ASSEMBLY STATE AND LOCAL GOVERNMENT COMMITTEE

STATEMENT TO

[First Reprint]
ASSEMBLY, No. 4455

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 20, 2025

The Assembly State and Local Government Committee reports favorably and with committee amendments Assembly Bill No. 4455 (1R).

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 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.

Specifically, 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, as follows: (1) if the percentage of the qualified small business's payroll attributable to in-State employees is at least 80 percent, the maximum allowable deduction would be the greater of $10 million or 10 times the aggregate adjusted basis of the QSBS; and (2) if the percentage of the qualified small business's payroll attributable to in-State employees is less than 80 percent, the maximum allowable deduction would be the greater of $8 million or 8 times the aggregate adjusted basis of the QSBS. However, these maximum allowable deduction amounts would be reduced by the aggregate amount of eligible gain claimed by the taxpayer for any prior taxable year and attributable to dispositions of stock issued by the corporation.

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.

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 revise the manner in which the maximum allowable deduction would be calculated under the bill. Specifically, the amendments provide that the maximum allowable deduction would be determined, as follows:

(1) if the percentage of the qualified small business's payroll attributable to in-State employees is at least 80 percent, the maximum allowable deduction would be the greater of $10 million or 10 times the aggregate adjusted basis of the QSBS; and

(2) if the percentage of the qualified small business's payroll attributable to in-State employees is less than 80 percent, the

maximum allowable deduction would be the greater of $8 million or 8 times the aggregate adjusted basis of the QSBS.

However, the amendments provide that these maximum allowable amounts would be reduced by the aggregate amount of eligible gain claimed by the taxpayer for any prior taxable year and attributable to dispositions of stock issued by the corporation.

Previously, the bill incorporated a schedule specifying the maximum allowable deduction that could be claimed by a taxpayer. Under that schedule, the maximum allowable deduction would have been 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.

Additionally, the committee amendments revise the definition of "qualified small business" to remove the requirement for at least 10 percent of the corporation's payroll, as measured by total dollar value, to be attributable to employment located within this State.

The committee amendments also provide technical changes to the bill, including revisions to the title and synopsis of the bill.