

5 KEY TAKEAWAYS

Essential Updates on Qualified Small Business Stock Under Section 1202

Kilpatrick partners [Jeff Reed](#) and [Jamie Null](#) recently presented “**Essential Updates on Internal Revenue Code Section 1202**” during the firm’s “**Next in Tax**” webinar series. They discussed legislative and regulatory updates impacting Section 1202; eligibility requirements for Qualified Small Business Stock (QSBS); maximizing tax exclusions and strategic planning tips; and State conformity and nonconformity to Section 1202.

Jeff and Jamie provide the following key takeaways from their presentation:

1

The OBBB Significantly Expanded QSBS Benefits. The One Big Beautiful Bill Act (“OBBB”) introduced several taxpayer-friendly changes to Section 1202, including raising the aggregate gross assets threshold from \$50 million to \$75 million for stock issued after July 4, 2025, and increasing the per-issuer gain exclusion cap from \$10 million to \$15 million (or 10x the taxpayer’s adjusted basis, if greater).

2

A New Tiered Holding Period Now Applies to Post-Enactment Stock. For QSBS issued on or after July 5, 2025, taxpayers can claim a partial exclusion before reaching the traditional five-year mark: 50% of eligible gain is excluded after three years, 75% after four years, and 100% after five years. Stock issued before July 5, 2025, still requires a holding period of more than five years for any exclusion.

3

Inflation Indexing Protects Future Value. For the first time, both the \$15 million per-issuer cap and the \$75 million gross assets threshold will be indexed to the Consumer Price Index for taxable years beginning after December 31, 2026. This prevents the thresholds from eroding in real terms, as the prior \$10 million and \$50 million limits had remained static since 1993.

4

A “Vintage” Analysis Is Now Essential for Practitioners. The July 4, 2025, enactment date creates a bright line: pre- and post-enactment stock are governed by different rules regarding holding periods, gain caps, and asset thresholds. A single taxpayer may hold both vintages, and the issuance date of each lot of stock must be carefully tracked. The date of original issuance generally controls even for tacked transactions.

5

State Tax Treatment Varies Widely and Can Materially Reduce Benefits. QSBS is a federal provision; states chart their own course. While most states conform (e.g., New York, Colorado, Georgia), several decouple entirely—California taxes the full capital gain at ordinary rates, and Pennsylvania and Mississippi also do not follow the federal exclusion. Practitioners should verify state conformity and consider residency planning, trust strategies, and timing of exits well before any liquidity event.