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Trust Stacking: What Founders Should Know Before Moving QSBS Into Trusts

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The strategy is legitimate more often than recent headlines suggest — but it succeeds or fails on three things founders should be more focused on: valuation, timing, and documentation.

The *Wall Street Journal* recently brought Qualified Small Business Stock (QSBS) in front of a mainstream audience, with a warning: a tax planning technique called trust stacking is multiplying tax breaks for founders by two, three, even four times over, and Treasury has noticed. We've seen founders read this one of two ways: I am leaving millions on the table —let's set up five trusts; or, this is a tax shelter that raises alarms— stay clear.

Both reactions are wrong, and in the same way. Trust stacking is neither a loophole to maximize nor a scheme to avoid. It is ordinary estate planning that happens to be tax-efficient, and whether a structure survives examination turns far less on the idea than on the execution. Get the execution right and a stack looks like what it is: a family transferring wealth. Get it wrong and it looks like what Treasury says it does not like.

What Stacking Is, And Why It Works

The Section 1202 gain exclusion — the rule that lets a founder exclude up to $15 million of capital gains on the sale of QSBS — applies per taxpayer, per company. A properly formed non-grantor trust is its own taxpayer. So, a founder who gifts QSBS into a separate trust for each family member, and keeps a slice personally, can turn one $15 million exclusion into three, four, or more.

The July 4, 2025, One Big Beautiful Bill Act made the prize larger. For QSBS acquired after that date, the per-issuer exclusion rose from $10 million to $15 million, indexed for inflation beginning in 2027; the company-size ceiling rose from $50 million to $75 million in gross assets; and the rigid five-year holding period gave way to a tiered schedule — 50 percent of the gain excluded at three years, 75 percent at four, 100 percent at five or more.

Stock acquired on or before July 4, 2025, still follows the old all-or-nothing five-year rule. One wrinkle for anyone modeling an early exit: gain not excluded under the three- and four-year tiers is taxed at 28 percent, not the usual long-term rate.

The engine that lets a gift work is Section 1202(h): when QSBS is transferred by gift, the recipient steps into the donor's shoes, taking the donor's holding period and the stock's QSBS character. A trust can therefore sell shortly after it receives shares, provided the founder has already held them long enough. That is the feature trust stacking depends on — and the feature that makes the rest of this article matter.

What Treasury Said — And What It Did Not

Strip the headline, and here is what happened. On May 20, 2026, Kenneth Kies, the Treasury official who oversees tax policy, told a Washington tax conference hosted by BakerHostetler that the government does not like stacking and is working on guidance to rein it in. Another Treasury official had raised the same concern weeks earlier, and the subject came up at the American Bar Association's tax section meeting that month. The Journal highlighted these signals to a wider audience.

What has not happened is rulemaking. No proposed regulations exist; no notice has been issued; conference remarks bind no one. There is also a genuine question — one tax lawyers are openly debating — whether Treasury can restrict stacking by regulation at all. Congress had Section 1202 on the operating table in 2025, expanded it, and chose not to touch either the per-taxpayer rule or the gift provision that makes stacking work. When a statute's plain words permit a result, an agency's distaste is not, by itself, authority to forbid it.

> What changed, and what didn't. Treasury has signaled, not acted. A completed gift that was properly valued and disclosed is not unwound by a speech, and any future guidance faces both a legal-authority question and the usual hurdles to retroactive application. The risk that has shifted is at the margin — the aggressive structures — not at the core.

The concern is also specific. Officials have pointed not at trust planning in general but at structures that go beyond one trust per family member: a founder with two children who creates a third trust for both, or a web of trusts assembled to manufacture exclusions rather than to move wealth. That is the line, and it is worth knowing where it falls before choosing a side of it.

Estate Planning On One Side, Tax Shelter On The Other

The distinction Treasury is drawing is not trusts-good versus trusts-bad. It is purpose. Does the structure look like a family moving wealth to the next generation, with tax efficiency as a consequence — or like an exclusion-multiplication device, with the family relationships bolted on afterward? The markers that separate the two are concrete enough to audit against:

FEATURE	DEFENSIBLE ESTATE PLANNING	HIGH-RISK TAX SHELTER
Trust-to-Beneficiary Ratio	One separate trust per separate beneficiary.	More trusts than actual beneficiaries.
Trust Structure	Distinct grantors and beneficiaries across trusts.	Multiple trusts with substantially identical parties.
Timing of Transfer	Made early, well before any company sale is in view.	Assembled in the weeks before a sale or term sheet.
Primary Purpose	Genuine donative intent; clear non-tax family-wealth reasons.	Manufactured strictly as an exclusion-multiplication device.

Two of those markers carry legal force. Duplicative trusts — several with substantially the same grantor and beneficiaries — can be collapsed into one under Section 643(f) where a principal purpose is tax avoidance, folding the whole stack into a single exclusion. And timing is not merely cosmetic: a structure assembled once a sale is in view runs into the assignment-of-income problem below. Nothing in the left-hand column is new; it describes the discipline careful planners have applied for years — which is why those structures have little to fear from guidance aimed at the ones on the right.

Where The Audit Risk Actually Lives: The Valuation

This is the part founders underweight, and the part most likely to decide whether a stack holds.

A gift of QSBS into a trust is a completed gift. It must be valued at fair market value as of the date of the gift — the willing-buyer, willing-seller standard of Section 2512 — and substantiated by a qualified appraisal. A 409A valuation is not that appraisal. It is built for a different purpose and answers to a different reader — an auditor, not an estate-and-gift examiner — on assumptions a gift-tax appraisal does not share. Treating the two as interchangeable is the most common technical error in this area, and it surfaces years later, under examination, when it is expensive to fix.

Two things follow. First, adequate disclosure matters as much as the number. A gift reported on Form 709 with the disclosure the regulations require — and backed by a qualified appraisal — starts the three-year statute of limitations under Treasury Regulation Section 301.6501(c)-1(f). Skip the disclosure and the gift stays open indefinitely; the IRS can revalue it, and the stack with it, long after the company has sold and the proceeds are spent. For a strategy whose entire payoff arrives at a future exit, an open-ended statute is not a footnote. It is exposure.

Second, low and early beats high and late — and "low" must mean defensible. The economics of stacking reward transferring shares when they are worth little: a modest fair market value keeps the gift-tax cost and lifetime-exemption usage small (the exemption is $15 million per person in 2026), and it places the maximum future appreciation inside each exclusion bucket. The temptation is to push the valuation lower with aggressive discounts for lack of marketability or minority interest. Those discounts are legitimate and often correct — but they are exactly where an examiner looks first, and an indefensible discount turns a clean gift into a contested one. The goal is not to minimize the number but to support it.

Where It Lives: The Timing

Two clocks run at once, and founders tend to watch only one.

The first is the holding-period clock. Because the trust includes the founder's holding period under Section 1202(h), the gift does not restart it. A trust can receive shares and sell soon after, so long as the combined holding satisfies the relevant tier —

three, four, or five years for post-2025 stock; five for older stock. Where a sale arrives before the clock runs out, a Section 1045 rollover into new QSBS, made within 60 days, can preserve the exclusion and carry the holding period forward — though that, too, requires a real operating business on the other side, not a shell built to park gain.

The second clock is the sale process, and it is the one that upends most good plans. Once a sale is practically certain — a signed letter of intent, a definitive agreement — gifting the shares no longer moves the gain. Under the assignment-of-income doctrine, a taxpayer who has, in substance, already earned a gain cannot escape it by handing the asset to someone else first; the gain is taxed back to the donor. A founder who waits until the deal is in hand has spent legal fees and lifetime exemption to accomplish nothing and may have created a gift-tax problem on top of the income-tax one. The most common way a sound structure fails is not bad design. It is good design executed too late.

Where It Lives: The Documentation

If valuation and timing are the substance, documentation is the defense — the file an examiner reads three years on.

A DEFENSIBLE STACK HAS, AT A MINIMUM:

A **Form 709** with adequate disclosure and a qualified appraisal for each gift; contemporaneous evidence of donative intent and of the non-tax purpose the planning serves;

An **independent trustee** and records showing the trust is actually administered as one;

Trusts that are genuinely **distinct in their beneficiaries**;

And a **tracking workpaper recording**, per company, each block's acquisition date, basis, holding period, and applicable exclusion tier. The post-2025 tiers make that last item more than bookkeeping: the same founder can hold pre- and post-OBBBA stock in one company under different caps and different holding rules, and only the records will tell them apart at sale.

One more item belongs in the file: **the state analysis**. The exclusion is federal; several states tax the gain in full, the map has been moving, and a non-grantor trust is taxed where it resides, not where the founder does — so the trust's situs matters as much as the founder's residence.

What To Do Now

For founders who have already stacked, there is no immediate need to unwind anything. It would be beneficial to read the existing structure against the markers above — number of trusts, distinctness of beneficiaries, timing of the transfers — and to confirm the two things that protect a completed gift: adequate disclosure already filed, and a defensible appraisal already in the file. If either is missing, that is the gap to close, and it is closable.

For founders considering it, the sequence is the strategy. Plan early, while the stock is worth little and no sale is in view. Size the structure to a real family plan, not to a target exclusion. Get the valuation done properly, by an expert who works to the gift-tax standard, and disclose it. And do not build more trusts than you can justify to someone who has never heard of Section 1202. If your expected gain sits comfortably under a single exclusion — yours, plus a spouse's — stacking is probably more cost and complexity than it is worth.

The Line That Holds

Treasury's signal changes the calculus at the edges. It does not change the core, because, in our view, the core was never the target. The structures that were defensible a year ago — early, documented, genuinely donative, valued by someone who does this for a living — are the same structures that will survive whatever guidance arrives, for the simple reason that they were built as estate planning and can be defended as estate planning. The ones assembled in the weeks before a term sheet were never safe, with or without a regulation to say so.

Stacking, in the end, is not a tax trick that needs a valuation bolted on. It is a valuation problem wearing a tax-planning costume. Get the number right, get it early, and write it down — and most of what Treasury is worried about simply will not apply to you.

Auditing an existing structure against the markers above — or getting a new one right from the start — begins with the number. Eton Venture Services provides independent gift- and estate-tax valuations of private-company stock, including QSBS transferred into trusts, built to the fair-market-value standard the IRS applies and documented to support the adequate disclosure that starts the statute of limitations. When a 409A is already in hand, much of the underlying analysis is done and a gift-tax valuation follows efficiently. To discuss a transfer you are planning, or a structure already in place, contact us at **info@etonvs.com**.

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About The Author

Chris Walton, JD, is President and CEO and co-founded Eton Venture Services in 2010 to provide mission-critical valuations to private companies. He leads a team that collaborates closely with each client's leadership, board of directors, internal/external counsel, and independent auditors to develop detailed financial models and create accurate, audit-ready valuations.

Chris has led thousands of valuations, including for equity securities, intangible assets, contingent considerations, financial instruments, investment valuations, convertible debt, business valuations for tax compliance purposes and financial reporting compliance requirements, as well as fairness and solvency opinions.

He started his career as an attorney at Gunderson Dettmer, a Silicon Valley law firm, where he specialized in corporate securities and M&A transactions. After transitioning from law firms to corporate management, Chris held leadership positions at two venture-backed startup companies.