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IRS Warns Against 'Trust Stacking' Tax Break

By Ashlea Ebeling, Richard Rubin and Peter Santilli

A hot tax break beloved by company founders and angel investors is expanding so rapidly that it is drawing the ire of the Trump administration. At issue is what is known as trust stacking, which multiplies the benefits of a tax break for investors in small companies by two, three, four or even more times. The Qualified Small Business Stock tax break, or QSBS, allows founders to exclude up to \$15 million in capital gains from their taxable income. But people are trying to exclude \$60 million and beyond by transferring shares to trusts in their relatives' names.

Treasury Department officials in this administration typically take a pro-taxpayer posture, but they have signaled a coming crackdown.

"Let me just warn you," said Kenneth Kies, the Treasury's top tax-policy official, in a speech last month. "We don't like stacking, OK?"

QSBS lets investors and founders avoid what would otherwise be as much as a 23.8% tax on the sale of shares. Created in 1993 and expanded since then, it enjoys bipartisan support because it is linked to the small businesses, entrepreneurship and early-stage investment that lawmakers want to promote.

These days, QSBS is frequently used in technology startups, where the goal is to get big. Last year's tax law sweetened the QSBS break further, raising the cap to \$15 million from \$10 million for stock acquired since July 4, 2025, and increasing the maximum size of companies that count as small businesses. Stock must be held for five years for the full exclusion.

The law explicitly allows investors to transfer shares to others and have each taxpayer qualify for an exclusion. That enabled stacking to become a core part of founders' early plans, and it will constrain the administration's ability to combat stacking.

The basic idea requires giving away shares to trusts when they aren't worth much. That minimizes the gift-tax hit for the founder and ensures that each piece of the stack can get its own \$15 million exclusion when the company is worth more.

"I'm definitely doing more QSBS stacking," said Michael Arlein, a trusts-and-estates lawyer at Patterson Belknap in New York, who said he is confident that his approaches fit well within the law and any possible Treasury rules. "I haven't changed anything that I'm doing."

The QSBS break is estimated to reduce federal revenue by \$4.9 billion this year, according to the congressional Joint Committee on Taxation, more than triple what it was in 2017. From 2012 through 2022, taxpayers claimed QSBS exclusions of \$140 billion, according to a 2025 Treasury Department study. The exclusions peaked in 2021 at about 2.5% of all capital gains. That year, trusts and estates made 17.5% of QSBS claims, far more than a decade earlier.

A cottage industry of advisory firms has been popping up to facilitate QSBS stacking, attracting clients with advertising and lower trust fees than what attorneys would charge.

Alessandro Chesser started GetDynasty, which offers QSBS packages for up to four trusts. He argues that this kind of trust planning should be more affordable for company founders.

“Giving away money to other people is a really good thing,” he said. “It’s about redistributing your wealth. Who do you actually want to give your wealth to?”

Kies, the tax policy official, said the administration will likely propose rules aimed at limiting QSBS stacking. The new rules could target what the government sees as aggressive planning. The most aggressive versions effectively set up multiple trusts for the same taxpayer.

Imagine a founder has three children, John, Jane and Joan, and sets up trusts for each of them, turning the \$15 million maximum exclusion into \$60 million.

“People are going beyond that and they’re setting up other trusts,” Kies told reporters recently. “It’s something we’re taking a close look at.”

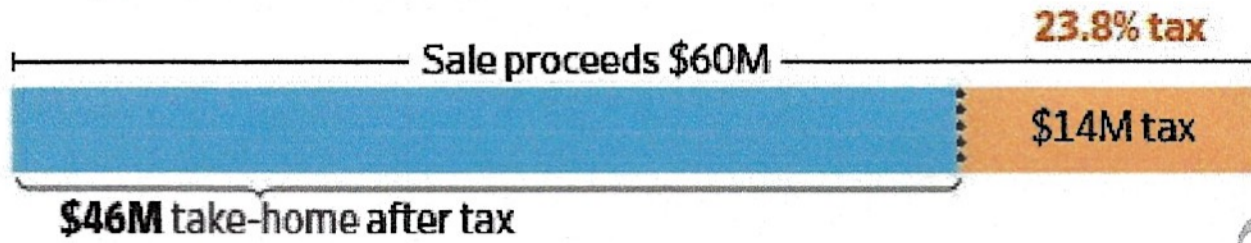
If the founder sets up an additional trust jointly for John and Jane, and another for John and Joan and another for Jane and Joan, that could run afoul of the forthcoming rules.

The Treasury Department and the IRS never published comprehensive regulations on the break, and there has been minimal guidance from courts.

That lack of rules and any requirements for detailed taxpayer reporting to the IRS leave the break without effective guardrails, said Manoj Viswanathan, a professor at UC Law San Francisco, who described the effectively unlimited stacking as absurd.

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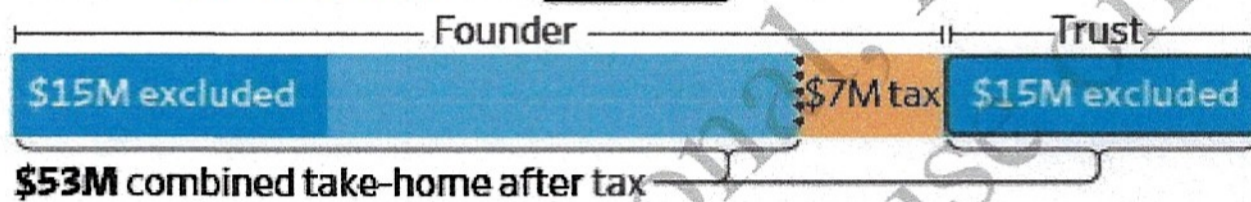
Without the QSBS tax break



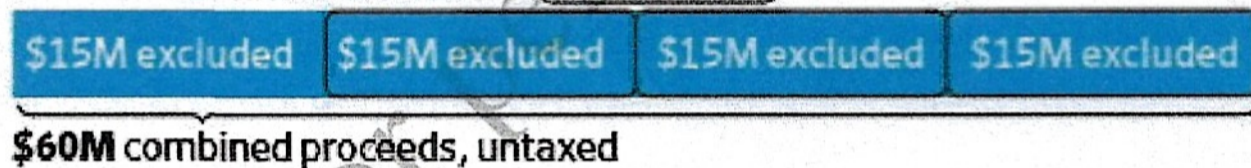
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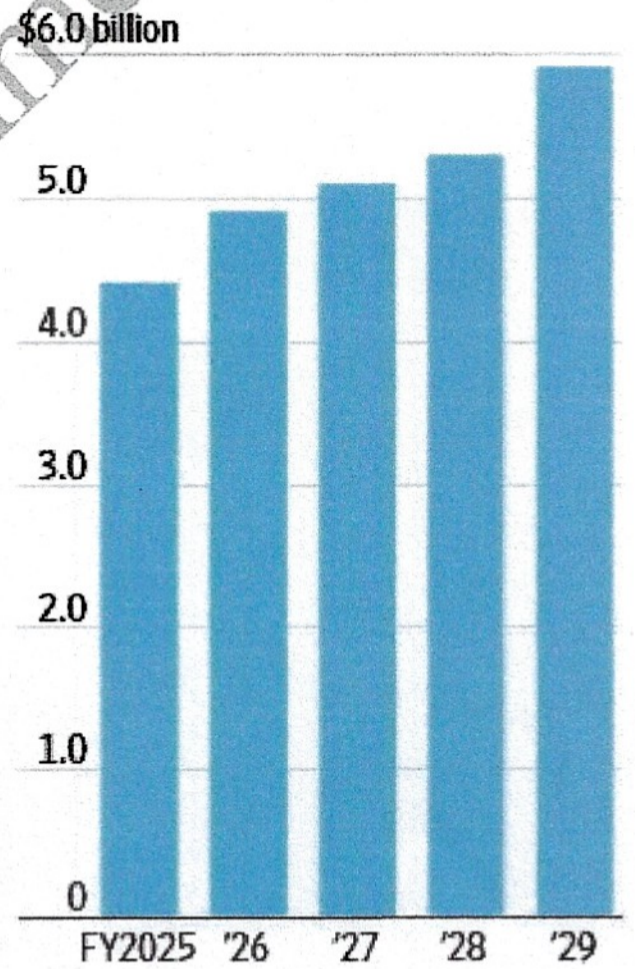
With the QSBS tax break and one trust



With the QSBS tax break and three trusts



Estimated tax revenue lost from Qualified Small Business Stock break*



Sources: Promissory.com (with/without tax break); Joint Committee on Taxation (revenue lost)

*For the fiscal years ending Sept. 30

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