

Part III

Administrative, Procedural, and Miscellaneous

Section 1045: Rollover of gain from qualified small business stock to another qualified small business stock.

Rev. Proc. 98-48

SECTION 1. PURPOSE

This revenue procedure provides procedures for taxpayers to make an election under § 1045 of the Internal Revenue Code ("§ 1045 election") to defer recognition of certain gain on the sale of qualified small business stock ("QSB stock").

SECTION 2. BACKGROUND

.01 Section 1045(a), as added by § 313(a) of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 788 (Aug. 5, 1997), and amended by § 6005(f) of the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. No. 105-206, 112 Stat. 685 (July 22, 1998), generally allows a taxpayer other than a C corporation to elect not to recognize gain from the sale of QSB stock held by the taxpayer for more than six months. If the taxpayer makes the election under § 1045 and this revenue procedure, gain from such sale is recognized only to the extent that the amount realized on the sale exceeds:

- (1) the cost of any QSB stock that the taxpayer

purchases during the 60-day period beginning on the date of sale, reduced by

(2) any portion of the cost of the replacement QSB stock that was previously taken into account under § 1045. However, the election is not available to defer any gain on the sale that is treated as ordinary income for purposes of the Code.

.02 Under § 1045(b), "qualified small business stock" has the same meaning as provided in § 1202(c).

.03 Section 1045(b)(5) provides that, for QSB stock held through passthrough entities, rules similar to the rules of § 1202(g) apply for purposes of § 1045. For example, a passthrough entity may make a § 1045 election if the entity sells QSB stock held for more than six months and purchases replacement QSB stock during the 60-day period beginning on the date of the sale. The benefit of deferral with respect to a sale of QSB stock by the passthrough entity will flow through to taxpayers (other than C corporations) that held interests in the entity during the entire period in which the entity held the QSB stock. Also, for example, if a passthrough entity sells QSB stock held for more than six months, an individual who has held an interest in the entity during the entire period in which the entity held the QSB stock and who purchases replacement QSB stock during the 60-day period beginning on the date of the sale of the QSB stock may make the § 1045 election with respect to the individual's share of any gain on the sale that the entity does not defer under § 1045.

SECTION 3. PROCEDURE

.01 Time for Making the Election.

A § 1045 election must be made on or before the later of December 31, 1998, or the due date (including extensions) for filing the income tax return for the taxable year in which the QSB stock is sold.

.02 Manner of Making the Election.

(1) In general. Except as provided in section 3.02(2) of this revenue procedure, the election is made by:

(a) reporting the entire gain from the sale of QSB stock on Schedule D, Capital Gains and Losses, of the return in accordance with the instructions for Schedule D;

(b) writing "section 1045 rollover" directly below the line on which the gain is reported; and

(c) entering the amount of the gain deferred under § 1045 on the same line as (ii) above, as a loss, in accordance with the instructions for Schedule D.

(2) Transition rule. If gain is reportable on a return filed before October 21, 1998, and the return does not satisfy the requirements of section 3.02(1) of this revenue procedure but discloses the gain and includes an affirmative statement to the effect that a § 1045 election applies to the gain, the requirements of section 3.02(1) will be treated as satisfied and an amended return is not required to make the § 1045 election. Otherwise, an original or amended return satisfying the requirements of section 3.02(1) of this revenue procedure is

required to make the § 1045 election with respect to such gain.

.03 Scope of the Election.

If a person has more than one sale of QSB stock in a taxable year that qualifies for the § 1045 election, the person may make a § 1045 election for any one or more of those sales.

.04 Revocation.

A § 1045 election is revocable only with the prior written consent of the Commissioner. To obtain the Commissioner's consent, the person who made the § 1045 election must submit a request for a private letter ruling in accordance with the provisions of Rev. Proc. 98-1, 1998-1 I.R.B. 7 (or its successor).

SECTION 4. EFFECTIVE DATE

This revenue procedure is effective for sales of QSB stock occurring after August 5, 1997.

DRAFTING INFORMATION

The principal author of this revenue procedure is J. Peter Baumgarten of the office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue procedure, contact Mr. Baumgarten on (202) 622-4950 (not a toll-free call).