**8593. Under what circumstances may a noncorporate taxpayer roll over gain from the sale or exchange of qualified small business stock that is held for six months or more?**

Generally, a noncorporate taxpayer, including certain partnerships and S corporations, may elect to roll over gain from the sale or exchange of qualified small business stock held more than six months to the extent that the taxpayer purchases other qualifying small business stock within 60 days of the sale of the original stock.[[1]](#footnote-1)

If the taxpayer elects to roll over gain on the sale of qualified small business stock, gain will be recognized only to the extent that the amount realized on the sale exceeds (1) the cost of any qualified small business stock purchased by the taxpayer during the 60-day period beginning on the date of the sale, reduced by (2) any portion of such cost previously taken into account under this rollover provision. The rollover provisions of IRC Section 1045 will not apply to any gain that is treated as ordinary income.[[2]](#footnote-2)

Rules similar to those applicable to rollovers of gain by an individual from certain small business stock[[3]](#footnote-3) will apply to the rollover of such gain by a partnership or S corporation.[[4]](#footnote-4) Thus, for example, the benefit of a tax-free rollover with respect to the sale of small business stock by a partnership will flow through to an “eligible partner”—meaning a partner who is not a corporation and who held his partnership interest at all times during which the partnership held the small business stock.[[5]](#footnote-5) (A similar rule applies to S corporations and their shareholders.)[[6]](#footnote-6)

For the rules regarding (1) the deferral of gain on a partnership’s sale of qualified small business stock followed by an eligible partner’s acquisition of qualified replacement stock, and (2) the deferral of gain on a partner’s sale of qualified small business stock distributed by a partnership, see Treasury Regulation Section 1.1045-1.[[7]](#footnote-7)

Any gain not recognized because of a rollover of qualified small business stock will be applied to reduce (in the order acquired) the basis for determining gain or loss of any qualified small business stock purchased by the taxpayer during the 60-day rollover period.[[8]](#footnote-8)

Ordinarily, the holding period of qualified small business stock purchased in a rollover transaction will include the holding period of the stock sold; but for purposes of determining whether the nonrecognition of gain applies to the stock that is sold, the holding period for the replacement stock begins on the date of purchase. In addition, only the first six months of the taxpayer’s holding period for the replacement stock will be taken into account for purposes of determining whether the active business requirement is met.[[9]](#footnote-9)

**Practice Point**: The taxpayer must make an election under IRC Section 1045 by the due date (including extensions) for filing the income tax return for the taxable year in which the qualified small business stock is sold.[[10]](#footnote-10) The election is made by (1) reporting the entire gain from the sale of qualified small business stock on Schedule D; (2) writing “IRC Section 1045 rollover” directly below the line on which the gain is reported; *and* (3) entering the amount of the gain deferred under IRC Section 1045 on the same line as (2), above, as a loss, in accordance with the instructions for Schedule D.[[11]](#footnote-11)

If a taxpayer has more than one sale of qualified small business stock in a taxable year that qualifies for the IRC Section 1045 election, the election can be made for any one or more of those sales. An IRC Section 1045 election is revocable only with the Commissioner’s consent.[[12]](#footnote-12)

1. . See IRC Sec. 1045(a). [↑](#footnote-ref-1)
2. . IRC Sec. 1045(a). [↑](#footnote-ref-2)
3. . IRC Sec. 1202. [↑](#footnote-ref-3)
4. . IRC Sec. 1045(b)(5). [↑](#footnote-ref-4)
5. . See Treas. Regs. §§1.1045-1(b)(1), 1.1045-1(g)(3)(i). [↑](#footnote-ref-5)
6. . General Explanation of Tax Legislation Enacted in 1998 (JCS-6-98), p. 167 (the 1998 Blue Book). [↑](#footnote-ref-6)
7. . TD 9353, 2007-2 CB 721. [↑](#footnote-ref-7)
8. . IRC Sec. 1045(b)(3). [↑](#footnote-ref-8)
9. . IRC Secs. 1045(b)(4), 1223(15). [↑](#footnote-ref-9)
10. . Rev. Proc. 98-48, 1998-2 CB 367. [↑](#footnote-ref-10)
11. . Rev. Proc. 98-48, 1998-2 CB 367. [↑](#footnote-ref-11)
12. . Rev. Proc. 98-48, 1998-2 CB 367. [↑](#footnote-ref-12)