GUNDERSON DETTMER

Client Insight: One, Big, Beautiful Bill Enactment: Impacts To Qualified Small Business Stock

Insights
July 7, 2025

Overview

Congress has passed, and President Trump signed into law on July 4, 2025, H.R.1, the so-called One, Big, Beautiful Bill ("***OBBB***"). The OBBB contains several sweeping U.S. federal tax changes relevant to the venture capital and emerging company sector, including significant changes to the Internal Revenue Code provisions related to "qualified small business stock" ("***QSBS***"), which could have a significant positive impact for eligible taxpayers.

This update provides:

- An overview of the pre-OBBB QSBS treatment;
- An overview of changes to the holding period requirements for eligible QSBS gain exclusion;
- An overview of changes to the maximum gain exclusion; and
- An overview of the changes to the maximum gross asset test.

QSBS Treatment Prior to OBBB Changes

It is important to note that the changes to QSBS as a result of the enactment of the

OBBB are only effective for stock issued *after the date* of the enactment of the OBBB. Consequently, stock issued prior to the OBBB's enactment will operate under the prior QSBS rules, which are generally described here.

Under pre-OBBB law, which remains effective for stock that was issued prior to the OBBB enactment, gain on the disposition of eligible QSBS could be excluded from income if, among other requirements, such QSBS had been held for at least five (5) years. Additionally, under pre-OBBB law, generally the amount of cash and tax basis of the gross assets of the applicable corporation must have been less than $50 million at the time of the stock issuance for such stock to be eligible QSBS. Lastly, under pre-OBBB law, the maximum amount of gain eligible for exclusion for each shareholder of eligible QSBS was the greater of $10 million or 10 times the shareholder's basis in such eligible QSBS.

OBBB Changes to QSBS Holding Period

Under the OBBB, the holding period with respect to eligible QSBS issued after the enactment of the OBBB required for excluding gain from income has been modified, such that:

- 50% of gain is eligible for exclusion on the disposition of eligible QSBS that has been held for at least 3 years;
- 75% of gain is eligible for exclusion on the disposition of eligible QSBS that has been held for at least 4 years; and
- 100% of gain remains eligible for exclusion on the disposition of eligible QSBS that has been held for at least 5 years.

As an example, assume Taxpayer purchases 1,000 shares in Company ABC for $10,000 on August 1, 2025. Further, assume Company ABC otherwise satisfies the requirements of QSBS during Taxpayer's holding period(s), and that Taxpayer is eligible for the benefits of QSBS. Further, because Taxpayer's ABC stock was issued after the enactment of the OBBB, Taxpayer's maximum exclusion is $15 million (as discussed below).

On September 1, 2028, Taxpayer sells 200 shares in Company ABC to a third party for $4 million. Taxpayer is eligible to exclude 50% of Taxpayer's gain from exclusion under QSBS, or $1,999,000 (i.e. 50% of ($4 million - $2,000 tax basis in the 200 shares)). The remaining gain of $1,999,000 that is not excluded is generally taxed at a 28 percent rate, and Taxpayer would have $13,001,000 of potential gain exclusion available for future sales of the remaining shares in Company ABC (subject to *inflation adjustment). Note that under pre-OBBB law, none of the proceeds from Taxpayer's sale of Company ABC shares would be eligible for gain exclusion under QSBS because the 5-year holding period was not met on September 1, 2028.*

OBBB Changes to Gross Assets Threshold

Under the OBBB, the amount of cash and tax basis of the gross assets of the applicable corporation must be $75 million or less at the time of the stock issuance for such stock to be eligible QSBS (a $25 million increase from the threshold under pre-OBBB law). Additionally, beginning after the 2026 calendar year, such threshold amount will be indexed to (and increased to account for) inflation.

As an example, assume Company XYZ was initially formed as an LLC taxed as a partnership July 1, 2025. On August 31, 2026, Company XYZ converts to a Delaware corporation, and at such time the assets have a fair market value of $30 million.

On December 31, 2026, Investors purchase $40M of preferred stock in Company XYZ. Assuming Company XYZ otherwise satisfies the requirements of QSBS, the preferred stock would be expected to be eligible for the benefits of QSBS, as the tax basis of the gross assets would be less than the $75 million threshold established by the OBBB. Note that under pre-OBBB law, the Investors' purchase of preferred shares would not be eligible for QSBS, as the tax basis of the gross assets would have exceeded the $50 million threshold.

OBBB Changes to Maximum Gain Exclusion

Under the OBBB, the maximum amount of gain eligible for exclusion for each shareholder of eligible QSBS is now the greater of *$15 million* (a $5 million increase from the dollar amount cap under pre-OBBB law) or 10 times the shareholder's basis in such eligible QSBS. Additionally, beginning after the 2026 calendar year, such amount will be indexed to (and increased to account for) inflation.

Summary

The changes that the OBBB makes to the QSBS regime could have a significant positive impact on taxpayers who are issued eligible QSBS after the enactment of the OBBB. Such changes are expected to have substantial effects on a variety of considerations often arising in the venture capital/emerging company space, including the initial structuring of a company, financing transactions, and the timing of disposition of underlying QSBS-eligible stock. The changes to QSBS following the enactment of the OBBB are complicated, and we recommend consulting with Gunderson Dettmer or your personal tax advisor on the implications relevant to your particular circumstances.

This communication, which we believe is of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. If you have any questions regarding these matters, please reach out to your regular Gunderson Dettmer contact.

Related People

Jace E. Clegg

PARTNER

P +1 646 490 9040

Mark M. Foster

PARTNER

P +1 650 463 5343

Lily H. Kim

PARTNER

P +1 650 463 5326

Jaime L. Narayan

PARTNER

P +1 650 463 5374

Related Services

North America

Tax

Featured Insights

CLIENT NEWS

Gunderson Dettmer Advises Antler and Peak XV in Airalo’s $220 Million Unicorn Financing

CLIENT NEWS

EDBI Invests in $11M Series A+ Financing of Augmentus

CLIENT NEWS

Propel Venture Partners Announces $100M Fund V

CLIENT NEWS

Boldstart Ventures Announces $250M Fund VII

CLIENT NEWS

Avenue Growth Partners Closes $7M Series A Financing of Temelio

CLIENT NEWS

Further Ventures Leads $3.2M Series Seed of BridgePort

INSIGHTS

Recent Fund Formations Represented by Gunderson Dettmer*

CLIENT NEWS

Savvy Wealth Raises $72M Series B Led By Industry Ventures

FIRM NEWS

LMG Life Sciences Shortlists Gunderson Dettmer and Boston Associate Joel Diamond for 2025 Life Sciences Americas Awards

CLIENT NEWS

Mexico-Based Fintech Klar Announces $190M Series C and $800M Valuation

CLIENT NEWS

Certify Raises $40M Series B Led by Transformation Capital

CLIENT NEWS

S32 Leads $11M Series Seed of The Owl AI