ASSEMBLY COMMERCE, ECONOMIC DEVELOPMENT AND AGRICULTURE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4455

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 6, 2025

The Assembly Commerce, Economic Development and Agriculture Committee reports favorably and with committee amendments Assembly Bill No. 4455.

As amended, this bill allows a taxpayer to claim a deduction from New Jersey gross income for the capital gains earned from the sale or exchange of New Jersey qualified small business stock (QSBS) held for more than five years. The maximum deduction allowable under the bill depends on the percentage of the qualified small business' payroll, as measured by total dollar value, which is attributable to employment located within the State.

If a taxpayer has capital gains for the taxable year from one or more dispositions of QSBS, the taxpayer would be allowed to claim a deduction equal to the greater of a specific dollar amount, or a multiple of the aggregate adjusted basis amount of the QSBS, based on a diminishing sliding scale. Specifically, the allowable deduction amounts would depend on the percentage of the corporation's payroll, as measured by total dollar value, that is attributable to employment within this State. For example, if the percentage of the qualified small business's payroll attributable to in-State employees is 100 percent, the maximum allowable deduction for capital gains from the sale or exchange of the QSBS would be $10 million or 10 times the aggregate adjusted basis of QSBS. In contrast, if the percentage of the qualified small business's payroll attributable to in-State employees is at least 10 percent but less than 20 percent, the maximum allowable deduction would be $1 million or the aggregate adjusted basis of QSBS.

The maximum deduction of $10 million or 10 times the aggregate adjusted basis of QSBS is modeled on the federal capital gains exclusion allowed under section 1202 of the federal Internal Revenue Code.

Under the bill, a QSBS is generally defined to include any stock that is originally issued by a C corporation on or after January 1, 2015, provided the corporation qualifies as a qualified small business as of the date of issuance, and the stock was acquired by the taxpayer at its original issue, not a secondary market. The bill also requires the

QSBS to have been acquired in exchange for money or property, or as compensation for services provided to the corporation.

For an individual taxpayer to qualify for the special capital gains treatment under the bill, the taxpayer is required to have held the QSBS for at least five years. Specifically, the stock is required to be in a qualified small business that is a domestic C corporation, and remains a C corporation during substantially all of the time the individual holds the stock, and which meets all of the following criteria: (1) the aggregate gross assets of the corporation do not exceed $50 million, both at all times after the effective date of the bill and before the issuance of the stock; (2) the aggregate gross assets of the corporation do not exceed $50 million as of the date the stock was issued and immediately thereafter; and (3) the corporation has fewer than 225 employees and at least 10 percent of the corporation's payroll, as measured by total dollar value, is attributable to employment located within this State.

Additionally, during substantially all of the time the stock is held, at least 80 percent of the value of the corporation's assets is required to be used in the active conduct of one or more qualified businesses. As under section 1202 of the federal Internal Revenue Code, the bill provides that a gross income tax deduction may not be claimed for a capital gain realized from the sale or exchange of a QSBS in a business that is: a service business in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting, athletics, financial services, or brokerage services; a banking, insurance, financing, leasing, investing, or similar business; a farming business; a business of operating a hotel, motel, restaurant, or similar business.

If the individual taxpayer holds qualifying stock for at least five years, then the taxpayer would be able to exclude the capital gains made on the disposition of the stock, and thus pay no gross income on the capital gains. The special exclusion of capital gains for qualified stock that is held by "pass through entities," including a partnership, an "S" corporation, a regulated investment company, or a common trust fund, that otherwise meet the requirements of this bill, is available to the individual gross income taxpayers who hold interests in those pass-through entities.

COMMITTEE AMENDMENTS:

The committee amendments expand the definition of a "qualified small business" to include, among other criteria, a requirement that the corporation have at least 10 percent of the corporation's payroll, as measured by total dollar value, attributable to employment located within this State. As introduced, the bill's definition of a "qualified small business" included a requirement that at least 80 percent of the corporation's payroll, as measured by total dollar value, be attributable to employment located within the State.

The committee amendments also incorporate a schedule to specify the maximum allowable deduction that a taxpayer may claim for the gains derived from the sale or exchange of QSBS for a qualified small business. The maximum allowable deduction to the taxpayer would be equal to the greater of a specific dollar amount or a multiple of the aggregate adjusted basis amount of the QSBS, as determined based on a diminishing sliding scale depending on the percentage of the corporation's payroll attributable to in-State employment.

The committee amendments further provide that, in the case of a married individual filing a separate return, the maximum deduction allowed under the bill would be the greater of: 50 percent of the allowable dollar value, or 50 percent of the allowable aggregate adjusted basis provided under the bill. As introduced, the maximum deduction would have been $5 million.

In addition, the committee amendments expand the scope of QSBS for which the deduction may be claimed. As amended, a QSBS would include any stock in a C corporation that was originally issued on or after January 1, 2015, provided that all other eligibility requirements are met. As introduced, a QSBS would have only included stock issued on or after the effective date of the bill.

The amendments also clarify that assets used in connection with any future qualified trade or business would be treated as being used in the active conduct of a qualified trade or business, regardless of whether a corporation has any gross income from those activities at the time. A corporation is required to satisfy the active business requirements, among other criteria, in order for its stock to be considered QSBS eligible for the deduction provided under the bill.

Additionally, the amendments clarify that the deduction allowed under the bill could only be claimed for taxable years beginning on or after the effective date of the bill.

The committee amendments also make technical changes to the bill to reflect the repeal of section 936 of the federal Internal Revenue Code (26 U.S.C. s.936), and make other corrections.