IRC Section 1202

Qualified Small Business Stock Guide

IRC Sec. 1202 allows holders of qualified small business stock (QSBS) to exclude between 50% to 100% of capital gains upon the sale of QSBS. In conjunction with a tax advisor, this EisnerAmper LLP guide can be utilized as a supplement in determining IRC Sec. 1202 eligibility.

Is the stock issued by a domestic C corporation (excluding a DISC, RIC, REIT, REMIC, cooperative, or corporation that has made an election under IRC Sec. 936)?

Was the stock issued after August 10, 1993?

Have you owned the stock for more than five years?

Did you acquire the stock at original issue (not from a secondary market) in exchange for money, other property (not including stock), or as compensation for services provided to the corporation?

At all times after August 10, 1993 were the corporation's gross assets less than $50 million up until the date of stock issue and immediately after?

Does the corporation conduct an "active trade or business" during substantially the entire holding period of your stock? To qualify, at least 80% of the corporation's assets must be used in the "active conduct of one or more trade or business" during your entire holding period.

If yes, is the active trade or business one of the following: (1) professional services; (2) banking, insurance, and related businesses; (3) farming businesses; (4) lodging and restaurant businesses or (5) rental of real property or a similar business?

Is the corporation a holding (or parent) company that owns more than 50% of the combined voting power of all classes of voting stock, or more than 50% in value of all outstanding stock of an operating company that conducts an "active trade or business?" A parent corporation is deemed to own its ratable share of the subsidiaries assets and its ratable share of its activities.

Does 10% or less of the value of the corporation's net assets consist of stock and securities of other corporations (not including that of a subsidiary)?

Has the corporation repurchased or redeemed any of its stock within two years before or after the issuance of the shares for which you are seeking an exclusion?

This guide is intended to provide general information to our clients and friends. It does not constitute accounting, tax, or legal advice; nor is it intended to convey a thorough treatment of the subject matter. This guide is an overview and is subject to change at any time. You should consult your accounting and tax advisor for your specific situation.

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