

CapGains Inc. – The Startup Born From a Tax Code Section

by Philip Wolf



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In this article, Wolf interviews Jonathan Fish about his startup, CapGains Inc., and explains how the complexity of section 1202 became an entrepreneurial opportunity.

This article provides information for educational purposes, not specific tax, legal, or financial advice. The author does not have a financial interest in CapGains Inc.

Editor's note: This interview has been lightly edited for clarity.

An attorney I greatly respect once said that “Silicon Valley isn’t just a place. It’s an ethos.” A successful entrepreneur needs both an original idea and the right mindset. The person also needs to be surrounded by competent professional advisers, especially tax advisers. Tax professionals, who are often entrepreneurial by nature, usually are a good fit in the startup environment. But what happens when a particular section of the IRC is itself the subject of a startup? Jonathan Fish is a member of the American Institute of CPAs. After spending many years at one of the Big Four accounting firms, specializing in niche accounting and finance areas, including valuation and accounting for environmental matters, and helping to manage a charity, he founded a startup called CapGains Inc. The company uses technology (combined with

Fish’s deep tax and valuation expertise) to help funds, individuals, and other entrepreneurs navigate the qualified small business stock (QSBS) rules under section 1202 (a section of the IRC created to promote the American economy by encouraging investment in certain high-risk businesses). I have worked with Fish in the past and admire him greatly. I recently explored how his company uses the tax code and computer algorithms to help entrepreneurs and investors use one of the most powerful provisions in the tax law and asked him where he sees the future of QSBS and tax entrepreneurialism heading.

Philip Wolf: Tell us about CapGains Inc. How did it come to be?

Jonathan Fish: When I was working in public accounting, venture fund managers would often ask me QSBS questions. I realized very quickly just how few people knew the nuances of section 1202 or had the experience to effectively advise through the multitude of situations that could impact QSBS eligibility. What struck me most was the disconnect: QSBS was designed to encourage entrepreneurship and investment, but many shareholders were finding out, often at the exit stage, that actions taken years earlier had tainted their eligibility. One of our earliest clients was a group of former employees whose company went public. They had exercised their options long before an initial public offering seemed likely, yet when liquidity finally came, the company couldn’t provide them with the documentation to prove QSBS eligibility.

That was the “what if” moment for me: What if companies and investors took proactive steps to understand their QSBS position early? Couldn’t that knowledge drive better decisions and capital flows? We started with QSBSExpert.com as an informational hub, but the demand quickly grew, and that’s how CapGains Inc. was born.



Jonathan Fish (CapGains Inc.)

Wolf: You have a background in valuation from your time at PwC and Deloitte, and you also served as the CFO of a nonprofit. How did those experiences influence your approach to QSBS?

Fish: Part of the challenge of QSBS is that it sits at the intersection of multiple disciplines. The aggregate gross asset threshold for determining which stock in a company has QSBS potential is measured on a tax basis of assets, so this requires accounting knowledge to understand which assets may need adjustments for tax basis. But the active business requirement metrics are quantified on a fair value basis, which requires knowing valuation techniques. At the Big Four I had a chance to hone my technical tax and valuation skills. Later, helping to manage a nonprofit through an economic downturn taught me to think holistically: I had to balance technical tax and accounting rigor with trying to accomplish an overarching mission. Both of my work experiences greatly impacted how I've approached CapGains Inc. I've been able to couple a deep exploration of the QSBS rules with

practical ways to navigate the permutations we see in real-world fact patterns.

Wolf: Translating complex QSBS rules into a diagnostic tool sounds challenging. What was the hardest part of designing tests that determine whether an investment qualifies for QSBS?

Fish: Our product roadmap first required developing a deep understanding of the QSBS rules, before exploring the multitude of permutations for each aspect of the rules and then figuring out tests to ensure that the criteria were indeed satisfied. Finally, we had to evaluate how best to obtain the data needed to run each of the tests and streamline the process for both obtaining the necessary data and performing the various tests. All these steps took a great deal of time and were very challenging. But they were all worth it because they are now baked into our main product, the QSBS diagnostic. This product is essentially an analysis that we generate, using our in-house technology combined with our own review, at any point along a company's life cycle to assess if there are risks that could prevent shares from qualifying as QSBS at the company, security, and shareholder levels. The QSBS diagnostic then provides the basis for a deeper analysis to help substantiate if a shareholder's gains qualify for QSBS tax benefits.

Wolf: Most investors now use simple agreements for future equity (SAFEs). From a tax perspective, there's uncertainty about when the QSBS holding period begins. How does CapGains handle this uncertainty?

Fish: QSBS is limited to stock in corporations. As such, securities such as SAFEs that are not technically stock require a more nuanced analysis to determine where the security falls in the spectrum between debt and equity. The CapGains security-level diagnostic examines whether the security, no matter its type, contains attributes of debt or equity, to help a shareholder evaluate and support if the security may be considered equity-like.

Wolf: What about the active business requirements? Which red flags do you watch for?

Fish: The active business requirements are measured on a fair value basis and are required to be met over substantially all of a shareholder's holding period. Examining whether a company is indeed in a qualified trade or business, which is a

key component of the QSBS active business requirement, requires understanding the key value drivers of the business. The IRS has provided some instructive guidance through previous rulings, which help chart a path for determining whether and what portion of a company's business might be considered a qualified trade. Certain nonqualified trades are tied to professions where the individual is the product — that is, a doctor providing care to a patient, a lawyer representing a client, etc. — and therefore require understanding the skill sets of personnel at the company and the tasks they are performing. For example, with health services, which are an excluded field for QSBS, it is important to understand if the services performed by the company are required to be performed by medical professionals and, if so, whether the company employs such personnel to perform such services in their professional capacity.

Wolf: Valuation can be notoriously subjective. How does your QSBS diagnostic handle fair market value challenges?

Fish: Valuation definitely brings complexities to QSBS. Even if a valuation of an entity is known, the QSBS criteria entail measuring the value of the business over time, and other requirements, such as the significant stock redemption provisions, sometimes require valuations at individual security and shareholder levels. Our tool first looks to understand what indications of value exist over the course of the company's life cycle — that is, section 409A valuations, financing rounds, secondary transactions, exit value, etc. — and then it performs the various QSBS tests based on those value indications.

Wolf: The One Big Beautiful Bill Act introduced changes to QSBS. Which do you think are the most significant?

Fish: Among the most significant OBBBA changes to QSBS is that different stock is now subject to different rules. For stock subject to the old QSBS rules, what we call QSBS 1.0, the shareholder had to hold the QSBS for five years before receiving the capital gains exclusion under section 1202. Now, under the new rules, QSBS 2.0, the benefits begin to phase in after the taxpayer has held the stock for three years, for a 50 percent gain exclusion. After four years the shareholder receives a 75 percent exclusion. Finally, the

taxpayer eventually gets the full 100 percent exclusion after holding the stock for five years. This gives shareholders more flexibility and creates more opportunities to time the disposition of QSBS 2.0 stock depending on the shareholder's needs. Other important changes are that, while under QSBS 1.0 the exclusion was the greater of \$10 million or 10 times the stock's basis, QSBS 2.0 bumped the minimum exclusion up to \$15 million, and this number will be adjusted for inflation starting in 2027. We've seen something similar happen to the aggregate gross asset test. Under QSBS 1.0, the threshold was \$50 million, but since the enactment of the OBBBA, the threshold has been increased to \$75 million, which will also be adjusted for inflation starting in 2027. Finally, companies that previously had to capitalize research and development might now have the chance to expense it, including retroactively for tax years 2022-2024. This is a big deal because some companies that may have previously exceeded the \$50 million test due to capitalized R&D may be able to retroactively bring themselves below this threshold.

Wolf: How does the OBBBA affect the QSBS diagnostic?

Fish: In light of the OBBBA, we now have to consider timing. Stock issued before the enactment of the OBBBA on July 4, 2025, but after QSBS was enacted in 1993, still falls under the old QSBS 1.0 rules. Only stock issued after the OBBBA's enactment qualifies under QSBS 2.0. As such, when we create a QSBS diagnostic we now have to analyze what rules apply to each security a shareholder holds. Additionally, given the increased benefits for QSBS 2.0 — that is, post-OBBBA — stock, it is important to know if opportunities exist to generate QSBS 2.0 stock, such as strategically converting certain other securities into stock post-OBBBA.

Wolf: Many, but not all, states have their own QSBS rules, and you even created a state-by-state conformity map.¹ What trends are you seeing at the state level?

Fish: Right now, the trend is toward expansion. New Jersey recently began to conform

¹ CapGains QSBS Expert, "QSBS Rules by State" (updated July 4, 2025).

to QSBS, and more states may follow suit because they don't want to disadvantage their entrepreneurs. That said, a handful still don't allow QSBS treatment, such as California. This is a developing area, and we are constantly updating our map.

Wolf: Have you seen cases in which a company initially qualified but later became ineligible?

Fish: Absolutely. Each of the QSBS criteria contains "tripwires" that can cause shares to lose their QSBS benefits. As companies grow, they and their shareholders may take actions that jeopardize QSBS. As a general rule, any time actions are being taken that involve equity — that is, security issuances, stock sales/redemptions, etc. — it is important to consider whether such transactions impact QSBS. Similarly, if a company is expanding rapidly or evolving its business, it is important to understand whether such changes may impact the company's QSBS status.

It is also important for shareholders to ensure that they do not themselves take actions that could taint their shares from qualifying. Suppose for example that a company IPOs — if a shareholder starts trading derivatives on the company's stock prior to the QSBS holding period being achieved, such trading activities can cause the individual shareholder to lose QSBS eligibility for their shares.

Wolf: Are there common misconceptions about QSBS?

Fish: A key misconception regarding QSBS is that qualifying is easy or straightforward. Tools like the CapGains platform make performing a QSBS analysis easier, but the multitude of tripwires that can cause shares to not qualify or to lose their QSBS status make not just tracking, but also having knowledgeable guides to lean upon, imperative. This is why we take a more "tech-enabled services" approach to QSBS. Opportunities that help optimize QSBS, like the ability to reinvest gains via section 1045, also require that shareholders are alerted to such opportunities at the right time. This is why we provide such alerts to the extent possible via the platform.

Wolf: Looking ahead, how do you see QSBS evolving in light of the OBBBA and current proposals?

Fish: OBBBA has helped expand opportunities for QSBS but has also added complexities that

shareholders and companies need to be able to manage. Although QSBS is a wonderful tax incentive to drive capital to early-stage businesses, it is only one tool in the tax incentive toolbox, and I think we'll continue to see QSBS as one piece of a broader ecosystem. For instance, both the federal government and state counterparts have created other incentives that can drive decision-making within companies — for example, where to locate, in the case of qualified opportunity zone businesses, or whether the state the company operates from offers tax credits for investors. We envision that, with greater clarity regarding what tax incentives may apply to a business, businesses and their shareholders will be compelled to utilize these incentives proactively to drive their businesses forward.

Wolf: From a tax policy perspective, are there areas where QSBS rules could be improved to make compliance easier for startups and investors?

Fish: Absolutely. Because there is not a lot of guidance we still have a lot of ambiguities in QSBS, like how SAFEs are treated, as we discussed earlier. I have heard that the IRS had been working on new regulations that would help to clarify many of the ambiguities in section 1202. However, it is not clear whether or when such guidance will be released.

Wolf: Finally, how do you see tax-tech tools evolving to help startups and investors?

Fish: I envision a world where tax incentives are delivered to entrepreneurs and their shareholders as actionable insights at the right time. Our goal at CapGains is to let founders focus on building companies and investors on identifying and supporting them, with confidence that the tax opportunities available to them are being optimized in the background.

Conclusion

By combining his background in tax and valuation with a Silicon Valley ethos, Fish has created a tax-tech startup to solve a critical need for funds, founders, investors, and others who are worried their stock may not qualify for section 1202 treatment. His experience shows how the complexity of a particular code section has become an entrepreneurial opportunity. ■