

New York Proposal to Tax QSBS Gains

New York lawmakers are advancing a proposal that would decouple New York tax law from the federal Qualified Small Business Stock (QSBS) regime under IRC §1202, effectively eliminating the state-level benefit of QSBS gain exclusion. The proposal is part of the State Senate's one-house budget for FY 2026–2027 and could be enacted as part of the final state budget. If adopted, the proposal would materially increase New York state tax exposure on startup exits by requiring taxpayers to include in New York income any gain excluded for federal purposes under §1202. As written, the decoupling would be retroactively effective as of January 1, 2025. The proposal is a direct response to recent federal expansion of QSBS benefits, including increased exclusion caps and reduced holding periods for partial exclusion.

Legislative Status

The decoupling provision has been incorporated into the State Senate's one-house budget proposal, increasing the likelihood that it will be considered in final budget negotiations. The statutory budget deadline is April 1, 2026, and decisions related to the final budget are expected to be negotiated in the next few weeks. At this stage, it remains uncertain whether the Assembly or Governor will adopt the provision.

Planning Considerations

Founders with imminent liquidity events should consider accelerating relocation plans out of New York, if feasible. Founders who relocate should obtain professional advice regarding the steps needed to successfully redomicile to minimize the risk of a residency audit.

Another planning option is to gift shares into a trust which qualifies as an "exempt resident trust" for New York income tax purposes. Such a trust is exempt from New York tax on capital gains and thus would not be affected by the decoupling legislation.

Conclusion

The proposal represents a meaningful shift in New York's treatment of capital gains for startups. We will continue to follow developments as budget negotiations proceed. Founders who are concerned about this development may wish to contact their elected officials.

Patterson Belknap has a multi-disciplinary team of lawyers who are focused on the legal needs of founders and entrepreneurs. A description of the full range of our services and attorney contacts can be found [here](#). Please visit the [Founder Focus Resource Center](#) for more content on a broad range of topics of interest to founders and their professional advisors.

This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact the following attorney or call your regular Patterson contact.

Michael S. Arlein	212.336.2588	msarlein@pbwt.com	Estate Planning
Edward H. Smoot	212.336.2168	ehsmoot@pbwt.com	Corporate/Employment
Douglas L. Tang	212.336.2844	dtang@pbwt.com	Corporate/Employment
Kathryn Bi	212.336.2320	kbi@pbwt.com	Disputes
Robin Krause	212.336.2125	rkrause@pbwt.com	Philanthropy
Justin Zaremby	212.336.2194	jszaremby@pbwt.com	Philanthropy
Dahlia Doumar	212.336.2988	dbdoumar@pbwt.com	Tax
Irene Kim	212.336.2195	ikim@pbwt.com	Tax

To subscribe to any of our publications, call us at 212.336.2800, email info@pbwt.com or sign up on our website, <https://www.pbwt.com/subscribe/>.

This publication may constitute attorney advertising in some jurisdictions.

© 2026 Patterson Belknap Webb & Tyler LLP