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Temporary Exclusion for 100% of Gain from Qualified Small Business Stock Extended Through 2011

By William Whitledge of Goodwin Procter LLP

On December 17, 2010, President Obama signed into law the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, which extends for an additional year the temporary exclusion for 100% of the gain recognized by noncorporate investors from the sale of qualified small business stock ("QSBS"). Previously, this exclusion had only applied to QSBS acquired after September 27, 2010 and before January 1, 2011 (as discussed in Goodwin Procter's October 1, 2010 client alert, "**Temporary Exclusion for 100% of Gain from Qualified Small Business Stock Acquired by Year End**").

The extended exclusion continues to apply for purposes of both the regular federal income tax and the alternative minimum tax. In addition, under the new legislation, the other general requirements applicable to QSBS remain the same, including that the aggregate amount of gain with respect to an investment in a single issuer that may qualify for the exclusion is generally limited to the greater of $10 million or 10 times the investor's aggregate tax basis in the issuer's QSBS. Investors who would like to take advantage of the new legislation should carefully consider the QSBS requirements as well as any additional requirements that may apply particularly to them under the Internal Revenue Code.

As discussed above, unless another extension is enacted, an investment in QSBS must be closed prior to January 1, 2012 in order to qualify for the temporary 100% exclusion. Under current law, with respect to QSBS acquired on or after January 1, 2012, only 50% of gain will be excludable from the regular income tax, and the alternative minimum tax may apply to a portion of the exclusion.

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William Whitledge, a partner in and chair of the firm's Tax Practice, specializes in corporate, partnership, foreign and general business taxation. Mr. Whitledge spends a substantial amount of time structuring international and domestic business transactions, including mergers, acquisitions, financings, dispositions, reorganizations and other business restructurings, and venture capital investments. He also has extensive experience in structuring collective investment vehicles with tax-exempt, foreign and domestic investors, including RICs, REITs and pension investments from an unrelated business taxable income perspective.

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