

**QUALIFIED SMALL BUSINESS STOCK:
THE QUEST FOR QUANTUM EXCLUSIONS
(QUERIES, QUALMS, QUALIFICATIONS & QOZ)**

Paul S. Lee, J.D., LL.M.
Chief Tax Strategist
The Northern Trust Company
New York, NY
Email: PSL6@ntrs.com

TABLE OF CONTENTS

- I. QUALIFIED SMALL BUSINESS STOCK: THE NEXT BIG BANG?
 - A. Introduction
 - B. QSBS: Why Now?
 - 1. TCJA: Paving the Way for QSBS
 - 2. The COVID-19 Pandemic
 - 3. Evolution of QSBS
 - a. Enactment in 1993
 - b. Increased Exclusion in 2009
 - c. 100% Exclusion in 2010 and Permanence in 2015
 - 4. Boom in Private Equity, Venture Capital, and SPACs
 - C. Proposed Limits to QSBS Benefits of High Income Taxpayers, Trusts, and Estates
- II. SHAREHOLDER AND CORPORATE LEVEL QSBS QUALIFICATIONS
 - A. Percentage Exclusion of Gain and QSBS Rate
 - B. Per-Issuer Limitation (\$10 Million or 10 Times Basis)
 - C. Qualified QSBS Shareholders
 - D. Eligible Gain (5-Year Holding Period)
 - 1. Generally
 - 2. Tacking and Permissible Transfers
 - 3. Disqualifying Hedging Transactions
 - E. QSBS: Original Issuance Requirement
 - 1. Generally
 - 2. Permissible Transfers
 - 3. Disqualifying Redemptions and Purchases
 - F. QSBS: Active Business Requirement
 - 1. Generally
 - 2. Defining “Substantially All”
 - 3. 80 Percent Test
 - 4. Qualified Trade or Business Defined
 - 5. Guidance from Section 199A Final Regulations
 - G. QSB Defined
 - 1. Aggregate Gross Asset Requirement
 - 2. “Domestic Corporation” and Non-U.S. Businesses
 - H. Tax Free Exchanges
 - I. Section 1045 Rollover
 - 1. Generally
 - 2. Calculating Gain Rollover
 - 3. Rollover Basis Rules
 - 4. Holding Period Rules

- 5. Rollover Election (Other Than a Partnership)
- 6. Partnership Regulations
 - a. Generally
 - b. Partnership Section 1045 Elections
 - c. Partner Section 1045 Elections
- J. C Corporation Formation or Conversion
 - 1. Generally
 - 2. Section 351
 - 3. Conversion of Pass-Through Entities
 - a. Conversion Generally
 - b. Assets-Over Conversion
 - c. Assets-Up Conversion
 - d. Interests-Up Conversion
 - 4. Acquisition Date for QSBS Purposes on Formation or Conversion
- K. Reporting Requirements and Statute of Limitations
- L. State Income Tax Treatment

III. QUERIES, QUALMS, AND QUALIFICATIONS FOR QUANTUM EXCLUSIONS

- A. How Are Transfers “By Gift,” “At Death,” and Other Transfers Defined?
 - 1. Transfers “By Gift” or “At Death”
 - 2. Transfers Related to Partnerships
 - 3. Powers of Appointment
 - 4. Summary of Movement of QSBS Shares
- B. Can You “Stack” and “Pack” the Per-Issuer Limitation?
 - 1. Generally
 - 2. “Stacking” or Multiplying the \$10 Million Per Taxpayer Limitation
 - 3. Multiple Trust Rules
 - 4. “Packing” or Maximizing the 10 Times Basis Limitation
 - 5. “Packing” the 10 Times Basis Limitation with Non-Eligible Gain
- C. Can a Preexisting Trade or Business Become a QSB?
- D. Can S Corporation Shareholders Benefit from QSBS?
- E. Can You Get the Benefit of QSBS Through Carried Interest?
- F. How Should Installment Sales Be Treated for QSBS and Rollover Purposes?
- G. When Does It Make Sense to Die with QSBS or Contribute to Charity?
 - 1. The “Step-Up” in Basis
 - 2. Contributions to Charitable Entities
- H. Can QSBS and QOZ Investments Be Combined?
- I. What Are the QSBS Planning Opportunities with a SPAC IPO Merger?

IV. CONCLUSION

APPENDIX: MOVEMENT OF QSBS SHARES CHART

Disclosure:

These materials do not constitute and should not be treated as, legal, tax or other advice regarding the use of any particular tax, estate planning or other technique, device or suggestion, or any of the tax or other consequences associated with them. Although reasonable efforts have been made to ensure the accuracy of these materials and the presentation, neither Paul S. Lee nor The Northern Trust Corporation assumes any responsibility for any individual’s reliance on the written or oral information presented during the presentation. Each attendee should verify independently all statements made in the materials and during the presentation before applying them to a particular

fact pattern, and should determine independently the tax and other consequences of using any particular device, technique or suggestion before recommending it to a client or implementing it for a client.

Last Updated: October 6, 2023

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 \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: QSBS: Quest for Quantum Exclusions (Queries, Qualms, Qualifications & QOZ)

Also available as part of the eCourse

[2023 Taxation eConference: Day 1 - Focus on Business Planning](#)

First appeared as part of the conference materials for the

71st Annual Taxation Conference: Day 1 - Focus on Business Planning session

"QSBS: Quest for Quantum Exclusions (Queries, Qualms, Qualifications & QOZ)"