

Frost Brown Todd Tax Planning Services

Qualified Small Business Stock (QSBS)

[Tax Law Defined® Blog](#)



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FBT's tax planning practice

Frost Brown Todd LLP (FBT) is a full-service firm with more than 600 lawyers in nine states, including Pennsylvania, Ohio, Texas, California, Colorado, Tennessee, Indiana, West Virginia and Kentucky, as well as Washington, D.C.

Scott Dolson and other members of the Tax Planning Team have developed a national practice solving clients' QSBS planning issues. FBT's tax attorneys also focus on issues unique to start-ups, closely-held businesses, equity compensation arrangements, and M&A transactions. The firm's tax attorneys often work closely with our wealth planning and M&A attorneys.

Section 1202 – qualified small business stock (QSBS)

Code Section 1202 provides each taxpayer (stockholder) with an unmatched opportunity to exclude at least \$10 million of gain (\$15 million for QSBS issued after July 4, 2025, or perhaps substantially more under a 10X contribution gain exclusion cap) from taxes when QSBS is sold if all of Section 1202's eligibility requirements have been met. The One Big Beautiful Bill Act (OBBBA) both confirms that our government supports investment in start-ups and qualified small businesses and enhanced the already significant benefits associated with taking the risks associated with making those investments. Our QSBS work spans the entire spectrum of planning issues, from cradle (e.g., the choice of entity decision) through grave (the M&A process and beyond). Additional Code Section 1202 and 1045 articles can be found on [FBT's website](#).

Section 1045 – tax-free reinvestment in replacement QSBS

Section 1045 allows taxpayers selling their original QSBS to reinvest sales proceeds on a pre-tax basis into replacement QSBS. Sales proceeds can be reinvested into third-party replacement QSBS (e.g., typical offerings of preferred stock) or into a newco organized by the selling stockholder to fund the creation or purchase of a

qualified business. Section 1045 is typically used by stockholders who haven't yet met Section 1202's five-year holding period requirement, but can also be used to reinvest QSBS proceeds that have exceeded Section 1202's gain exclusion cap. We assist clients with the planning and implementation of their Section 1045 rollovers.

More about the Tax Planning Team's QSBS Practice

FBT's QSBS work is focused on maximizing each client's gain exclusion allowable under Section 1202. If the project involves reinvestment of QSBS sales proceeds, we assist with the planning and implementation of a Section 1045 rollover of sales proceeds. Our work often involves confirming, substantiating and memorializing a client's eligibility to claim Section 1202's gain exclusion, or election to reinvest sales proceeds under Section 1045. An overriding goal of the team is to ensure that clients are always in the best position possible to respond successfully to an IRS audit. We work closely with founders, management and investors who are making an initial choice of entity decision, in connection with the issuance of QSBS, vetting their eligibility to claim Section 1202's gain exclusion (before or after a sale of QSBS) and assisting companies and shareholders in navigating through their M&A sales process. Here are several additional specific categories of QSBS-related projects regularly handled by our Tax Planning Team:

- Assisting clients making choice of entity decision (e.g., should I operate my business through a C corporation looking down the road to claiming Section 1202's gain exclusion?).
- Assisting client who are converting LLCs/LPs taxed as partnerships into C corporations.
- Dealing with the problem of mixing S corporations and QSBS, including restructuring an S corporation's assets using a tax-free Type F reorganization, prior to making the S corporation a stockholder of a new C corporation that issues QSBS.
- Issuing written tax opinions addressing various QSBS-related issues, including eligibility to claim Section 1202's gain exclusion and reinvesting QSBS sales proceeds under Section 1045.
- Advising founders, management teams and investors with respect to their QSBS eligibility and documentation requirements.
- Handling the restructuring of businesses with QSBS in mind.
- Assisting clients with respect to the intersection between Section 1202 and equity compensation planning, including issuing various types of equity and equity rights (e.g., restricted stock, convertible debt and SAFEs).
- Advising founders and management teams in connection with M&A transactions, including the nuances of equity rollovers involving QSBS.
- Assisting companies who are working through their QSBS-related communications with investors, including providing certificates or information copies of opinions
- Advising stockholders with respect to how to maximize their Section 1202 gain exclusion amounts.
- Dealing with difficult Section 1202 eligibility issues and associated planning.

- Assisting with all aspects of reinvesting QSBS sales proceeds into replacement QSBS under Section 1045.
- Advising clients with respect to documenting their QSBS-related return positions.
- Advising with respect to how carried interests mesh with QSBS
- Assisting investment funds and investors with planning for holding QSBS through pass-thru entities (LLCs/LPs).

Trust Planning

FBT's estate and trust attorneys have developed significant expertise and experience working with clients in structuring the gifting of QSBS to individuals and non-grantor trusts. In particular, FBT trust attorneys work with the Tax Planning Team and estate planning lawyers in structuring QSBS ownership arrangements using Delaware non-grantor trusts to achieve a client's QSBS, state tax, wealth transfer and asset protection goals.

Legislative Outlook

The Biden administration attempted to cut back on Section 1202's benefits as part of the 2021 "Build Back Better" legislation. That legislation ultimately failed. The Inflation Reduction Act passed during August, 2022, did not amend Sections 1202 or 1045. Although it is dangerous to predict what Congress will do next, it seems reasonable to assume for planning purposes that the benefits of QSBS will remain available for the foreseeable future.

FBT's Tax Planning Team

In addition to the Tax Planning Team's QSBS practice, FBT's tax attorneys assist clients and other FBT business attorneys with entity structuring, financing and M&A transactions. The team also serves as a "destination shop" for clients seeking specialized partnership, M&A, equity compensation planning, start-up and venture capital financing and state and local (SALT) tax planning assistance. The Tax Planning Team includes the following attorneys:



Scott Dolson – Tax Planning Team leader and member of the firm's private equity practice group. Practice areas include tax planning, M&A, and outside general counsel work.



Marty Mooney – Practice areas include tax planning with deep experience working with pass-thru entities.



Melanie McCoy – Team leader of our Estates, Trusts and Wills team. Practice areas include estate planning and trust (including QSBS-related) work.



Megan Dollenmeyer – Practice areas tax planning, fund formation, venture transactions, and tax incentives.



[Brian Masterson](#) – Co-Chair of Tax Planning Team. Practice areas include federal, state and local tax planning and mergers and acquisitions.



[Kaitlin Hizny](#) – Practice areas include tax planning and employee benefit planning.



[Megan Vandermeer](#) – Practice areas include tax and benefits planning for business formation and reorganizations.



[Ryan Whitaker](#) – Practice areas include tax, real estate, corporate governance, and business succession planning.



[Raghav Agnihotri](#) – Practice areas include federal, state and local (SALT), and international tax planning.

About Frost Brown Todd: Frost Brown Todd is a national law firm of over 600 attorneys spanning a nine-state footprint. Our [tax practice](#) works closely with businesses, founders and investors (spanning individuals, family offices and PE firms) to assist them in their efforts to qualify for Section 1202's generous tax benefits. Check out our [blog](#) on all things tax.