

THE NATIONAL GATHERING ON QUALIFIED SMALL BUSINESS STOCK



QSBSSummit 2026

SEPTEMBER 23–25, 2026 · JACKSON, WYOMING



QSBS ROLLOVER



QSBSummit **2027**



September 12-15, 2027

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2026

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QSBS ROLLOVER



Session 1

A Quick Sprint “Thru” the QSBS Quagmire

Paul Lee • Founder and CEO, Consiglio Advisors
Chief Tax Strategist, Indivisible Partners

Consiglio
ADVISORS

Associated with  Indivisible™ Partners

QSBS: Brilliant Concept, Executed Terribly

QUINTESENTIALLY COMPELLING

- ✓ Up to 100% Capital Gain Exclusion
- ✓ Rollover Taxable Gains
- ✓ Multiply (Stack & Pack) Exclusion

QUASHING QUALIFICATIONS

- ❖ C Corporation
- ❖ 3-, 4-, and 5-Year Holding Periods
- ❖ Applies to Stock Sale (Not Assets)

QUARRELSOME QUAGMIRE

- Quixotic Definitions
- Quirky Qualifications
- Quibbling IRS Guidance

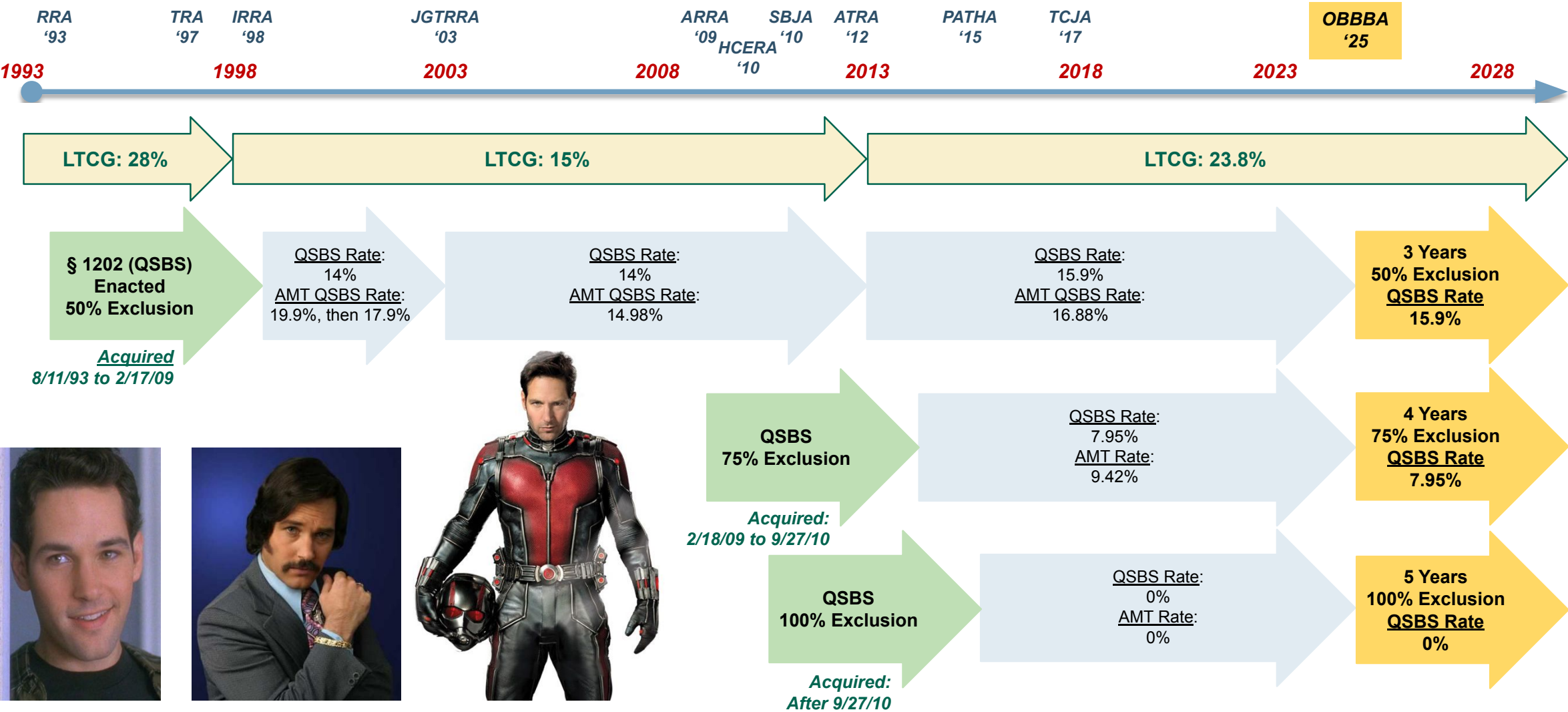
OBuBBA!

SUMMARY OF OBBBA CHANGES TO SECTION 1202			
BEFORE OBBBA		AFTER OBBBA	
<u>“Eligible Gain” and “Applicable Percentage” (Exclusion Percentage)</u>			
5 Years	3 Years	4 Years	5 Years
100%	50%	75%	100%
<u>“Applicable Dollar Limit” (Per-Taxpayer Limitation)</u>			
\$10 million per taxpayer	\$15 million per taxpayer (plus inflation)		
<u>Aggregate Gross Asset Requirement</u>			
\$50 million	\$75 million (plus inflation)		

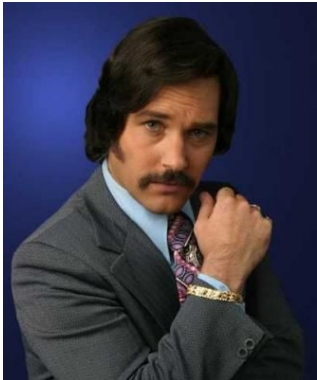
Exclusion Percentage Depends on the “Acquisition Date”

Acquisition Date	Exclusion Percentage	Maximum QSBS Rate	Maximum QSBS AMT Rate	Maximum Rate (No QSBS)
Aug. 11, 1993 to Feb. 17, 2009	50%	15.90%	16.88%	23.80%
Feb. 18, 2009 to Sep. 27, 2010	75%	7.95%	9.42%	23.80%
Sep. 28, 2010 to July 4, 2025	100%	0.00%	0.00%	23.80%
After July 4, 2025	(50%) 3-Year	15.90%	15.90%	
	(75%) 4-Year	7.95%	7.95%	23.80%
	(100%) 5-Year	0.00%	0.00%	

QSBS: 25 Years to Graduate... 7 Years to Mature...



"Clueless"



60% = Every Time



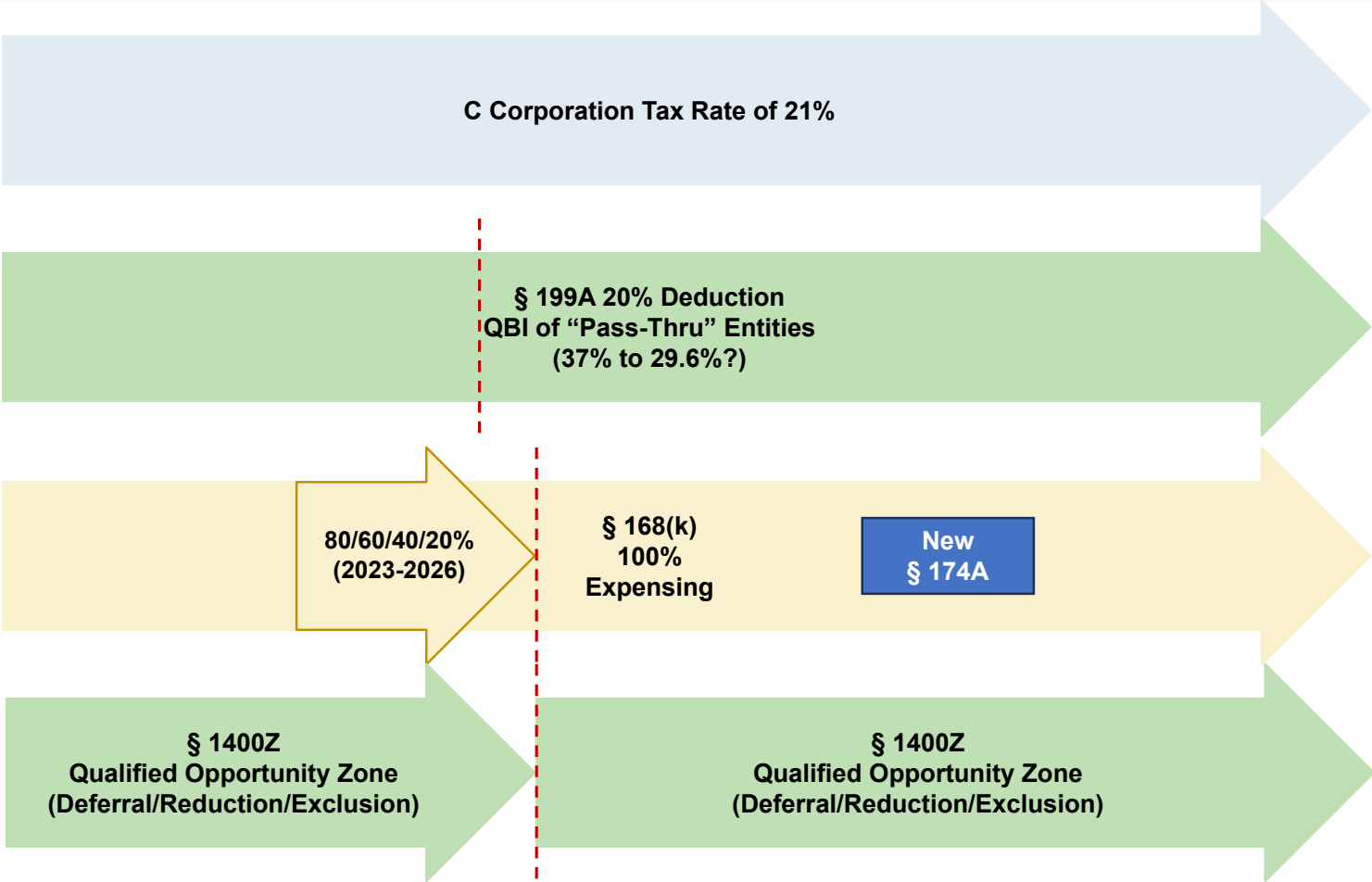
Superhero

QSBS: Look Ma, I'm a Big Boy Now...!!

TCJA
'17

OBBBA
'25

2018 2023 2028 2033 2038

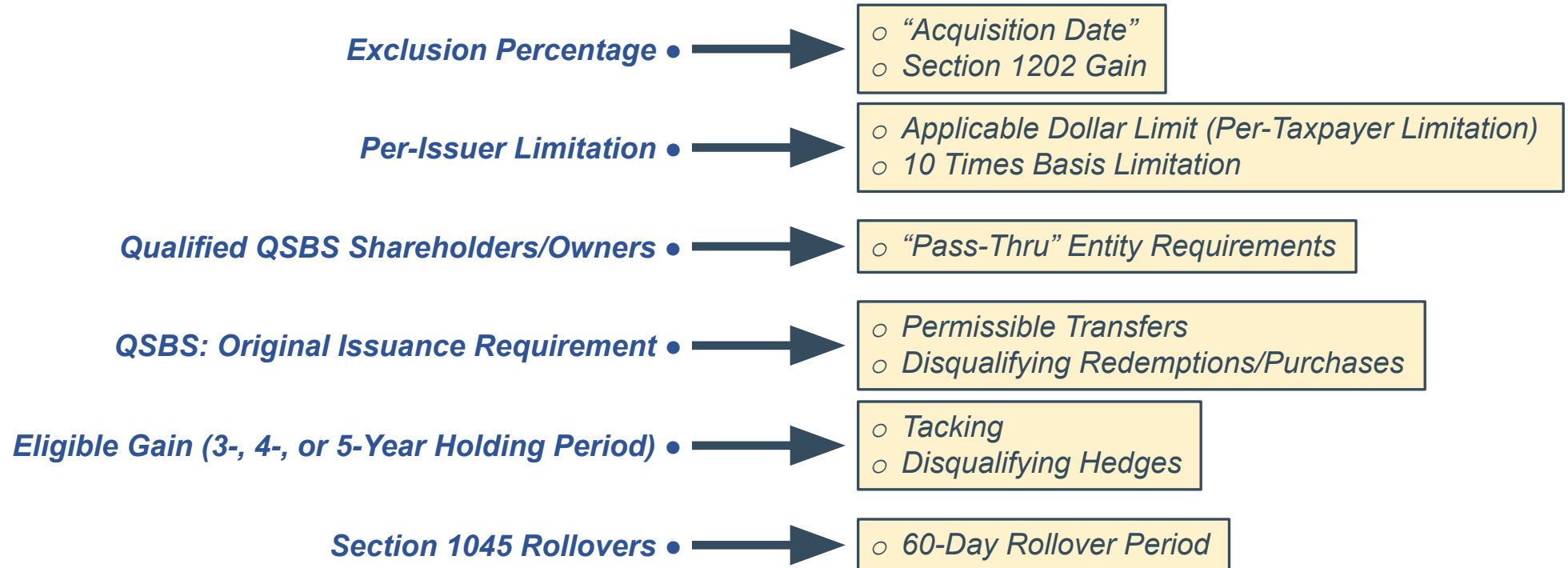


Aggregate Gross Asset Requirement
\$75,000,000
+
Inflation

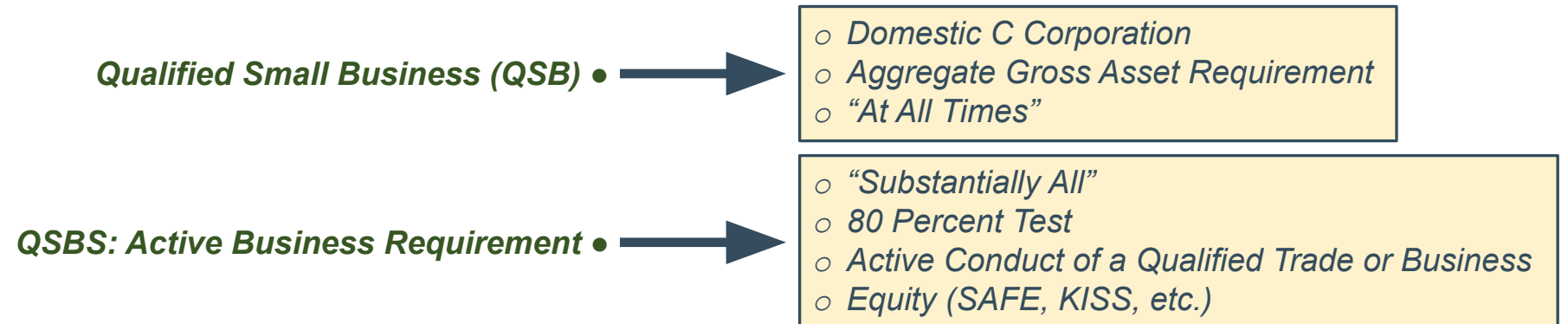


Brilliant Concept... Executed Terribly

Shareholder Level Qualifications



Corporate Level Qualifications



Brilliant Concept... Executed Terribly: “Acquisition Date”

New § 1202(a)(6)(B) defines “**acquisition date**” as:

In the case of any stock which would (but for this paragraph) be treated as having been acquired *before, on, or after* the applicable date, whichever is applicable, the acquisition date for purposes of this section shall be the first day on which such stock was held by the taxpayer *determined after the application of section 1223*.

Why Section 1223???

- § 351 tax-free exchange
- Carryover holding period?
- Same “flush” language in § 1202(a)(3) and § 1202(a)(4), added later in 2012

“In the case where the taxpayer transfers property (other than money or stock) to a corporation in exchange for stock in such corporation, such stock shall be treated as having been acquired by the taxpayer on the date of such exchange.”

§ 1202(i)(1)(A).

(§ 1223)
2019 holding period Contributing
Shareholders

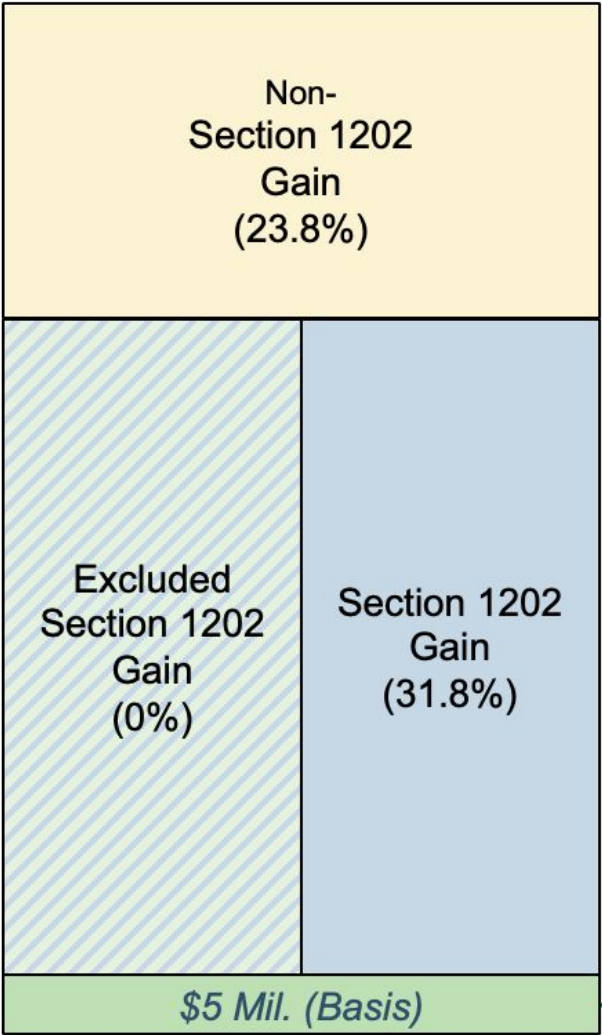
C Corporation

(Property Purchased in 2019)

Legislative History

- Flush language only applies for purposes of the section 1045 rollover.
- “The provision is not intended to change the acquisition date determined under Section 1202(i)(1)(A) for certain stock exchanged for property.”

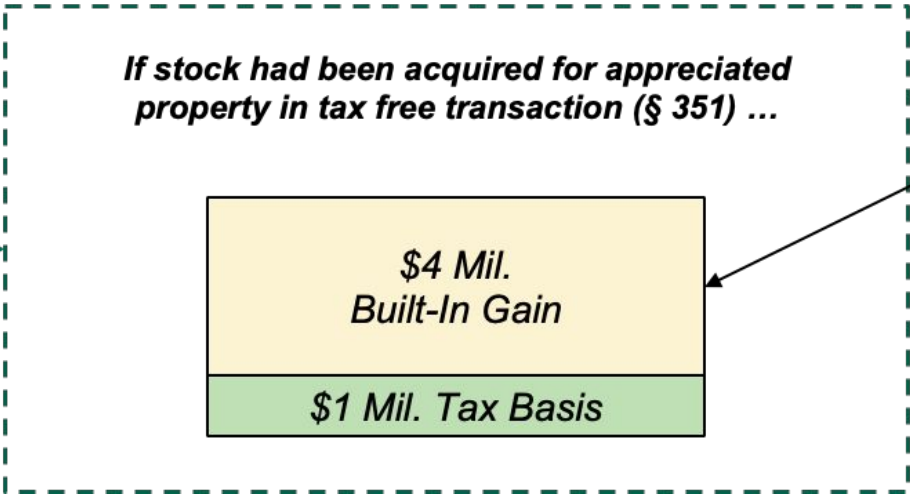
Calculating the Tax on the Sale of QSBS: Reminder



50%
Exclusion
Percentage

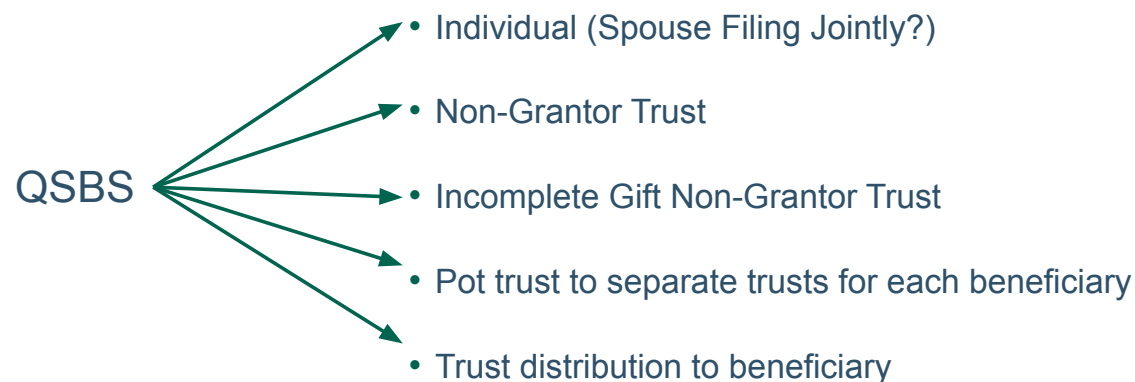
Category Of Gain	Maximum Tax Rate	Amount Of Gain	Federal Tax Liability
Excluded Section 1202 Gain	0.00%	\$25 Mil.	\$0.00
Section 1202 Gain	31.80%	\$25 Mil.	\$7.95 Mil.
Non-Section 1202 Gain	23.80%	\$45 Mil.	\$10.71 Mil.
TOTALS	N/A	\$95 Mil.	\$18.66 Mil.

Per-Issuer
Limitation
\$50 Mil.
(10 x Basis)

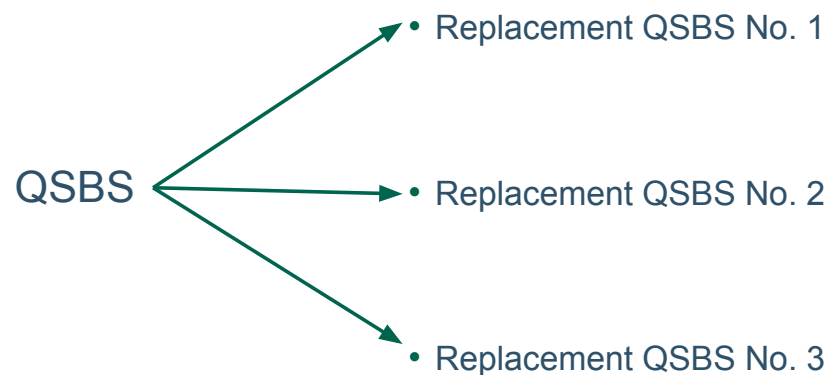


“Stacking” the Per-Taxpayer Limitation (Applicable Dollar Amount)

Stacking (Multiplying) the Per-Taxpayer Limitation with “by gift” transfers



Creating New Per-Taxpayer Limitations with section 1045 rollovers



Caveats

§ 643(f)

“Multiple Trust” Rule

Economic Substance

Step Transaction

Assignment of Income

Per-Issuer Limitation is
based upon the stock
“issued by such corporation.”

“Packing” the 10 Times Basis Limitation

Packing (Maximizing) the 10 Times Basis Limitation with Contributions of Property



Packing the 10 Times Basis Limitation with Non-Eligible Gain

10 Times Basis Limitation Defined

“10 times the aggregate adjusted bases of qualified small business stock issued by such corporation and disposed of by the taxpayer during the taxable year.”

NOT defined in terms of QSBS
“Eligible Gain”
(3-, 4-, or 5-year holding period)
for the taxable year.

Exercise option to purchase
\$4 million for \$1 million QSBS
(\$3 million of ordinary income)

+

(Non-Eligible Gain)
Sell option-acquired
QSBS stock for
nominal gain

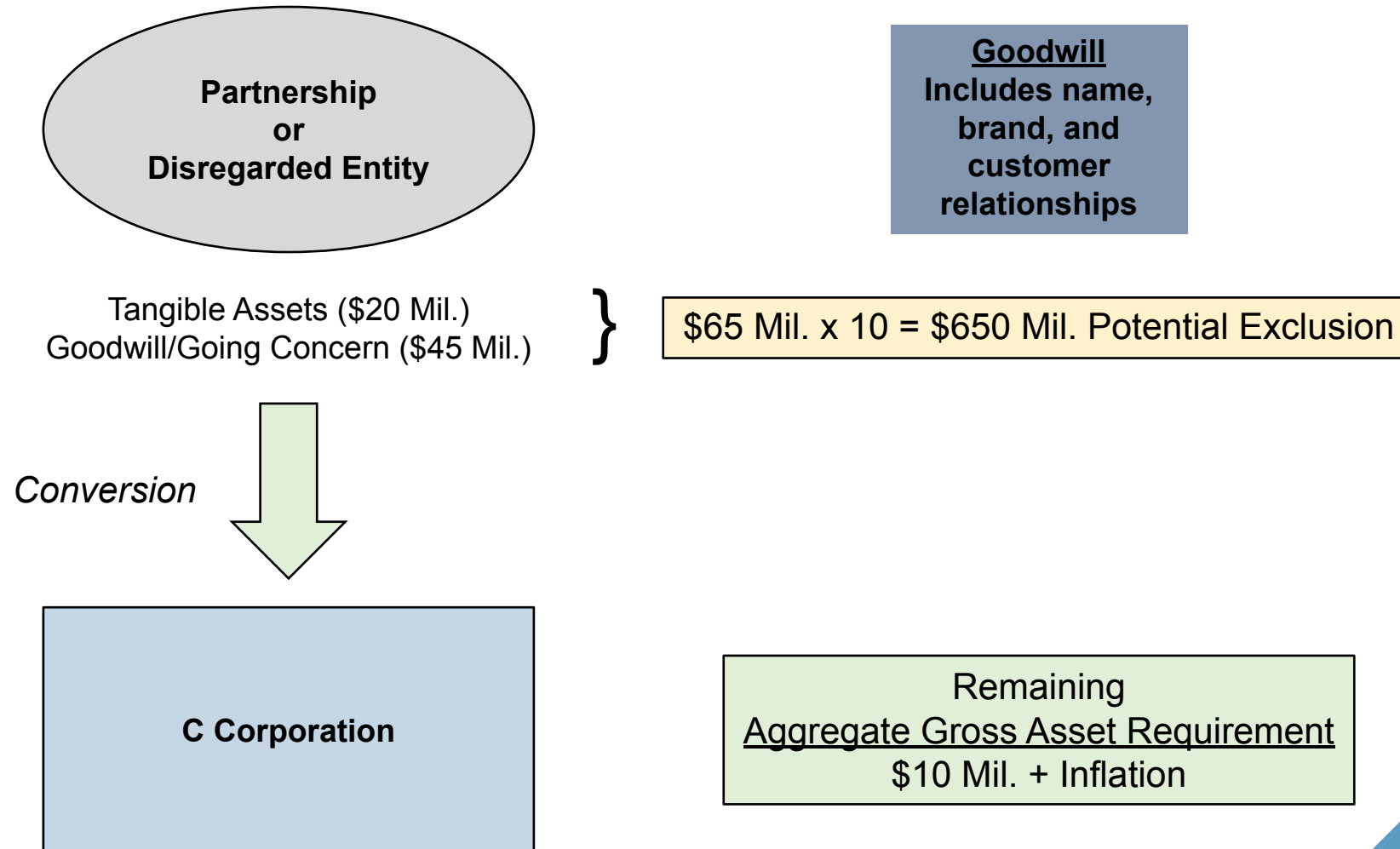
+

(Eligible Gain)
Sell \$0 basis QSBS
held for more than 5 years for
\$40 million of gain

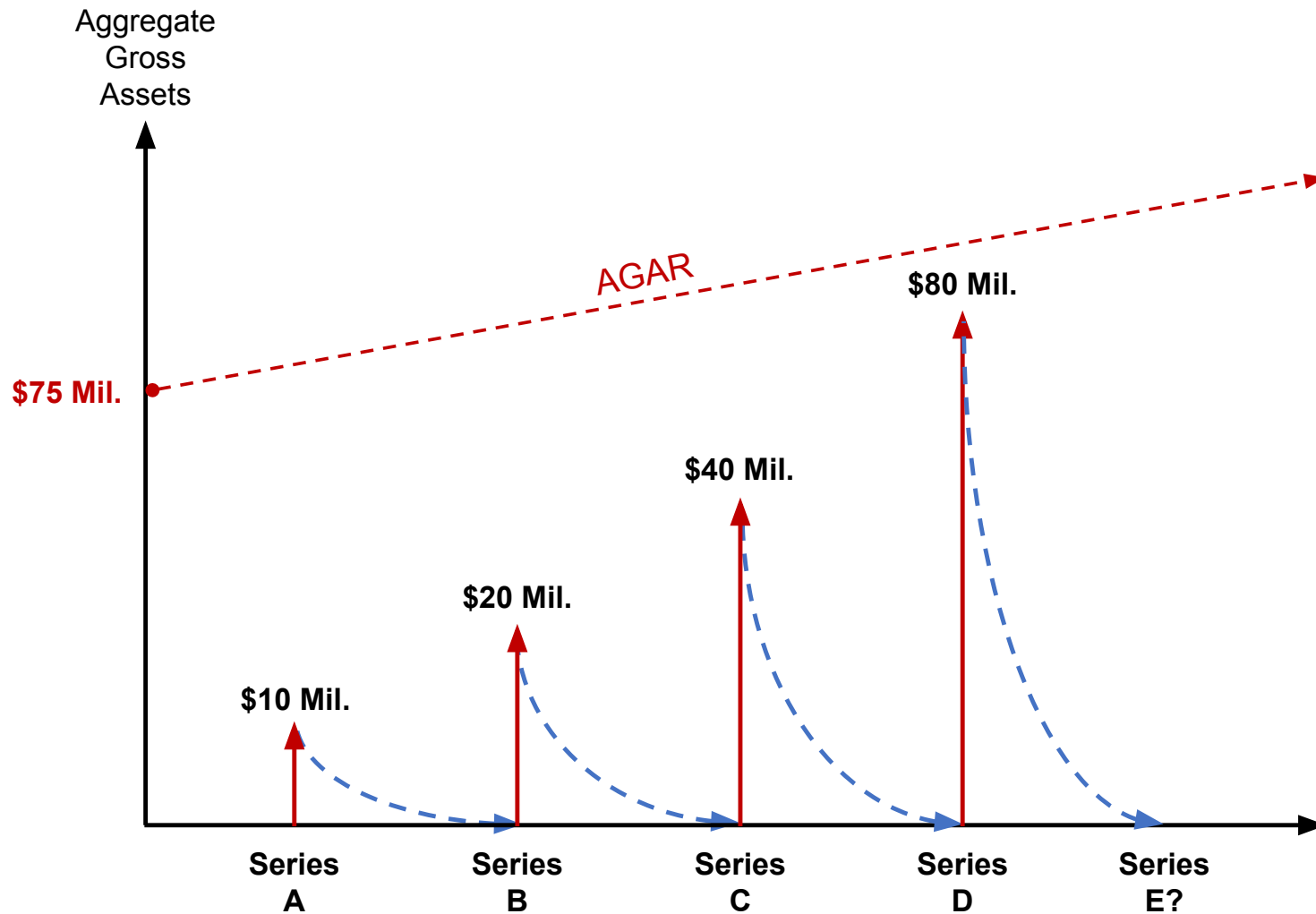
=

\$40 Million
Per-Issuer Limitation

Packing: Conversion with FMV of Goodwill and Going Concern



Packing: Serial Rounds of Funding



Cumulative Tax Basis
\$150 Mil.

Potential Exclusion
\$1.5 Bil.

Disclosures

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QSBS ROLLOVER



Session 2

Saving QSBS: Creative Ideas for Complex Transactions

Paul Myers • Partner, Venable LLP

Craig Solar • Partner, Venable LLP

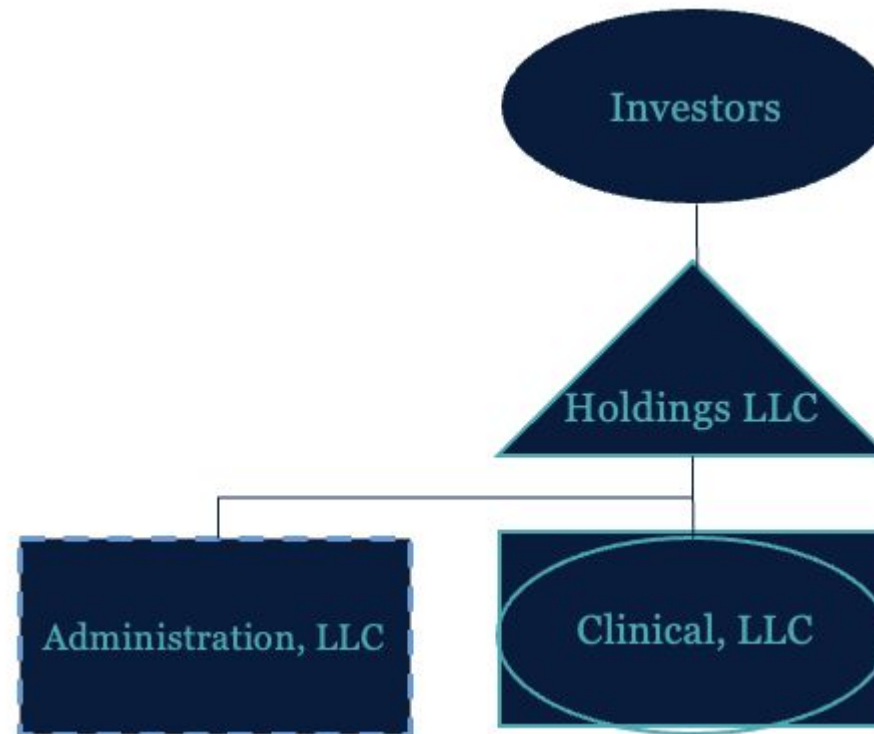
Brady Weller • Co-founder, QSBS Rollover

Common QSBS Issues

- Qualified Trade or Business (1202(e)(3))
- Aggregate Gross Assets Cap (1202(d))
- Qualified Small Business Stock (1202(c))
 - C corporation requirement (1202(c)(1))
 - Domestic corporation requirement (—really, “qualified small business” (1202(d)(1)))
 - SAFEs
- Exemption Amount (1202(b)(1)(b))
 - Aggregate Adjusted Basis of Stock (1202(i)(1)(b))
 - Carried Interest (1.1045-1(d)(1)(ii))
 - Trust Stacking
- Active Business Requirement—Working Capital Ceiling (1202(e)(6))

Qualified Trade or Business (1202(e)(3))

- Lease vs Services
 - Section 7701(e)
 - Tidewater Inc. v. United States, 565 F3d 299 (2009)
 - AOD 2010-001 (May 14, 2010)
- Medical/Clinical Practice
 - MSO Structure
- Insurtech
 - PLR 202114002



Aggregate Gross Assets Cap (1202(d))

- Sophisticated Valuation Experts
 - EBITDA Multiple vs DCF
 - Discounting Extrinsic Evidence
 - Asset IP Selectivity

Qualified Small Business Stock (1202(c)(1)) C Corp Requirements

- Entity formed as S Corporation
 - F Reorg and CTB of LLC or conversion
 - Blow S Election (Married Couple-Community Property State)
 - Conversion, Recap and 83(b) election
 - Other ideas?

Qualified Small Business Stock (1202(d)(1)) Domestic Corp Requirement

- Entity formed as Foreign Corporation
 - Problem with liquidation-reincorporation (1.368-2(m)(1))
 - Form Domestic Co in exchange for cash, followed by all cash D? Or 304?
 - Buy ForeignCo assets in exchange for Installment Note?
 - Note should be issued by affiliate to avoid zero basis in shares
 - Gain should be treated as NCTI

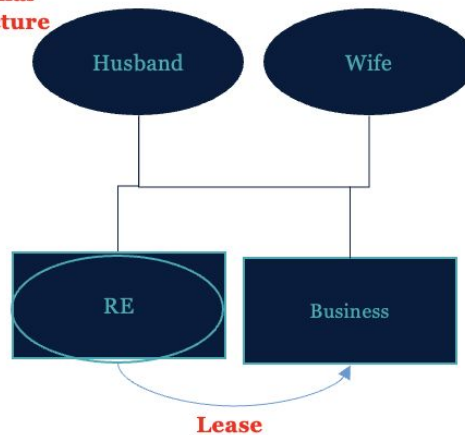
Qualified Small Business Stock (1202(c)) SAFEs

- Characterization
 - Rights to dividends
 - Rights to Vote
 - Likelihood/Fixed right of conversion

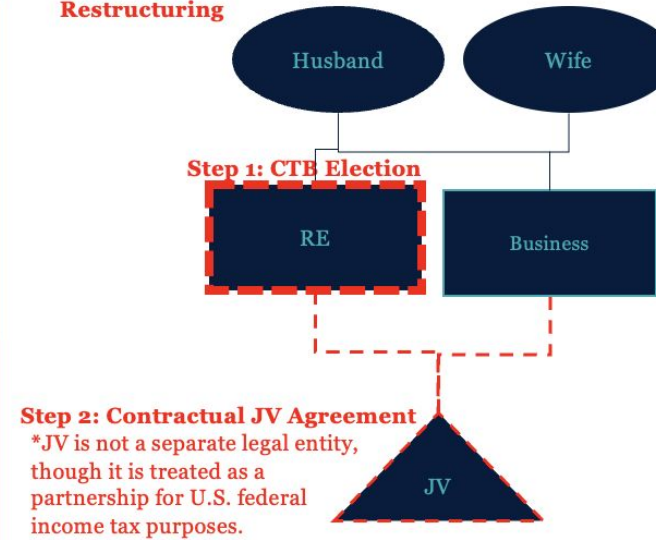
Exemption Amount (1202(b)(1)(b) Aggregate Adjusted Basis of Stock (1202(i)(1)(b)

- “...the basis of such stock in the hands of the taxpayer shall in no event be less than the fair market value of the property exchanged”
 - Seed Capital Pre-Money Valuation
- Combination of Separately Held Real Estate used in Business
 - Maintenance of EIN through contractual partnership

Original Structure



Restructuring



Exemption Amount (1202(b)(1)(b)) Carried Interest (1.1045-1(d)(1)(ii))

- 1.1045-1(d)(1) In general. For purposes of this section, the amount of gain that an eligible partner does not recognize under paragraphs (b)(1) and (c)(1) of this section cannot exceed the nonrecognition limitation. Except as otherwise provided in paragraph (d)(2) of this section, the nonrecognition limitation is equal to the product of—(i) The partnership's realized gain from the sale of the QSB stock, determined without regard to any basis adjustment under section 734(b) or section 743(b) (other than basis adjustments described in paragraph (b)(3)(ii) of this section); and (ii) The eligible partner's smallest percentage interest in partnership capital”
- Does this limitation apply for 1202 purposes?

Trust Stacking

Stacking uses separate noncorporate taxpayers to multiply the per-issuer § 1202 exclusion, subject to qualification and anti-abuse rules.

Core premise

- § 1202 limit is applied by taxpayer and issuer
- Separate taxpayer may claim a separate exclusion
- Grantor trusts generally do not create a new taxpayer-level exclusion
- Transfers should occur before any binding sale obligation

Potential stacking vehicles

- CRUTs
- Incomplete-gift nongrantor trusts: ING, DING, NING, WING
- Completed-gift nongrantor trusts (each spouse can create one or more nongrantor trusts)

Planning guardrails

- Avoid substantially identical trusts where § 643(f) risk is meaningful
- Vary dispositive terms, beneficiaries, and administration
- Coordinate state income-tax conformity and sourcing analysis

Practical framing: stacking is not just about creating more trusts. Each trust must have a defensible tax status, a non-tax purpose, and administration consistent with the claimed separate taxpayer treatment.

QSBS Stacking with a Charitable Remainder Unitrust (CRUT)

 Taxpayer / Founder  Tax-Exempt Trust (CRUT)  Charitable Entity  Buyer / Market

- IRC § 1202 provides up to \$10M–\$15M in tax-free gain per taxpayer per issuer
- A CRUT is a separate taxpayer — it gets its own QSBS exclusion
- Combined exclusions can shelter \$20M–\$30M+ of QSBS gain from tax

The Opportunity: Why Stack with a CRUT?

Section 1202 is taxpayer-specific: generally, the greater of \$10M (or \$15M for qualifying post-7/4/2025 stock) or 10× basis, per issuer. If the founder has exhausted the individual issuer-level cap, a CRUT may supply a separate taxpayer-level exclusion if the position is respected.

WITHOUT CRUT Stacking

Founder sells \$10M of QSBS:

Individual § 1202 Exclusion Remaining:
\$0 (cap already used)

Taxable Gain:
\$10M

Estimated Federal + NYS State + NYC Tax:
~\$3.86M+ (at ~38.576% combined rate)

Charitable Deduction: None

~\$3.86M+ in Tax

VS

WITH CRUT Stacking

CRUT sell \$10M of QSBS:

CRUT § 1202 Exclusion:
\$10M

Taxable Gain:
\$0 (both exclusions should cover full amount)

Estimated Tax Savings:
~\$3.86M

Charitable Deduction:
~10% of contributed FMV

\$0 Tax

QSBS Stacking with CRUT - Structural Flow

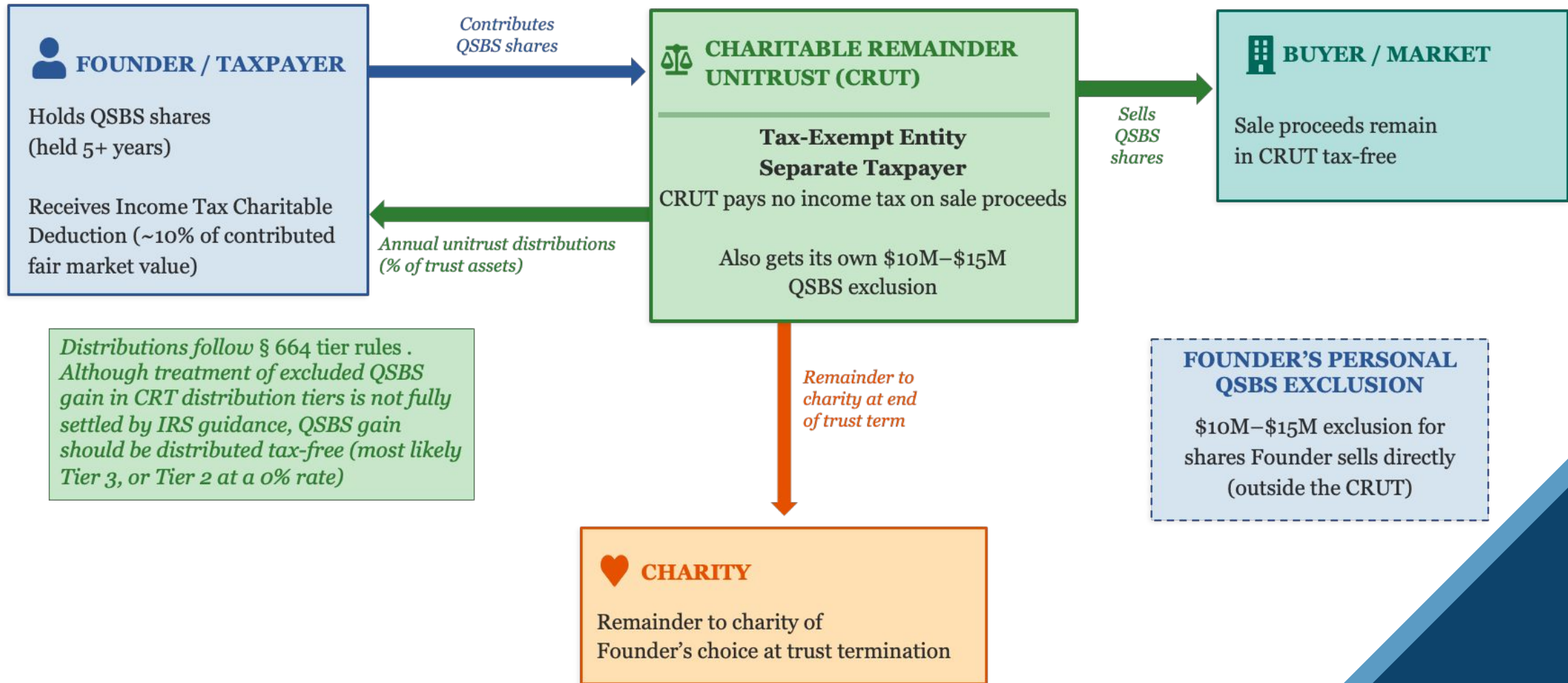


Illustration of 5-year FLIP NIMCRUT

Transaction timeline and core assumptions

NYC resident has no remaining personal § 1202 exclusion and funds a FLIP NIMCRUT



Economic Result: CRUT stacking materially improves client-side outcome

CLIENT BENEFIT

+\$3.14M

more projected client assets with CRUT vs. outright taxable sale

■ **\$11.06M** Client assets with CRUT

■ **\$7.92M** Client assets without CRUT

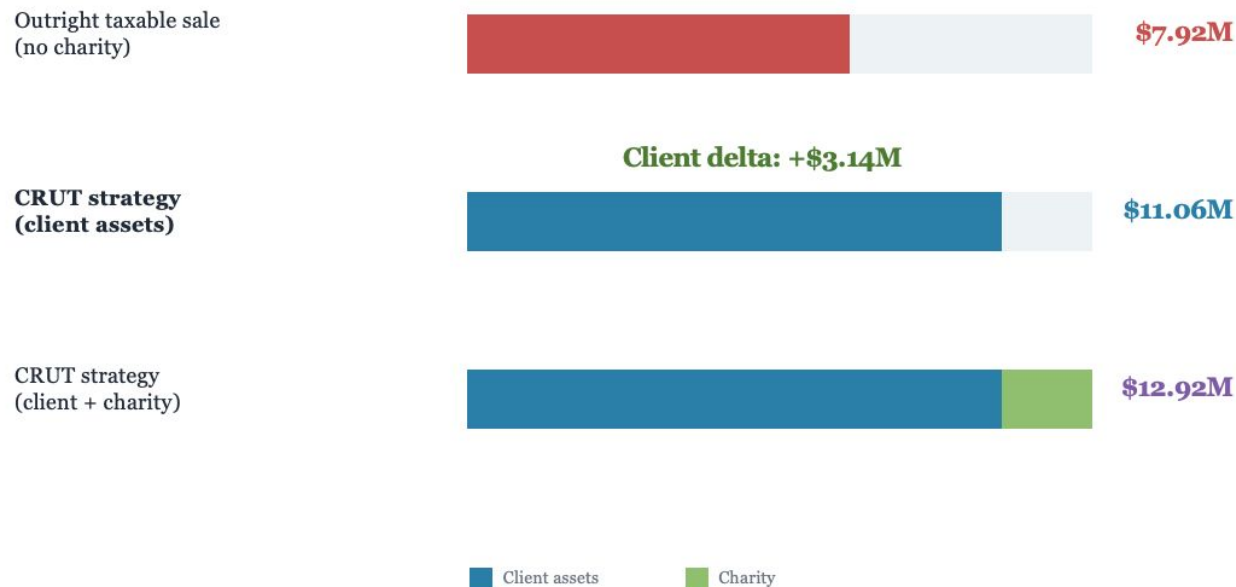
■ **\$1.87M** Charitable remainder

■ **\$12.92M** Combined CRUT footprint

Individual issuer-level §1202 cap is exhausted; CRUT is modeled as a separate taxpayer with its own available §1202 exclusion.

Projected value by end of CRUT term

Client assets shown at 12/31/2031; charity shown at CRUT termination.



Model assumptions:

\$10.0M sale price; \$6.6M gift value (34% discount); 38.897% unitrust; 3% income / 5% appreciation; 38.576% LTCG tax rate.

§1202 cap

Tier 3 treatment

Key Considerations and Caveats

Timing (Assignment of Income)

QSBS must be contributed to trusts BEFORE any binding obligation to sell. Otherwise the founder may be taxed on the sale gain.

Multiple Trust Rule (§ 643(f))

The IRS may aggregate multiple trusts with substantially the same grantor and beneficiaries if a principal purpose is federal income-tax avoidance. Use distinct structures.

Holding Period

QSBS must be held 5+ years for 100% exclusion. Gifted QSBS may tack the donor's holding period under § 1202(h)(1).

State Tax Considerations

Not all states conform to § 1202 (e.g., California taxes QSBS gain in full). Trust situs, residency, sourcing, and state conformity require separate analysis.

CRUT Compliance

The CRUT must satisfy the 5%–50% annual payout range, the ≥10% remainder requirement, and other CRT requirements under § 664.

CRT Tier Rules

Treatment of excluded QSBS gain in CRT distribution tiers is not fully settled by IRS guidance. Most practitioners treat it as tax-free under Tier 3 or Tier 2 at a 0% rate.

Active Business Requirement - Working Capital Ceiling (1202(e)(6))

- “For periods after the corporation has been in existence for at least 2 years, in no event may more than 50 percent of the assets of the corporation qualify as used in the active conduct of a qualified trade or business by reason of this paragraph.”
 - How is quantum of assets determined?

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QSBS ROLLOVER



Session 3

QSBS in Motion: Conversions, Exchanges, and Reorganizations

Mark Melton • Partner, Holland & Knight LLP

Brandon Bloom • Partner, Holland & Knight LLP

Ryan Dobens • Director, KBF Advisory

Meghan Andersson • Senior Manager, National Tax, Baker Tilly US

Holland & Knight

Section 1202:

Transfers, Conversions, and Reorganizations
in Section 351 Transactions and Reorganizations

An Illustrated Guide

Road Map

1. **General Ground Rules:** Section 1202(h)(3) and (h)(4) Synopsis
2. **Key Interpretive Issues from the Article:** The Forever Debate, Partial Sale, Disqualified Business
3. **Preferred Stock to Common Stock Conversion:** Section 1202(f) conversion rules
4. **A, B, C Reorgs vs. E and F Reorgs:** Section 1202(h)(3) vs. (h)(4) comparison
5. **The D Reorganization PLR -- PLR 9810010:** Divisive D reorg preserving QSBS
6. **Stock Dividends:** Nontaxable dividends, mixed holdings
7. **Section 351 Transactions:** Including two detailed deal examples

The Two Parallel Regimes Under Section 1202(h)

Section 1202(h)(3)

E/F Reorgs & Stock Dividends

- Stock dividends (Section 305)
- Recapitalizations (Section 368(a)(1)(E))
- Mere change in identity/form (Section 368(a)(1)(F))
- Cross-references to Section 1244(d)(2)
- Successor corp = same corp as predecessor (F reorg)

Section 1202(h)(4)

Section 351 Transactions & Section 368 Reorgs

- Section 351 exchanges
- Section 368 reorganizations (all types, by its terms)
- Does NOT cross-reference Section 1244(d)(2)
- **QSB requirements do NOT need to be re-applied** for QSBS status
- But QSB status at exchange date determines gain cap

Section 1202(h)(4) -- The Basic Rule



Taxpayer

QSBS in Corp X
Acquired at original
issuance

*Section 351 or
Section 368
Exchange*

Stock in Corp Y
(successor
corporation)

Successor stock = QSBS (deemed acquired on date exchanged stock was acquired)

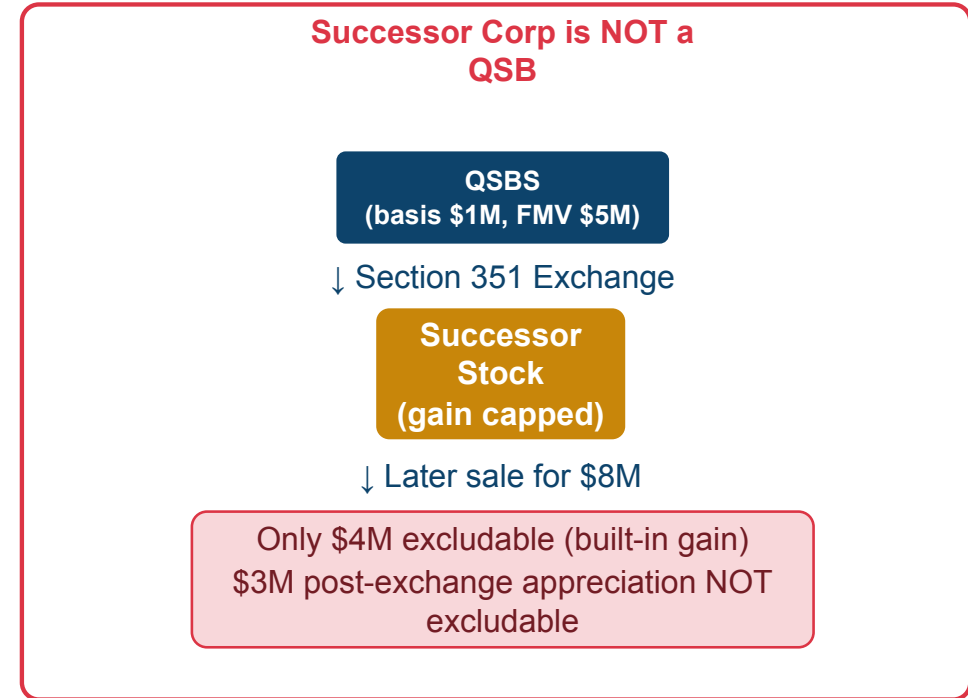
1. Applies to both Section 351 and Section 368 (drop-downs, Holdco formations, mergers)

2. Exchanged stock must be QSBS at time of exchange

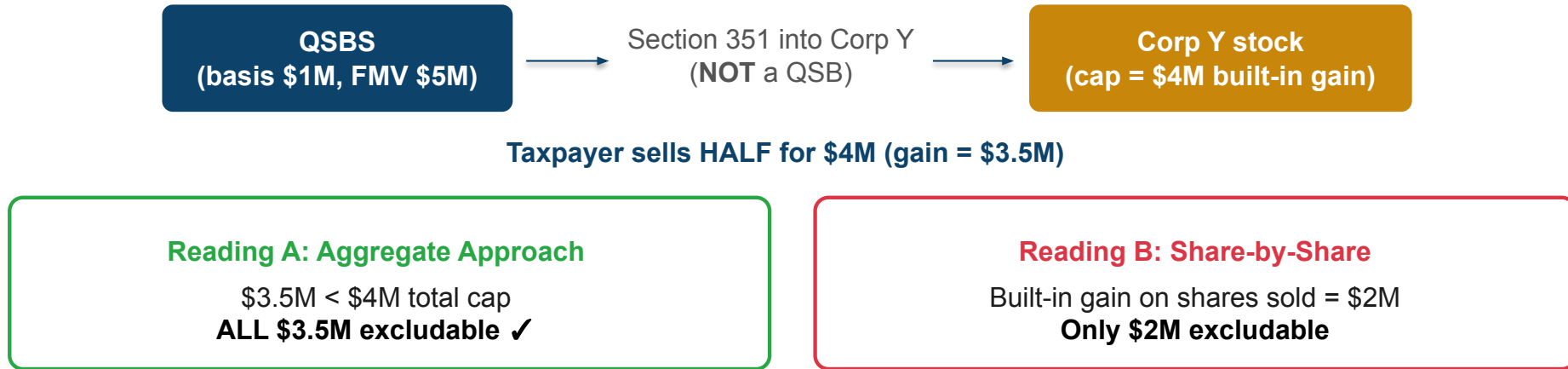
3. Deemed acquisition date tacks back (determines pre-OBBS or post-OBBS regime)

4. No requirement for complete nonrecognition -- boot is okay

The Built-In Gain Limitation: Section 1202(h)(4)(B)



The Partial Sale Question



The "Forever" Debate: Does Successor Stock Stay QSBS?

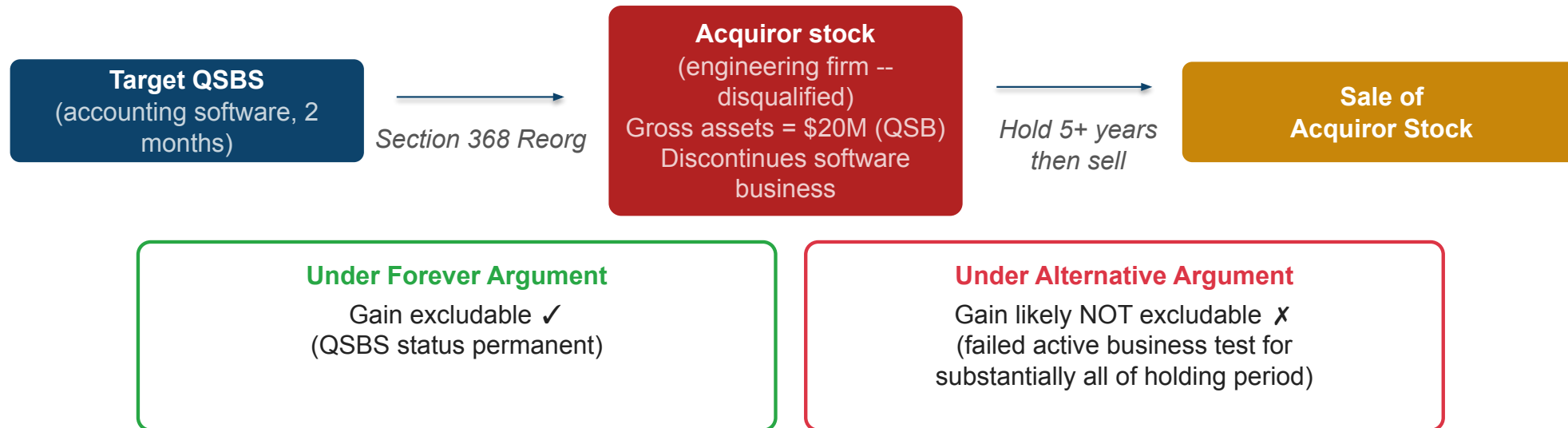
The "Forever" Argument

- Section 1202(h)(4)(A) says successor stock "shall be treated as QSBS" -- no qualifications
- Doesn't limit itself to any particular reason why successor stock fails to qualify
- Whatever the defect, it is deemed cured
- Supported by literal statutory language
- Bolstered by 1202(h)(4)(B) contemplating non-QSB successors

The Alternative Argument

- Section 1202(h)(4)(A) is a continuity rule, not a permanent qualification rule
- Overrides the Predicate Test (original issuance) but leaves the Ongoing Test (Section 1202(c)(2)) in place
- Post-exchange: successor corp's own activities matter
- A foreign corp or disqualified business shouldn't get permanent QSBS
- Policy-driven; prevents "cleansing" via merger

The Disqualified Business Problem



Preferred to Common Conversion -- Section 1202(f)

Taxpayer holds Preferred QSBS
in Corp X



Conversion to Common Stock
in Corp X



Does § 1202(f) apply?
Yes — this is the core application of § 1202(f)

Key Issues

- **§ 1202(f)(1)-(2):** The common stock received is treated as qualified small business stock in the taxpayer's hands and is treated as held throughout the period the converted preferred was held.
- **“Solely” requirement:** § 1202(f) reaches only stock acquired solely through conversion, so partial conversions should be bifurcated.

Takeaway: Preferred-to-common is the straightforward § 1202(f) case. The §§ 305 and 306 complications run the other direction — see the next slide.

Section 1202(f):

“If any stock in a corporation is acquired solely through the conversion of other stock in such corporation which is qualified small business stock in the hands of the taxpayer—

- (1) the stock so acquired shall be treated as qualified small business stock in the hands of the taxpayer, and*
- (2) the stock so acquired shall be treated as having been held during the period during which the converted stock was held.”*

Common to Preferred Conversion

Taxpayer holds Common QSBS
in Corp X



Conversion to Preferred Stock
in Corp X



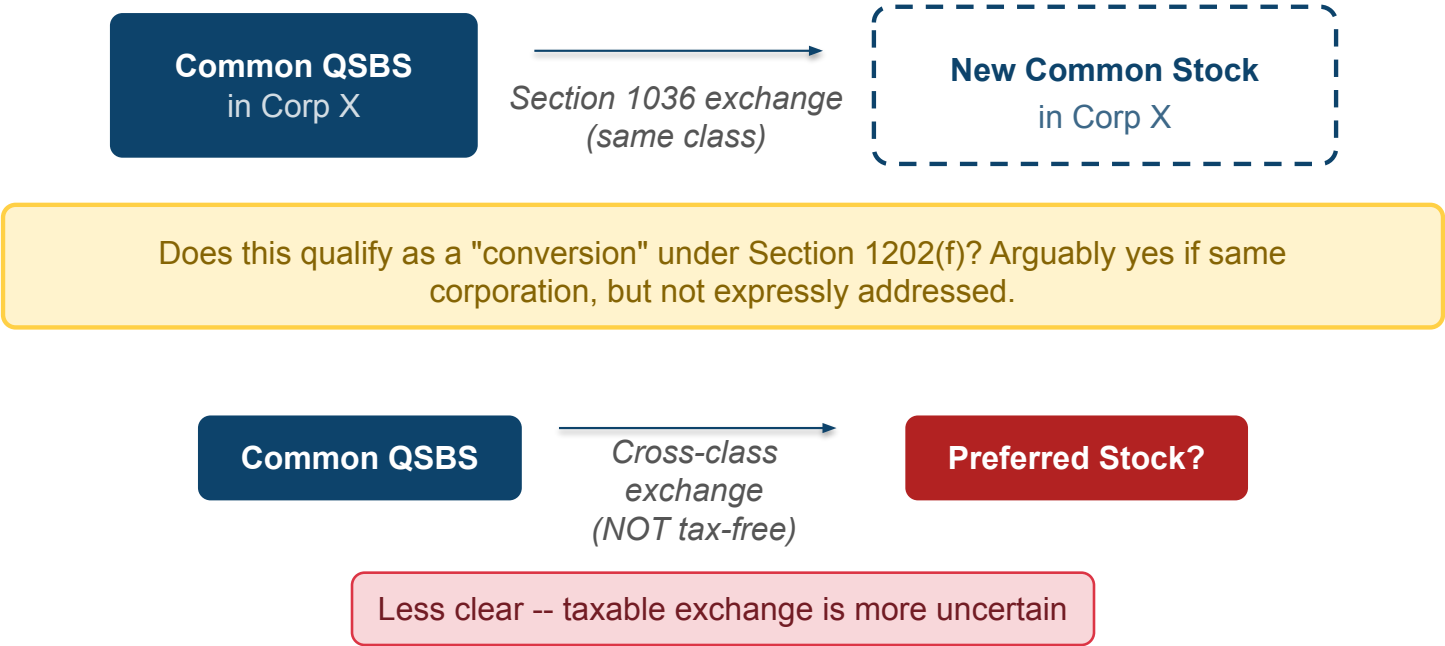
Does § 1202(f) apply?
On its face, yes
but §§ 305 and 306 create complications

Key Issues

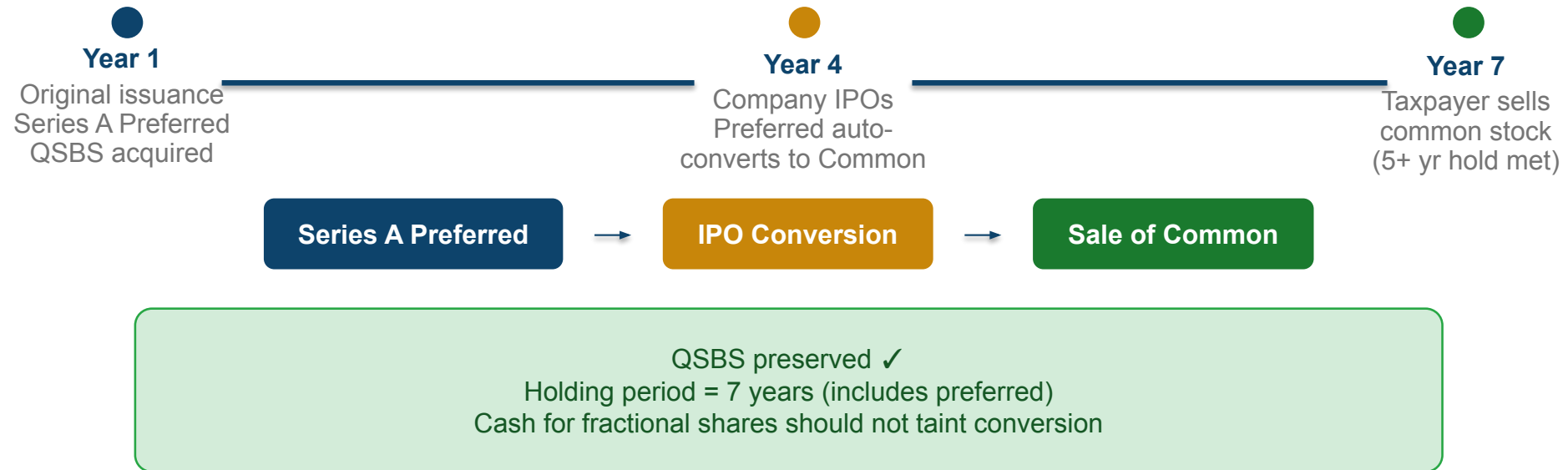
- **§ 305:** If the conversion has the effect of a distribution, it may be taxable. A taxable § 305 distribution is arguably not a “conversion” under § 1202(f). If nontaxable under § 305(a), § 1202(f) should apply.
- **§ 306:** Preferred stock received could be “Section 306 stock” under § 306(c)(1)(B). If so, gain on later sale is ordinary income under § 306(a), which could override the § 1202 capital gains exclusion.

Takeaway: Common-to-preferred conversions require careful analysis of §§ 305 and 306 before relying on § 1202(f).

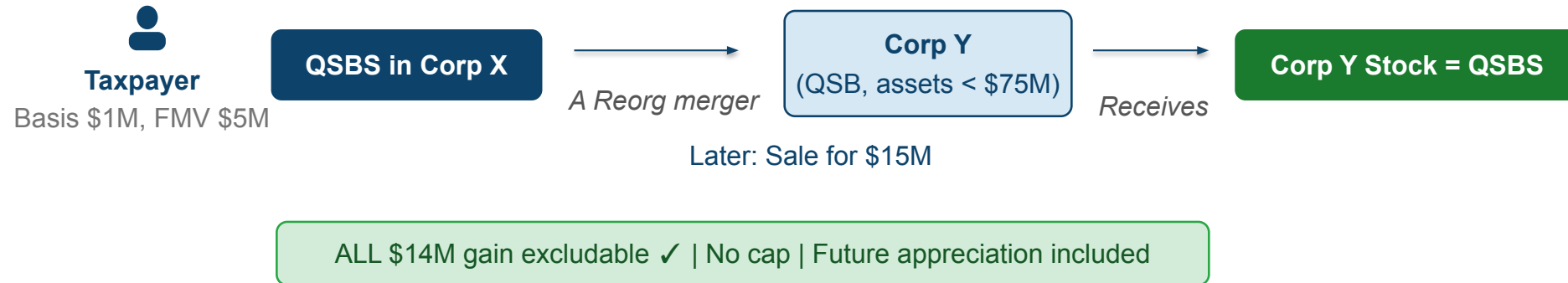
Query: Section 1036 Exchange



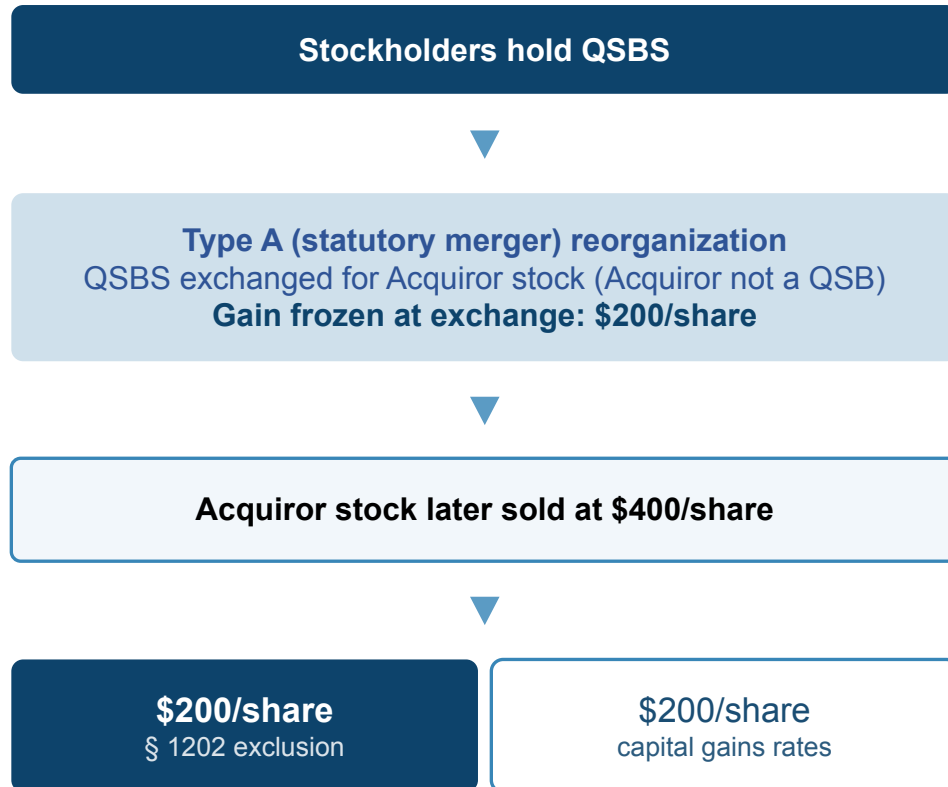
Venture-Backed IPO Auto-Conversion



A Reorg -- Successor IS a QSB



A Reorg -- Successor NOT a QSB



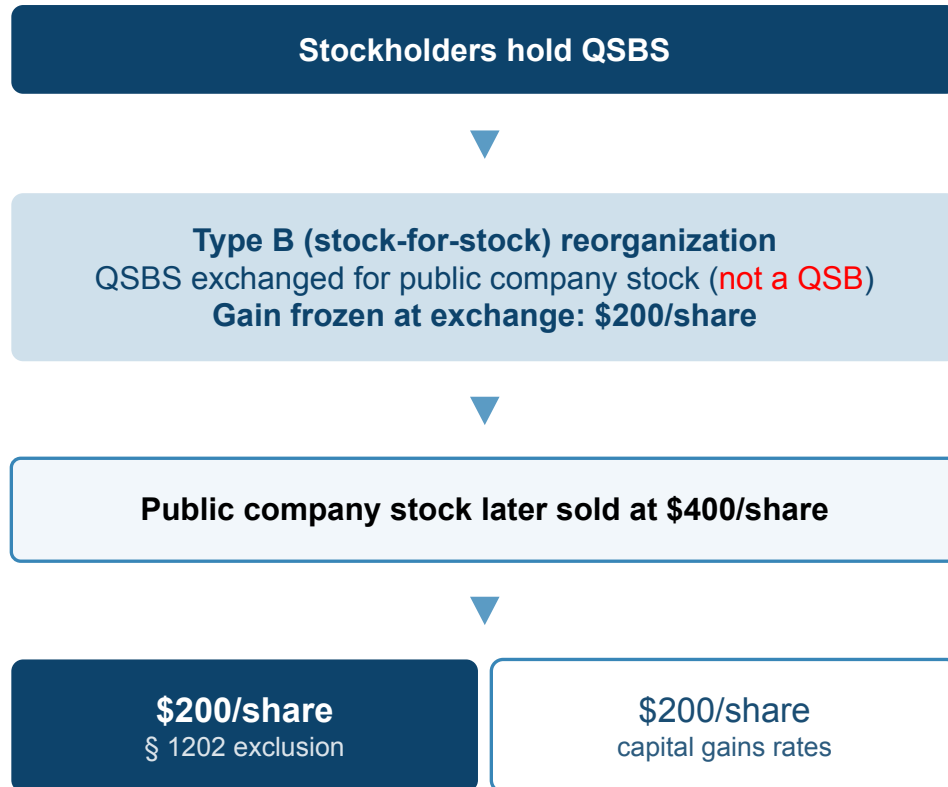
Tax Considerations*

- Exclusion is capped at the \$200 of gain frozen at the exchange.
- The other \$200 of appreciation is taxed at capital gains rates.

** Assumes the applicable holding period for a 100% exclusion was met at time of the sale and that QSBS requirements in original shares were met up until the exchange, but the Acquiror was not a QSB at the time of the exchange.*

Query: Is the cap on a per-share basis or in the aggregate?

Type B Reorganization -- Gain Limitation Example



Tax Considerations*

- Exclusion is capped at the \$200 of gain frozen at the exchange.
- The other \$200 of appreciation is taxed at capital gains rates.

** Assumes the applicable holding period for a 100% exclusion was met at time of the sale and that QSBS requirements in original shares were met up until the exchange, but the public company stock received was not itself QSBS at the time of the exchange.*

F Reorganization -- Change of Form

Reincorporation

Corp X
(Delaware)

↓ F Reorg

Corp X
(Texas)

QSBS status unaffected ✓

Corp to LLC Conversion

Corp X
(C
Corporation)

↓ State law conversion (CTB
election)

Corp X LLC
(elects corp
status)

QSBS preserved ✓

Type E Reorganization -- Recapitalization Example

Stockholders hold QSBS in Corp X



Type E reorganization (recapitalization)
Old QSBS exchanged for new stock of the same corporation
Value at the recapitalization: \$100/share



New Corp X stock later sold at \$200/share



\$200/share
full gain eligible for the § 1202 exclusion

Tax Considerations*

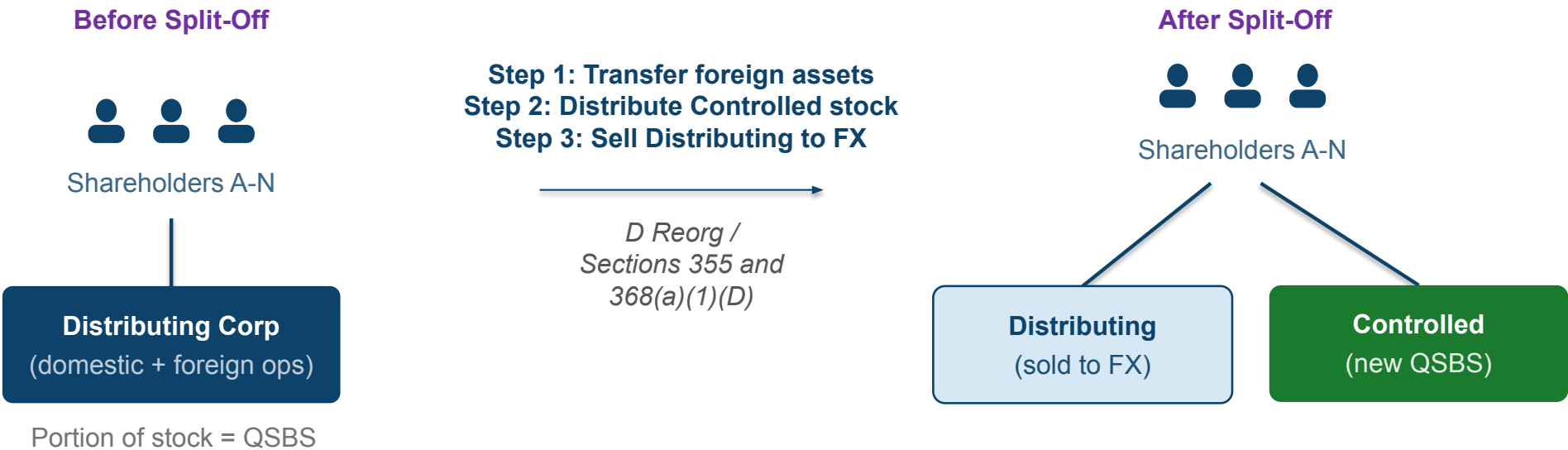
- New stock continues to be treated as QSBS.
- The Gain Limitation Rule does not apply — gain is not frozen at \$100/share.

** Assumes the applicable holding period for a 100% exclusion was met and that Corp X otherwise satisfies all § 1202 requirements for substantially all of the stockholder's holding period.*

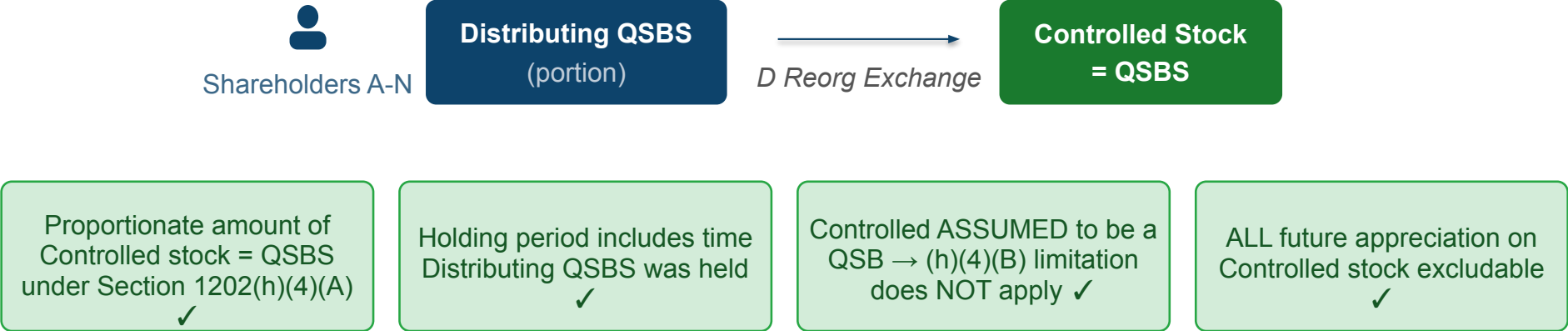
Section 368 Reorganizations -- QSBS Treatment Summary

Feature	Section 1202(h)(3) E/F Reorgs + Stock Dividends	Section 1202(h)(4) All Section 368 Reorgs + Section 351
Transactions	E reorgs, F reorgs, stock dividends	Section 351 exchanges; any reorganization described in Section 368
Cross-refs Section 1244(d)(2)?	YES	NO
QSB re-testing?	Unclear	NO -- but QSB status determines gain cap
Gain limitation	N/A (new stock takes the character of the stock surrendered)	Built-in gain cap if successor NOT QSB
Control test?	No	Yes -- 80% for Section 351 only
Ordering rule	Applied FIRST when both could apply	Applied only to stock that "would not qualify but for this subparagraph"

PLR 9810010 -- The Transaction



PLR 9810010 -- The Section 1202 Result



Why PLR 9810010 Matters

First IRS ruling applying Section 1202(h)(4)(A) to a divisive D reorg (on assumed facts)

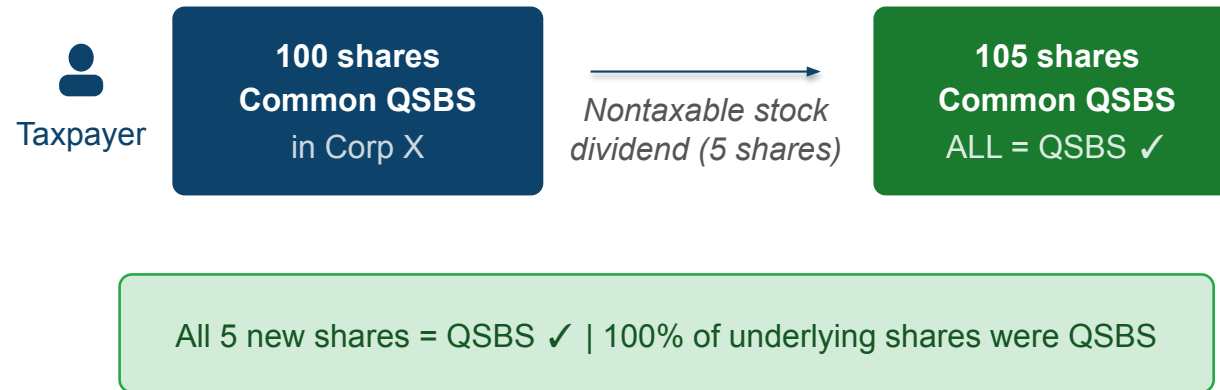
QSB status of successor corp is critical -- document it at time of exchange

Proportionate allocation of QSBS status (not all-or-nothing)

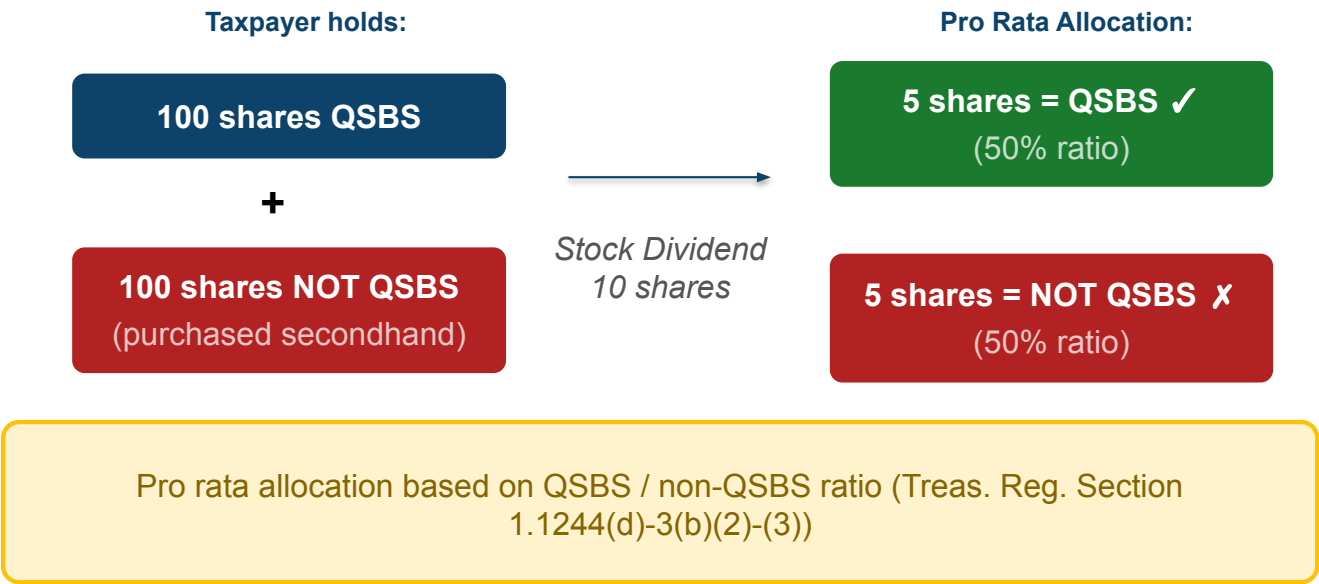
Holding period tacking applied under Section 1223(1)

The most-cited ruling on Section 1202(h)(4) -- but not precedent (Section 6110(k)(3))

Stock Dividend -- All QSBS



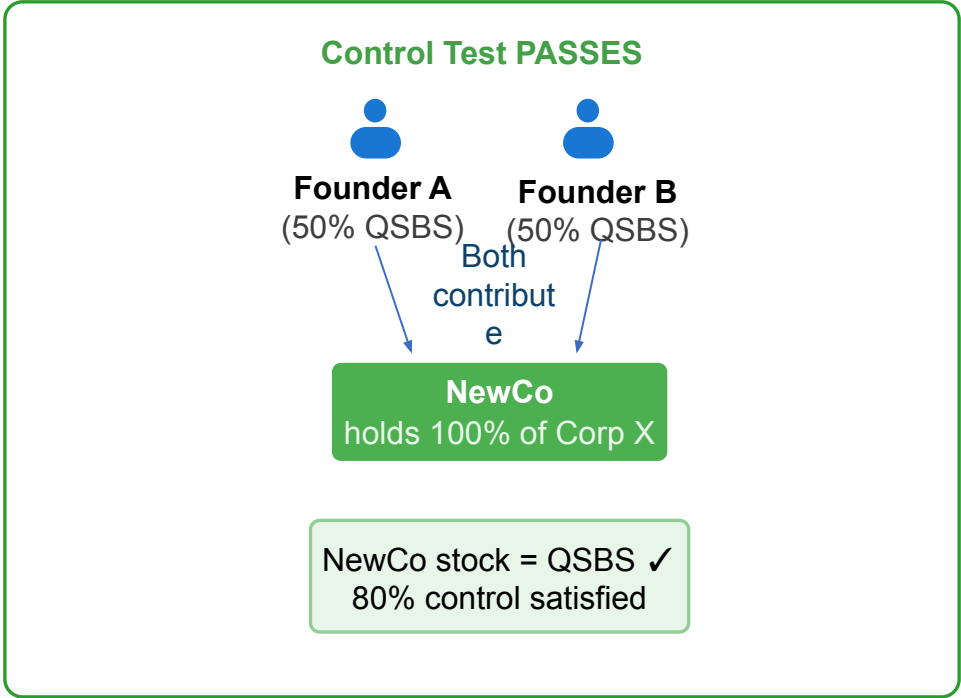
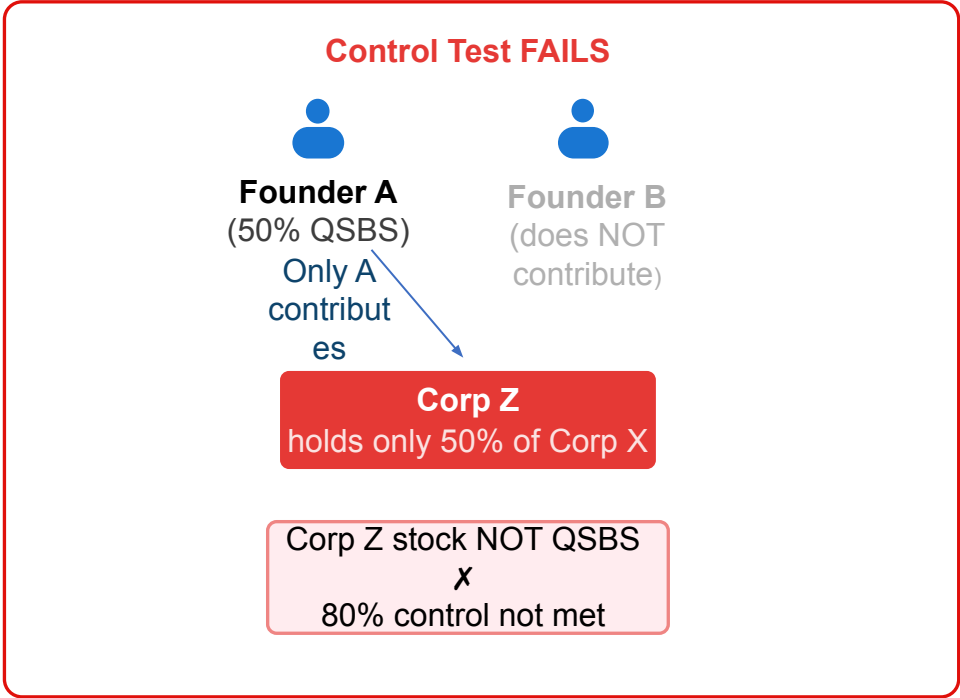
Stock Dividend -- Mixed Holdings



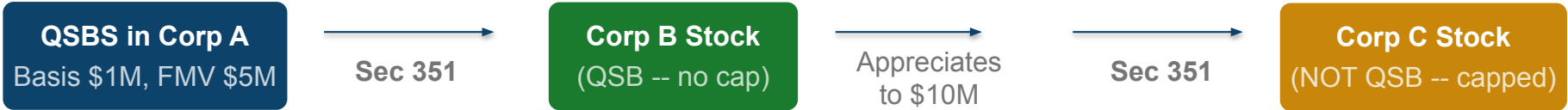
Section 351 -- Key Ground Rules

1. Successor stock = QSBS with tacked holding period (if exchanged stock was QSBS)
2. Exclusion capped at built-in gain UNLESS successor corp is QSB
3. Control test: successor must own 80% of exchanged corp (Section 351 only, not reorgs)

Control Test -- Pass vs. Fail



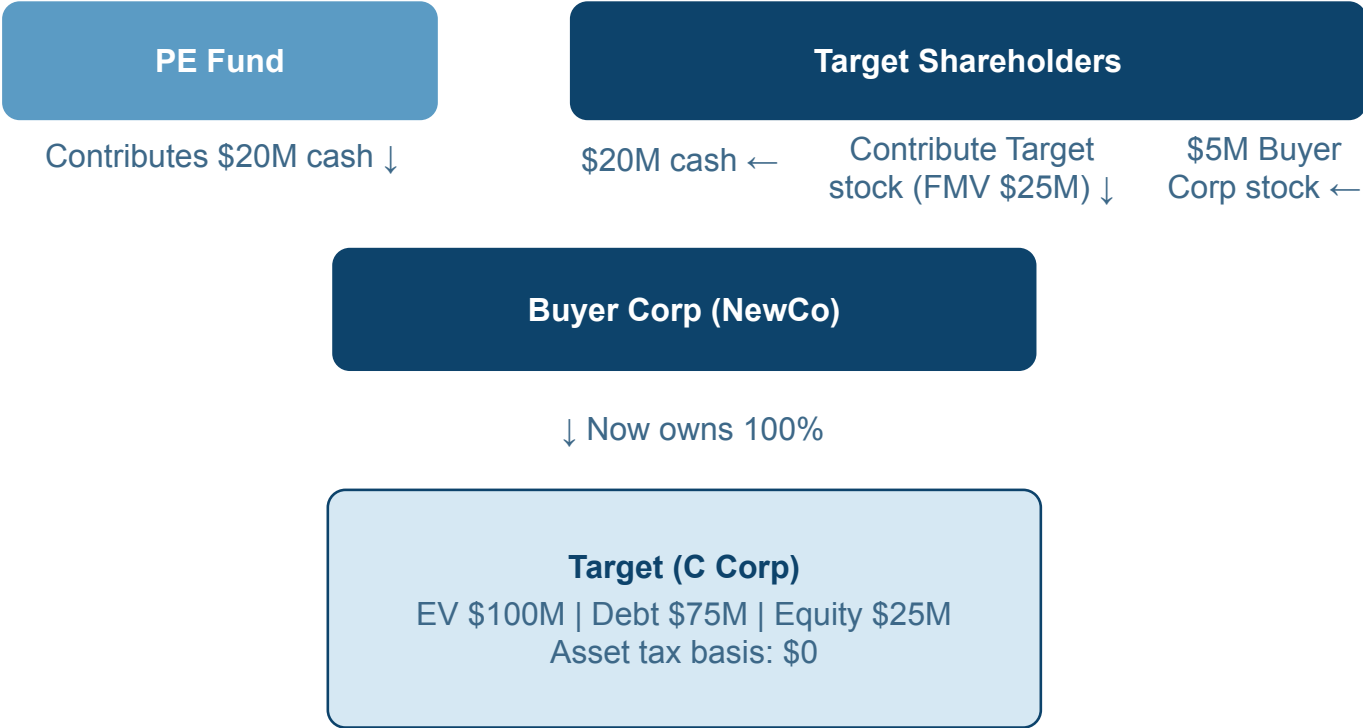
Successive Transactions



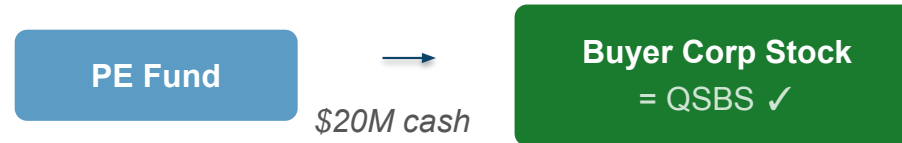
Excludable gain capped at \$9M (\$10M FMV minus \$1M original basis at time of B-to-C exchange). Post-Corp C appreciation NOT excludable. Section 1202(h)(4)(C): limitation anchored to FIRST transfer to which it applies.

DEAL EXAMPLE 1 -- PE Acquisition with Rollover

Deal Example 1 -- The Structure



Deal Example 1 -- PE Fund's QSBS



PE Fund's Buyer Corp stock = QSBS ✓ (original issuance in exchange for cash). Question: Is Buyer Corp a QSB at time of issuance? See gross assets analysis.

Deal Example 1 -- Rollover QSBS Status

Target Shareholders
hold QSBS in Target

→
*Exchange Target QSBS
for Buyer Corp stock
(Section 351 + \$20M
boot)*

Buyer Corp Stock
= QSBS under (h)(4)(A) ✓
Tacked holding period ✓

Key question: Is exclusion capped at built-in gain, or does it cover future appreciation? Depends on whether Buyer Corp is a QSB at time of exchange.

Deal Example 1 -- The \$75M Gross Assets Puzzle

How do we measure Buyer Corp's aggregate gross assets?

Outcome 1: FMV of Contributed Stock

Cash from PE Fund: \$20M

FMV of Target stock: \$25M

Total: \$45M → Under \$75M ✓

Buyer Corp IS a QSB

No cap on exclusion

Outcome 2: FMV of Target's Assets (Look-Through)

Aggregation rule: treat as holding Target's assets

FMV of Target's assets: \$100M

Total: \$120M → OVER \$75M ✗

Buyer Corp is NOT a QSB

Exclusion capped at built-in gain

Outcome 3: Tax Basis of Target's Assets

Aggregation applies, but assets not "contributed"

Tax basis of Target's assets: \$0

Cash: \$20M

Total: \$20M → Under \$75M ✓

Strongest technical support

Deal Example 1 -- The Partnership Comparison

If Target Were a Partnership

Section 351 contribution of **partnership assets** to NewCo

FMV of contributed assets = \$100M

Section 1202(d)(2)(B) requires FMV measurement

Gross assets = \$100M → OVER \$75M ✗

No QSBS going forward

Target is a C Corp (Actual Facts)

Target **stock** contributed (not assets)

Tax basis of Target's assets = \$0

Stock FMV = \$25M (net of \$75M debt)

Outcome 3: Gross assets = \$20M + \$0 = \$20M ✓

Technical argument: QSBS available

DEAL EXAMPLE 2 -- S Corp F Reorg to Partnership

Step 1: F Reorganization

Target S Corp (value: \$125M) → New S Corp HoldCo formed
Target converts to single-member LLC (DRE) owned by HoldCo



Step 2: CEO Investment

CEO contributes cash to LLC for membership interest
LLC now has 2 members → “springs to life” as partnership



Step 3: Newco Formation (§ 351)

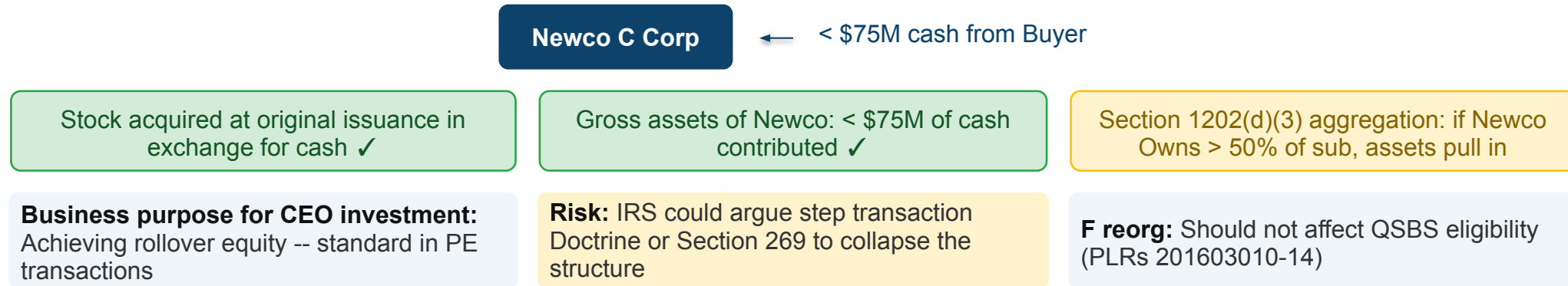
Partnership contributes business assets to new C corp (“Newco”)
Newco issues stock at original issuance in exchange for property

Key QSBS Question: Is Newco’s Stock QSBS?

- **Original issuance for property (not stock):** ✓
- **Gross assets test:** Contributed assets valued at FMV for § 1202(d)(2)(B). If full \$125M of assets contributed → exceeds \$75M threshold.
- **Planning alternative:** If partnership contributes only a portion of assets (worth <\$75M) to Newco and retains the rest, Newco’s gross assets could be under \$75M.
- **Aggregation rules:** Apply to parent-subsidary controlled groups of corporations, not partnerships. Partnership assets should not be attributed to Newco.

Risks: Step transaction doctrine (IRS could collapse steps); § 269 (principal purpose tax avoidance); need legitimate business purpose (CEO rollover helps but overall structure must be defensible).

Deal Example 2 -- The QSBS Analysis



Key Takeaways

- 1 Section 1202(h)(4) preserves QSBS through Section 351 and reorgs -- but conditions apply
- 2 QSB status of successor corp at exchange date is THE critical planning point
- 3 Gross assets test uses FMV for contributed property -- but ambiguity exists when stock (not assets) is contributed
- 4 C corp wrapper may create planning advantages vs. partnership (debt shields equity value)
- 5 Document everything contemporaneously -- especially QSB status at exchange date
- 6 The "Forever" vs. "Alternative" debate matters -- structure conservatively
- 7 Section 1202(h)(3) and (h)(4) have different rules -- know which applies to your transaction

Questions?

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Session 4

Structuring Non-affiliated Entity Ownership Arrangements (including MSOs)

Scott Dolson • Partner, FBT Gibbons LLP
Brian Masterson • Partner, FBT Gibbons LLP
Robert Dietz • National Director, Tax Research,
AllianceBernstein L.P.

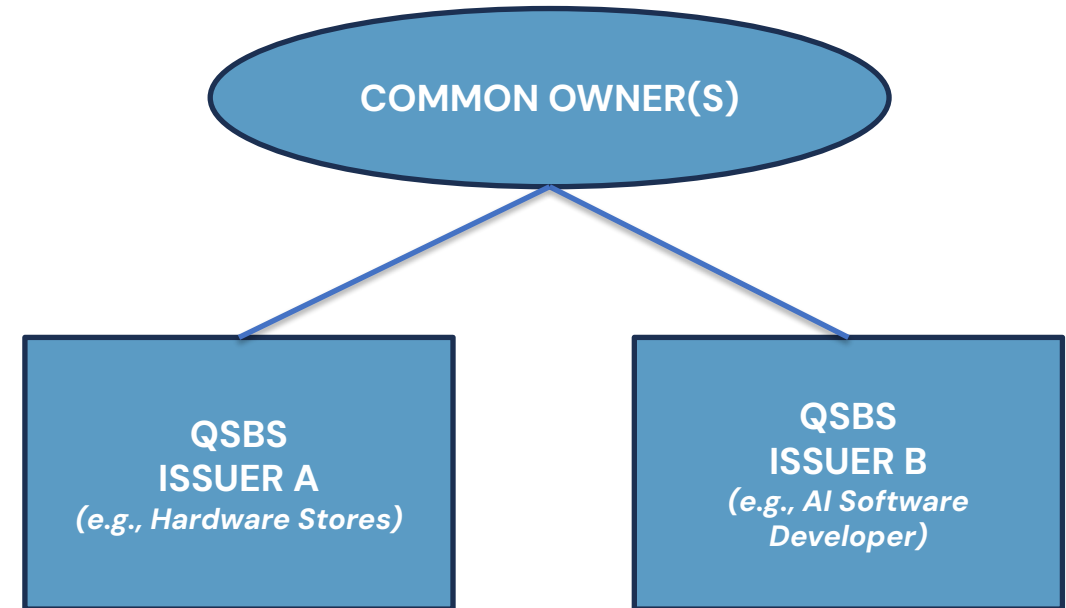
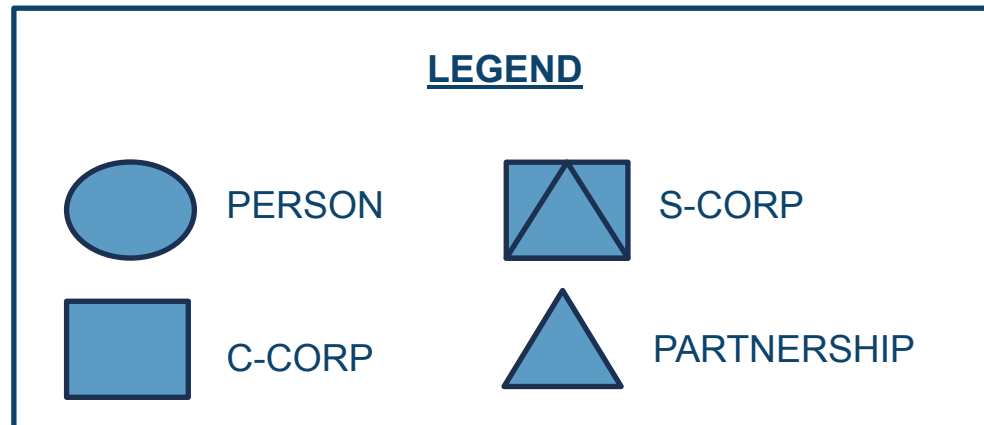


**FBT
Gibbons**

ANY ISSUES HERE?

Non-Affiliated Arrangement:

Brother-sister C corps under common ownership; no parent-subsidary relationship; no §1202(e)(5) look-through between them



WHY NON-AFFILIATED ARRANGEMENTS MATTER FOR §1202

§1202 FACTOR	SINGLE QSBS ISSUER	NON-AFFILIATED ARRANGEMENT (TWO QSBS ISSUERS)
Gain Exclusion Cap	\$15M per taxpayer (one corporation)	\$30M per taxpayer (two separate caps)
Agg. Gross Assets Ceiling Exposure	Full \$75M ceiling for all activities	Separate \$75M ceiling per QSBS Issuer
80% Test Risk	Excluded activities impair the single issuer	Excluded activities isolated outside QSBS Issuer in separate entity
Excess Cash / Double Taxation Exposure	Cash piles up; distributions trigger 23.8% tax	Deductible fees, rent, and licensing payments move cash to pass-throughs

MSO POLL QUESTION

A PE firm acquires an orthopedic practice using a friendly PC model, where a physician-owned PC holds the clinical assets and an MSO provides management services under a long-term MSA. Which of the following is correct?

- (a) The PC and MSO are respected as separate entities.
- (b) The structure is valid as long as the physician holds 100% of the PC's equity.
- (c) It depends on how the MSA and control terms were drafted.
- (d) It depends on actual operational control and how the documents are drafted

FUND SELLS MSO STOCK

Seven years have passed since the Fund began orthopedic practices across the United States. In the meantime, the MSO now serves multiple practice entities. The Fund sells all of its MSO stock and claims §1202 gain exclusion.

Three-front IRS attack:

- **Excluded Activities.** MSO's comprehensive suite of administrative services to the practice entity constitutes engaging in excluded healthcare activities
- **Consolidation.** MSA terms (lock-box, nominal consideration options, comprehensive non-clinical control) demonstrate MSO beneficially owns Practice Entity — consolidate under §1504; Practice Entity's clinical activities cause 80% Test failure
- **§482 Argument.** Management fee sweeps substantially all economics to MSO — not arm's-length; reallocate sale proceeds

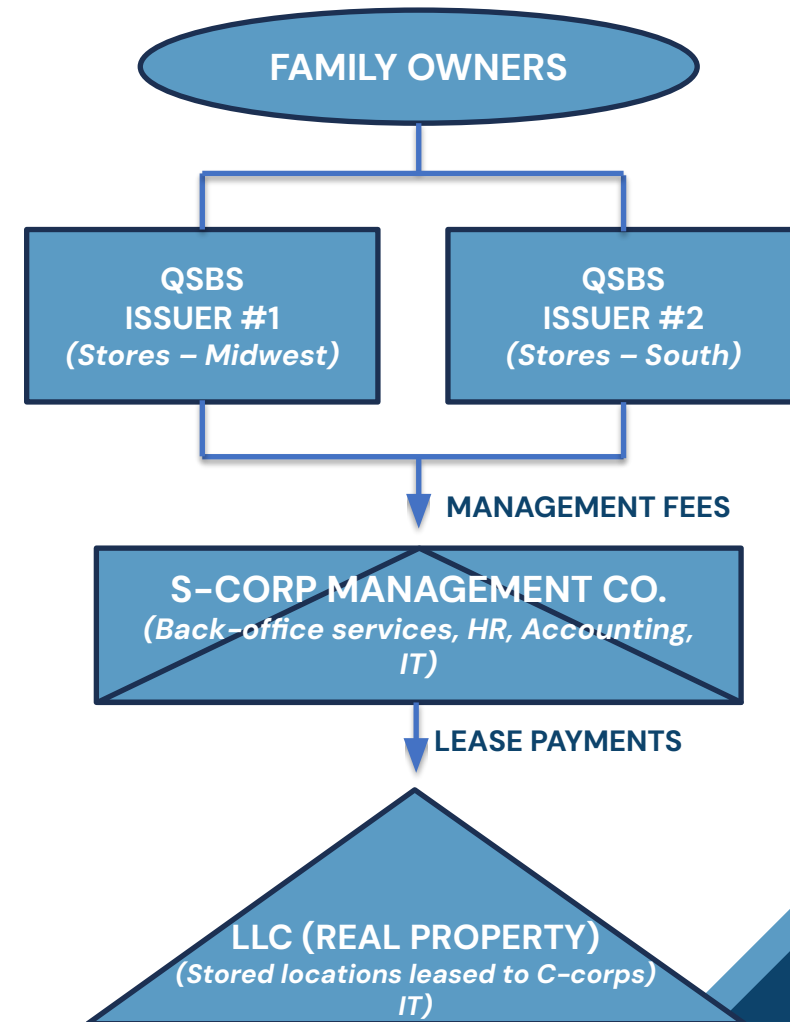
Defense:

- Professional services provided exclusively by licensed professionals at the practice entity level; admin/tech support to healthcare providers is not an excluded activity
- State law prohibits non-professional ownership in 32+ states; IRS itself opposed consolidation on this ground; every PLR supporting consolidation was taxpayer-initiated
- Management fee compensates for services and investor risk; professional compensation at practice entity represents genuine arm's-length labor cost; multiple practice entities strengthens the per-entity fee benchmarking argument

PASS-THROUGH RESTRUCTURING EXAMPLE

Family restructures LLC into two brother-sister C corporations, split by geography. A separate S corporation owned by the family provides management services to both C corps for a fee, and a separate LLC holds the real estate and leases it back to each store. After 5 years, UTP buys all of the stock in both C corporations. The shareholders claim a §1202 exclusion with respect to the stock of each corporation. IRS audits and challenges active conduct.

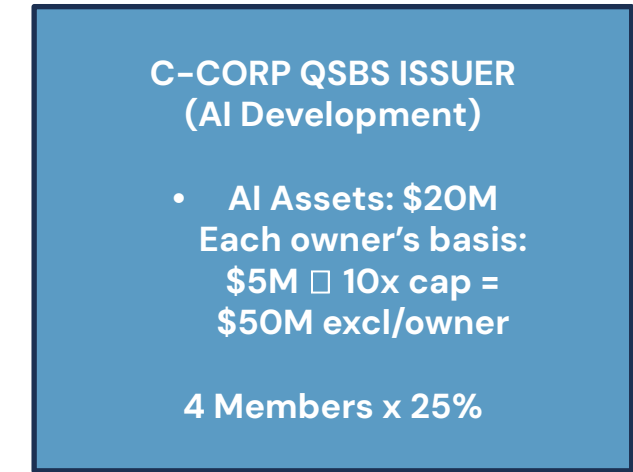
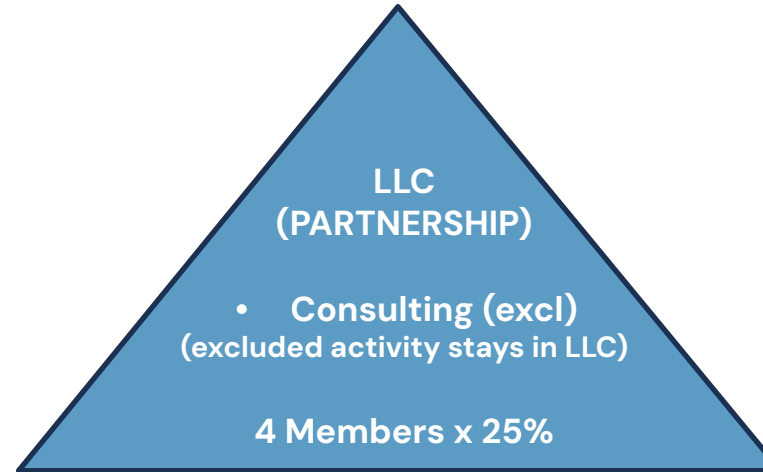
- **IRS argument:** C corps depend on centralized management entity; not independently conducting their own business
- **Defense:** Each C corp employs its own retail workforce performing core commercial functions; management services cover only back-office functions typical in the industry; all fees arm's-length
- **Lesson:** Each QSBS Issuer must conduct its business through its own employees; management agreements are permissible but cannot substitute for the corporation's own commercial activity



SEPARATE GOOD AND BAD BUSINESSES

A four-person LLC runs a consulting business and is also in the start-up phase of an AI software product. Anticipating explosive growth in the AI business, the LLC restructures by contributing the AI assets to a new C corp, and, in turn, distributing such stock to its members, pro rata. The LLC keeps running the consulting business.

- **IRS argument:** The C corp is not truly independent. Therefore, the C corp and the LLC should be treated as one enterprise.
- **Defense:** The C corp was formed for real business reasons and develops the AI product through its own team; as a brother-sister entity, there's no §1202(e)(5) look-through to the LLC.



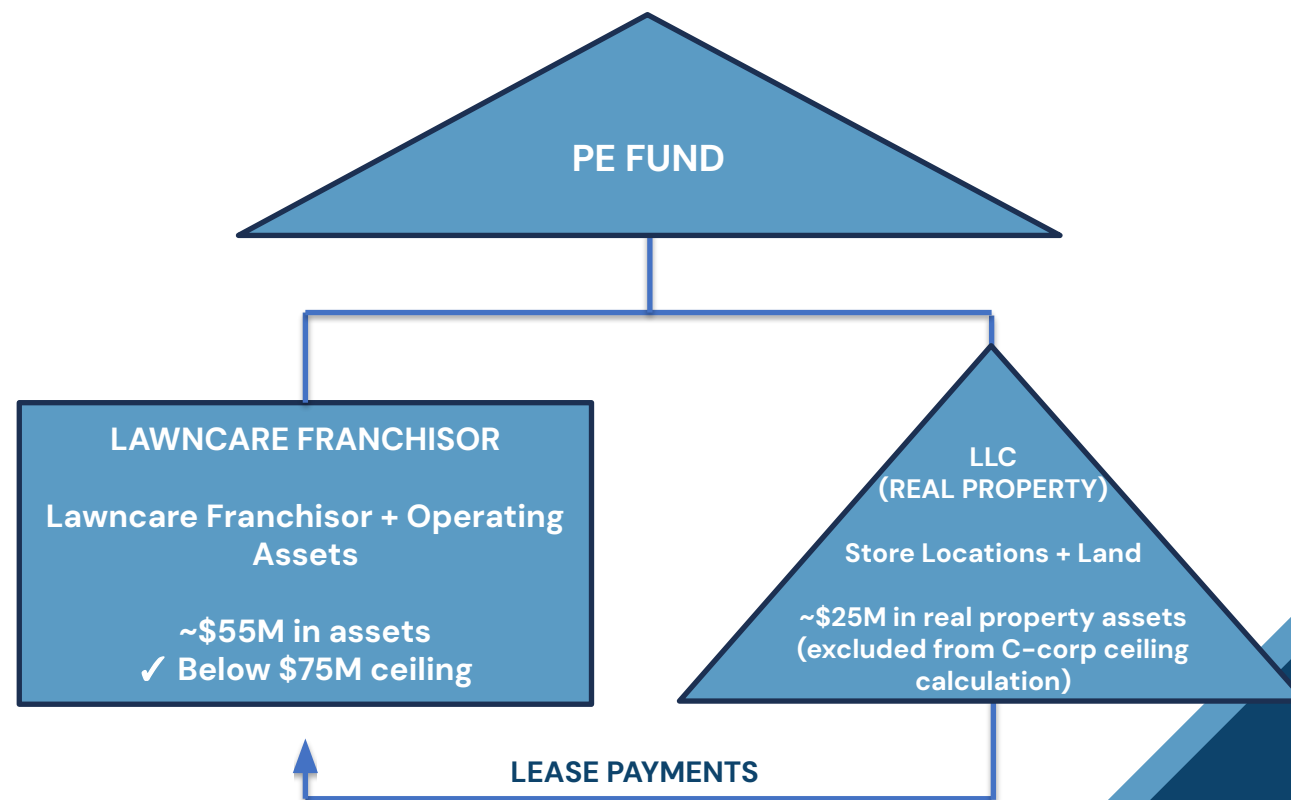
Lessons: Restructure before assets appreciate. The appraisal at restructuring sets the §1202 exclusion cap. Build genuine operational independence into the C corp from day one.

PE FUND LAWN CARE ROLL-UP

A Fund plans to acquire the assets of a large southern lawncare business, which includes significant real estate used in those operations, for aggregate consideration of \$80M. Assume that the value of the real estate is \$25M. The Fund wants to acquire the business assets through a newly formed C corporation and create a lawncare franchise model that can be scaled nationally.

The issue here is that the \$75M aggregate gross assets ceiling. The solution is to have the Fund acquire the real estate in a separate LLC and lease it to the C corp.

- **IRS argument:** PE fund controls both LLC and C corp — consolidate for aggregate gross assets test
- **Defense:** LLC and C corp are brother-sister entities; §1202(d)(3) aggregates only parent-subsidiary controlled groups (>50% ownership *between* entities); real estate/operating separation is standard in sophisticated acquisitions for independent reasons
- **Lesson:** Analyze the aggregate gross assets test *before* structuring the acquisition; separating real estate simultaneously solves the ceiling issue, removes 80% Test bad assets (if the real estate had not been used in the QTOB), and reduces excess cash through deductible rent.



THE FOUR IRS CHALLENGE ARGUMENTS

ARGUMENT	CORE THEORY
Active Conduct Failure	QSBS Issuer's business activities are insufficiently independent — core functions outsourced, passive IP licensing, leased employees
Excluded Professional Activities (MSO)	MSO's administrative services to a professional Practice Entity constitute engaging in excluded health/law/accounting activities
§1504 Consolidation	MSO beneficially owns Practice Entity — consolidate; Practice Entity's excluded activities and assets fold into the 80% Test
§482 Reallocation	Management fee is not arm's-length; substantially all economics flow to the QSBS Issuer; reallocate income or sale proceeds

KEY TAKEAWAYS + Q&A

1. **Plan structurally and plan early.** The best Non-Affiliated Arrangement is designed before assets appreciate; the tax cost of correcting a poorly structured arrangement after the fact can dwarf the cost of proper planning at the outset
2. **Substantiation is the foundation.** The burden of proof is on the taxpayer and structural arguments are irrelevant if basic eligibility cannot be documented
3. **Active conduct is the sleeper issue.** Each QSBS Issuer in a Non-Affiliated Arrangement must demonstrate genuine, independent business activity through its own workforce; centralized management and leased employees introduce real risk
4. **MSO Structures are defensible.** Regulatory compulsion is the strongest possible bona-fide purpose argument; the consolidation risk is real but manageable with deliberate MSA drafting and implementation

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Session 5

QSBSSmaxxing: The Latest Trends in Stacking Strategies for Founders

Michael Arlein • Partner, Patterson Belknap Webb & Tyler LLP



**Patterson
Belknap**

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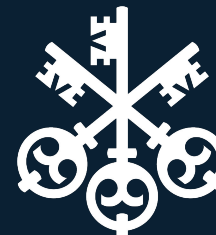
Session 6

QSBS and Wealth Planning: Turning Opportunity into Outcomes

Matthew Goward • Senior Vice President, Financial Advisor,
UBS Financial Services Inc.

Josh Pottinger • Managing Director, Financial Advisor,
UBS Financial Services Inc.

James Jack • Managing Director, Head, Business Owner Segment
UBS Financial Services Inc.



UBS

The founder journey

QSBS is one chapter in a much larger story



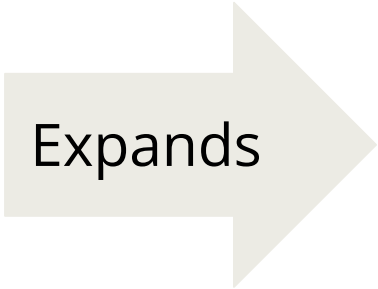
Company-building creates the opportunity. Planning determines what follows.

How founders enter the conversation

QSBS may start the conversation. Planning expands it.

What founders think they need

- QSBS
- Tax planning
- Exit planning



Expands

What founders often discover they need

Family planning

Liquidity strategy

Estate planning

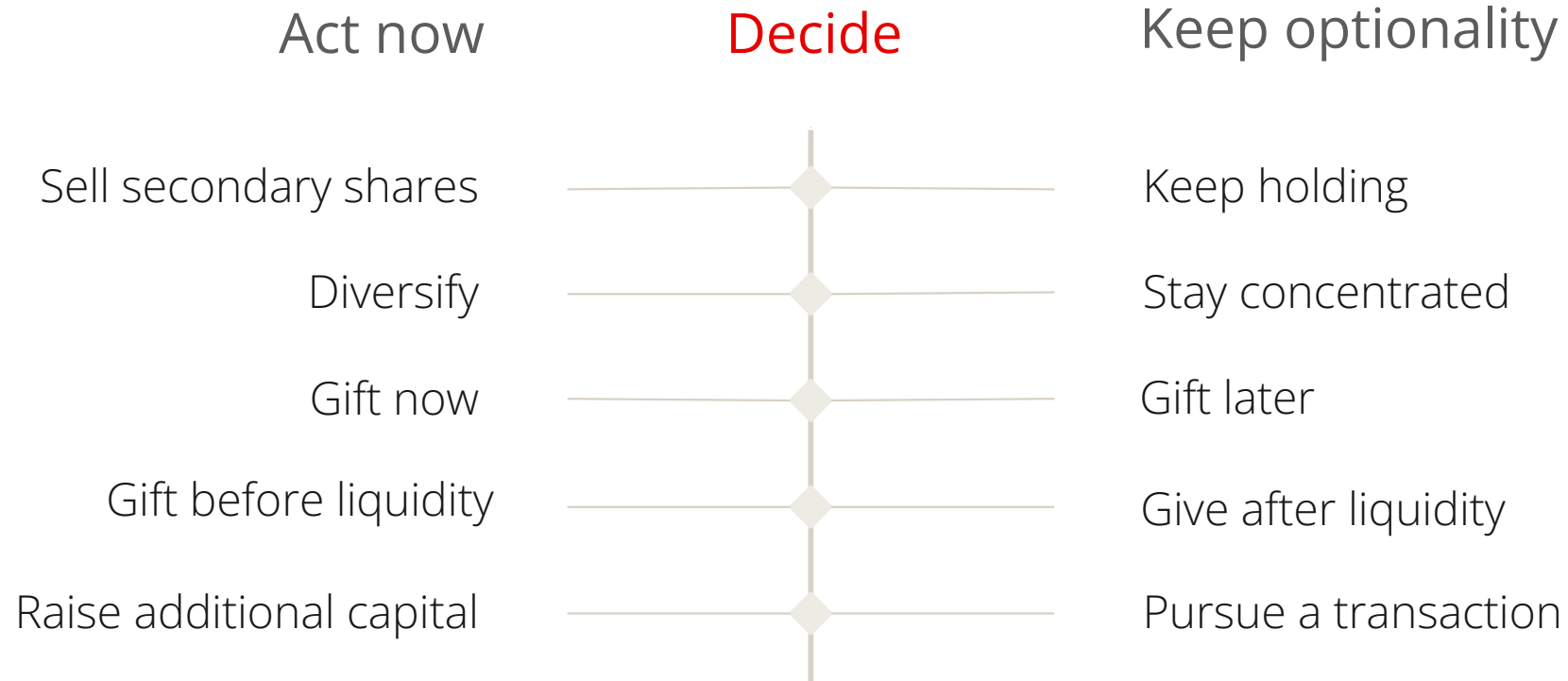
Philanthropy

Investment management

Purpose & legacy planning

The decisions that matter most

The biggest risks are not always tax risks



The technical answer matters. So do timing, conviction, family dynamics and behavior.

Wealth creation vs. Wealth stewardship

Eventually every founder transitions from building wealth to managing what wealth can accomplish

Founder / Operator Mindset

Wealth
Creation

Build

Scale

Raise capital

Increase enterprise value

Create liquidity

Shift
The Frame

*from value created
to value directed*

Steward Mindset

Wealth
Stewardship

Family

Legacy

Philanthropy

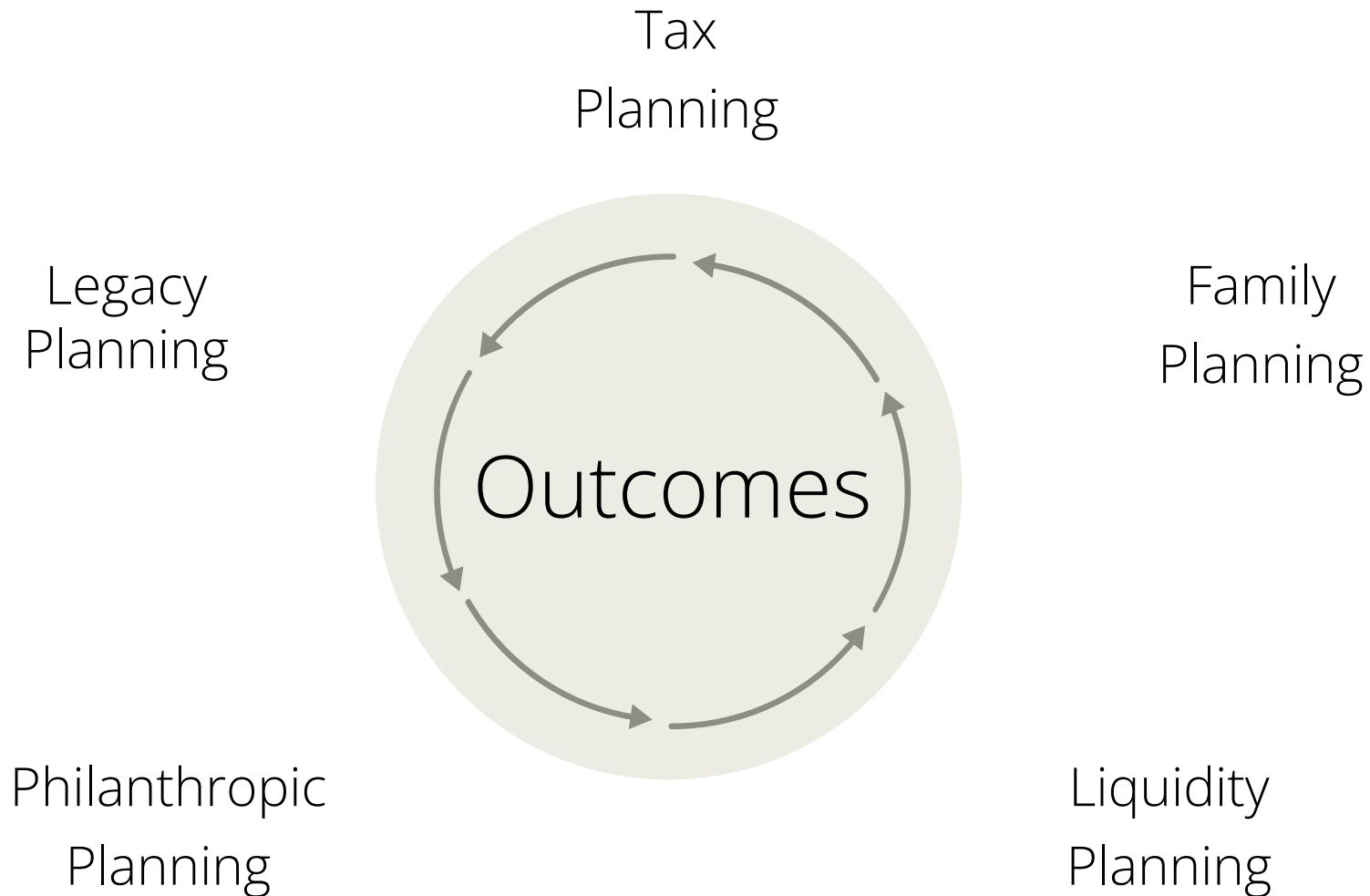
Governance

Impact

Purpose

Turning opportunity into outcomes

Extraordinary wealth outcomes are rarely the result of a single strategy. They emerge from thoughtful, integrated planning.



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Session 7

Building a QSBS Team: Founding to Exit

Christopher Karachale • Partner, Hanson Bridgett
Syida Long • Managing Director, Goldman Sachs
Myra Sutanto Shen • Partner, Wilson Sonsini
Karin Pranglely • Managing Director, Brown Brothers Harriman



HansonBridgett

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