

A Resurgence of the Capital Gain Exclusion Under Section 1202 (Qualified Small Business Stock)

UTCLE LLCs, LPs and Partnerships
Thursday, July 13, 2023
Brandon Bloom, Holland & Knight

Holland & Knight

Copyright © 2023 Holland & Knight LLP. All Rights Reserved

1

1

Agenda

- I. Overview of Section 1202
- II. Considerations for Business Owners and Investors
- III. Use of Pass-Through Entities
- IV. Q&A and Discussion

Holland & Knight

2

2

Overview of Section 1202

3

3

Section 1202 Gain Exclusion

- Non-corporate taxpayers can exclude 100% of the gain from the sale or exchange of qualified small business stock (“QSBS”) if (1) acquired after September 27, 2010 and (2) held for more than 5 years
- Gain exclusion (on a per-issuer, per-taxpayer basis) is the greater of:
 - \$10 million lifetime exclusion (\$5 million each for married people) OR
 - 10x aggregate adjusted basis of stock sold during the tax year

4

4

QSBS Requirements at Issuance

- Corporation must be a “Qualified Small Business” (“QSB”)
 - Domestic C corporation
 - Aggregate gross assets of \$50m or less at all times before and immediately after issuance
 - Active business requirement (certain types of businesses)
- Calculation of aggregate gross assets
 - Gross assets = cash and adjusted basis of other property
 - For contributed assets, adjusted basis = fmV at contribution
 - More than 50%-owned subsidiaries treated as part of parent corp.
- Stock must have been acquired in an original issuance
 - Directly from corporation (i.e., cannot purchase from existing stockholder)
 - In exchange for money, other property (excluding other stock), or services

Active Business Requirements

- At least 80% of assets (by value) are used in the active conduct of a qualified trade or business
 - Not “qualified”: most professional services, banking/investing, farming, hospitality, and oil and gas activities
 - Subsidiary’s assets and activities are ratably attributed to Parent
 - Special rules for working capital and real estate investments
 - Includes start-up and R&D activities
- Must be an “eligible” corporation
 - Excludes DISCs, RICs, REITs, REMICs, and cooperatives
- Both must be met during “substantially all” of taxpayer’s holding period

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](http://utcle.org/elibrary)

Title search: A Resurgence of the Capital Gain Exclusion Under Section 1202 (Qualified Small Business Stock)

First appeared as part of the conference materials for the 32nd Annual LLCs, LPs and Partnerships session

"A Resurgence of the Capital Gain Exclusion Under Section 1202 (Qualified Small Business Stock)"