



Startup America Suggestion of the Day: Extend the Rollover Period in Section 1045 (Installment 9)

By [Joe Wallin](#)

– February 15, 2011

I can't take credit for today's suggestion—I heard it from *Tom Alberg* at the Northwest Regional Angel Capital Association conference. Tom's idea is worth advocating for.

Internal Revenue Code *Section 1045* allows taxpayers (other than corporations) that have held qualified small business stock for more than 6 months to defer the gain on the sale of such stock if they reinvest the proceeds of the sale in qualified small business stock within 60 days of the sale. (Think of Section 1045 as the equivalent for startups to Section 1031 for real estate.) This is a very beneficial provision, because you have to meet a 5 year holding period to benefit from the Section 1202 exclusion from income.

The trouble with Section 1045 is that 60 days is a very short period of time in which to identify and invest in another company. It typically takes investors several months to identify and make investments in qualified small businesses.

For the benefit of startups, the Startup America Initiative team ought to advocate that this 60 day period be extended to something on the order of 1 year, or perhaps 270 days, to allow investors time to find investments in an orderly manner and be able to take advantage of Section 1045.

This advisory is a publication of Davis Wright Tremaine LLP. Our purpose in publishing this advisory is to inform our clients and friends of recent legal developments. It is not intended, nor should it be used, as a substitute for specific legal advice as legal counsel may only be given in response to inquiries regarding particular situations.