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March 2026

New York Senate Proposes to Tax Gain on Sale of Qualified Small Business Stock

By: Michael B. Kaufman

The New York State Senate has proposed a bill that would tax gain from the sale of Qualified Small Business Stock (“QSBS”) that is currently exempt from income tax federally and in New York State. Under Section 1202 of the Internal Revenue Code (the “Code”) taxpayers may generally exclude up to 100% of the gain from the sale of QSBS within certain limitations, provided that the stock is held for a certain period of time and the corporation that the QSBS relates to satisfies certain requirements.

Prior to the passage of the One Big Beautiful Bill (“OB BB”) in 2025, taxpayers who held QSBS for at least 5 years were permitted to exclude the greater of \$10 million of gain or 10 times (10x) their cost basis in the QSBS from income tax. The OB BB extended the exclusion to the greater of \$15 million or 10x the cost basis of the QSBS and allows for a partial exclusion for QSBS held for at least three years.

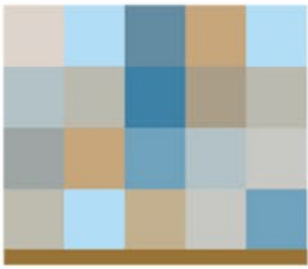
Historically, New York State has followed the treatment of QSBS under the Code and New York State taxpayers were permitted to exclude gains from the sale of QSBS in the same manner as under federal income tax law.

The Senate proposal would affect New York State resident taxpayers who sell QSBS.

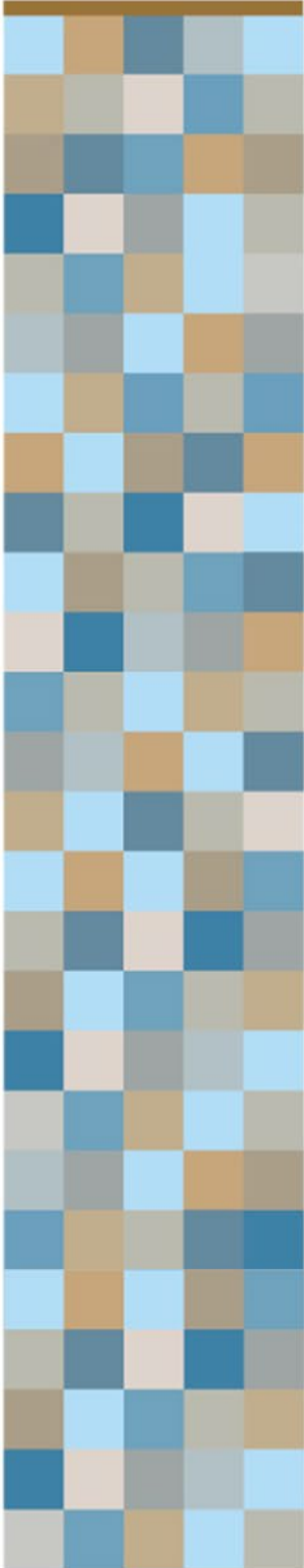
As currently drafted the QSBS provision in the New York State Senate bill would be retroactive to sales or liquidation events for QSBS happening from January 1, 2025 and on, although it is likely that applying the bill retroactively would be challenged by taxpayers. Even if QSBS was purchased prior to January 1, 2025, if liquidated after January 1, 2025, you would owe income tax in New York.

It is uncertain whether the New York State Assembly or Governor Hochul will adopt the bill at this point, but if it is adopted, New York State would join other states like California that do not conform with the federal income tax treatment of the sale of QSBS.

Moritt Hock & Hamroff continues to monitor the situation and will continue to issue Client Alerts on the New York State treatment of QSBS as appropriate. If you have any questions



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regarding the matter raised in this Alert, please feel free to contact Michael Kaufman at mkaufman@moritthock.com

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