



# QSBS Stacking Overview

## Executive Summary: Maximizing QSBS Through Strategic Stacking

The Qualified Small Business Stock (QSBS) exemption represents one of the most significant wealth preservation opportunities in the current federal tax code. Created to incentivize investment in the U.S. entrepreneurial ecosystem, Section 1202 allows founders and early investors to exclude up to \$10 million (or \$15 million for issuances post-July 4, 2025) in capital gains from federal taxation and most state taxation.

However, for UHNW individuals anticipating an exit value well exceeding these caps, a single exemption is often insufficient. This has given rise to “QSBS Stacking” — a sophisticated planning strategy that multiplies the exemption by distributing shares to distinct taxpayers, such as family members or trusts.

The following guide outlines the strategic landscape for multiplying your QSBS exclusion, categorized by control, estate tax efficiency, and implementation timing.

## The Regulatory Landscape: Post-2025 Updates

Under the One Big Beautiful Bill Act (OBBBA), signed July 4, 2025, the exclusion cap has bifurcated based on the issuance date:

### Pre-July 4, 2025, Issuance:

Capped at the greater of \$10 million  
or 10x basis

### Post-July 4, 2025, Issuance:

Capped at the greater of \$15 million  
or 10x basis

Note: Residents of non-conforming states (e.g., California, New Jersey) face state-level taxation on these gains, necessitating further geographic planning.

## Strategy 1: Direct Gifting

### Profile: High simplicity, low control

The most direct method to multiply the QSBS exemption is the outright transfer of shares to family members or other individuals. The IRS has affirmed that QSBS status travels with the shares when gifted. By transferring shares to children or relatives, you effectively assign them their own \$10M–\$15M exemption.

- **The Estate Tax Advantage:** Direct gifting removes high-growth assets from your taxable estate before they appreciate further. This leverages your lifetime gift exemption to transfer potential future value tax-free, rather than paying the federal estate tax on that appreciation at death.
- **The Limitations:**
  - **Loss of Governance:** Once gifted, you forfeit voting rights and disposition control. This can complicate cap table management and introduce risk if the recipient lacks financial maturity.
  - **Asset Protection:** Assets held outright by beneficiaries are exposed to their personal creditors and potential divorce settlements.
  - **Loss of Liquidity:** You legally forfeit access to the proceeds. Informal arrangements to “share” proceeds can trigger IRS step-transaction doctrines and should be avoided.

## Strategy 2: Non-Grantor Trusts (NGTs)

### Profile: High control, maximum tax efficiency, creditor protection

For early-stage founders, Non-Grantor Trusts are often the gold standard for QSBS stacking. An NGT is treated as a separate taxpayer by the IRS, meaning it is entitled to its own separate QSBS exemption.

- **Governance & Control:** Unlike direct gifting, an NGT allows you to appoint a fiduciary (trustee) to manage the assets, ensuring the shares are voted and sold according to a prudent strategy, rather than at the whim of a beneficiary.
- **SALT Optimization:** By siting the trust in a zero-income-tax jurisdiction (e.g., South Dakota, Delaware, Nevada), you may eliminate state income tax on the gains—a critical arbitrage for residents of high-tax states like California.
- **Dynastic Wealth Preservation:** NGTs provide a wrapper that protects assets from beneficiaries’ creditors and ex-spouses. Furthermore, by allocating your Generation-Skipping Transfer (GST) tax exemption to the trust, assets can compound for multiple generations without incurring transfer taxes.
- **Timing is Critical:** This strategy is most capital-efficient when share value is low, minimizing the use of your lifetime gift exemption.

## Strategy 3: Spousal Lifetime Access Non-Grantor Trusts (SLANTs)

**Profile:** Balanced approach: Retained indirect access with administrative complexity

The SLANT is a sophisticated variation of the Non-Grantor Trust designed for those who wish to move assets out of their estate but fear losing access to the liquidity.

- **The Mechanism:** By naming your spouse as a discretionary beneficiary, your household retains indirect access to the trust funds for “health, education, maintenance, and support.” This allows you to stack an additional QSBS exemption while maintaining a financial safety net.
- **The Trade-off:** SLANTs require rigorous administration to avoid IRS challenges. They generally require the involvement of adverse parties (such as an independent trustee) to ensure the trust remains a separate taxpayer for income tax purposes. This adds a layer of “compliance friction” that is higher than standard NGTs.

## Strategy 4: Charitable Remainder Unitrusts (CRUTs) with QSBS

**Profile:** Late-stage planning, liquidity-focused

For founders who are approaching an exit and missed the window for early-stage gifting, a QSBS-optimized CRUT offers a powerful solution to capture an additional exemption while retaining the proceeds.

- **How it Works:** You contribute shares to the CRUT prior to a binding letter of intent. Upon sale, the CRUT (a tax-exempt entity) pays no tax. Because the CRUT claims its own QSBS exemption, the distributions of those gains back to you are also tax-exempt up to the cap.
- **The Benefit:** Unlike gifting strategies, where the money goes to heirs, a CRUT distributes the tax-free proceeds back to you.
- **Strategic Constraints:**
  - **Short Duration:** To prevent trapping tax-free gains behind taxable investment income, these trusts are often designed with a short term (e.g., 5 years). This requires precise timing relative to the liquidity event.
  - **Estate Inclusion:** Because the proceeds return to you, they remain in your taxable estate. This is a liquidity tool, not an estate reduction tool.



## Conclusion

QSBS stacking is not merely a tax tactic; it is a fundamental component of net-worth optimization for founders. Whether your priority is dynastic wealth transfer (Non-Grantor Trusts), immediate liquidity (CRUTs), or spousal security (SLANTs), the variance in after-tax yield can amount to tens of millions of dollars.



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