\$15 million cap split equally (\$7.5 million each), indexed annually for inflation beginning after 2026
<b>Reduction for Prior Exclusions</b>	Reduced by prior exclusions	Same rule continues (explicit coordination between old and new stock)
<b>Qualified Small Business Asset Threshold</b>	≤ \$50 million in aggregate gross assets (before and immediately after issuance)	≤ \$75 million in aggregate gross assets (before and immediately after issuance), indexed annually for inflation beginning after 2026

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