

Reporting of Digital Assets

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I. Background

Section 6045 (prior to amendment)

- Generally, all brokers required to file information returns
- “Broker” includes dealer, barter exchange or any person who (for a consideration) regularly acts as a middleman with respect to property or services
- “Specified security” includes corporation stock, debt instrument, certain commodities, or contracts or derivatives and certain financial instruments

Section 6045 (amended by Infrastructure Investment Jobs Act and w.e.f from January 1, 2024)

- “Broker” now also includes any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person
- “Specified security” now includes digital assets
- “Digital asset” means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary
- https://www.sjsu.edu/people/annette.nellen/website/6045_CryptoProposal_Nov2021_AN.pdf

III. What constitutes a sale of Digital Assets?

- It covers:
 - exchange transactions (including for services of a broker)
 - delivery of digital assets pursuant to forward contracts, options or futures contract
- It does not include receipt of new digital assets (pursuant to a hard fork or airdrop) without any exchange of cash or in exchange for services or property
- No clarity regarding reporting requirements for loan of digital assets, wrapping or unwrapping of digital assets, etc.
- Broad emphasis on “effectuating transfers” as added at §6045(g) by IIJA:

(c) Definitions. For purposes of this section—

(1) Broker. The term “broker” includes—

(A) a dealer,

(B) a barter exchange, and

(C) any person who, for property or services, or for any other consideration, receives or provides, or offers to receive or provide, any digital assets on behalf of another person.

(d) Effectuating transfers of digital assets.

V. *What is the information sought?*

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VII. Timeline

- 11/15/21 - IIJA enacted Nov. 2021 (P.L. 117-58, 11/15/21)
- 12/23/22 - IRS delays effective date for §6045 and §6045A broker reporting until final regs issued - Ann. 2023-02
- 9/29/23 – Proposed regs issued under §6045
 - <https://www.govinfo.gov/content/pkg/FR-2023-08-29/pdf/2023-17565.pdf>
- Comments due to IRS 10/30/23 + Public hearing at IRS in DC on 11/7/23
 - Comment period extended to 11/13/23 (FR 73300, 10/25/23).
- January 2026 – brokers issue 1099-DA for 2025 transactions
- If required, reporting of gain or loss and basis info for sales on or after 1/1/26 for DA acquired and continuously held by that broker in customer’s account on or after 1/1/23.
- Real estate reporting persons treated as DA brokers to report when DA used to acquire real estate in transactions that close on or after 1/1/25.
 - Include FMV of digital assets on Form 1099-S.

Other Digital Asset Guidance Issued in 2023

- Notice 2023-24 – modifies Notice 2014-21 to stress that despite bitcoin being legal tender in El Salvador, virtual currency is not a foreign currency.
- CCA 202316008 – ETH Merge of Sept 2022 is not a sale or exchange under §1001 or *Cottage Savings*, 499 US 554 (1991).
- Rev. Rul. 2023-14 – receipt of add’l native units of cryptocurrency from staking by cash basis taxpayer is income in year they gain dominion and control over the rewards.
- Notice 2023-27 – IRS to apply “look-through analysis” to determine if NFT is a collectible. Example: Gems are collectibles. If NFT certifies ownership of a gem, the NFT is a collectible. IRS sought comments.
- CCA 202302011 - No realized loss when crypto drops in value. Not abandoned or worthless if still hold and can be transferred. Several issues unaddressed regarding losses.
- CCA 202302012 – Need qualified appraisal if donate digital asset valued at over \$5,000. No reasonable cause exception as Form 8283 notes need for qualified appraisal. Also, digital assets are not “readily valued property” under §170(f)(11) so no appraisal exception.

IIJA Open Items for Digital Assets

Ann. 2023-02 (12/23/22) only extended effective dates for IIJA changes to §6045 and §6045A until final regs issued. No mention of changes to §6050I and need for merchants to issue Form 8300 after 12/31/23.

- Form is due within 14 days of transaction where merchant receives over \$10,000 digital assets (or along with cash and foreign currency) from customer in one or more related transactions.
- Will IRS provide relief since no guidance issues under §6050I for digital assets?

Will we see legislative changes?

- 7/11/23 – bipartisan [letter](#) from Senate Finance Committee seeking answers by 9/8/23 on several specific questions [next slide]
 - [JCT report](#)
- Lummis-Gillibrand introduce revised [Responsible Financial Innovation Act](#) (S. 2281, 7/12/23) with tax and other law change for crypto assets including 9 IRC changes [next slide]

Reporting of Digital Asset Transactions

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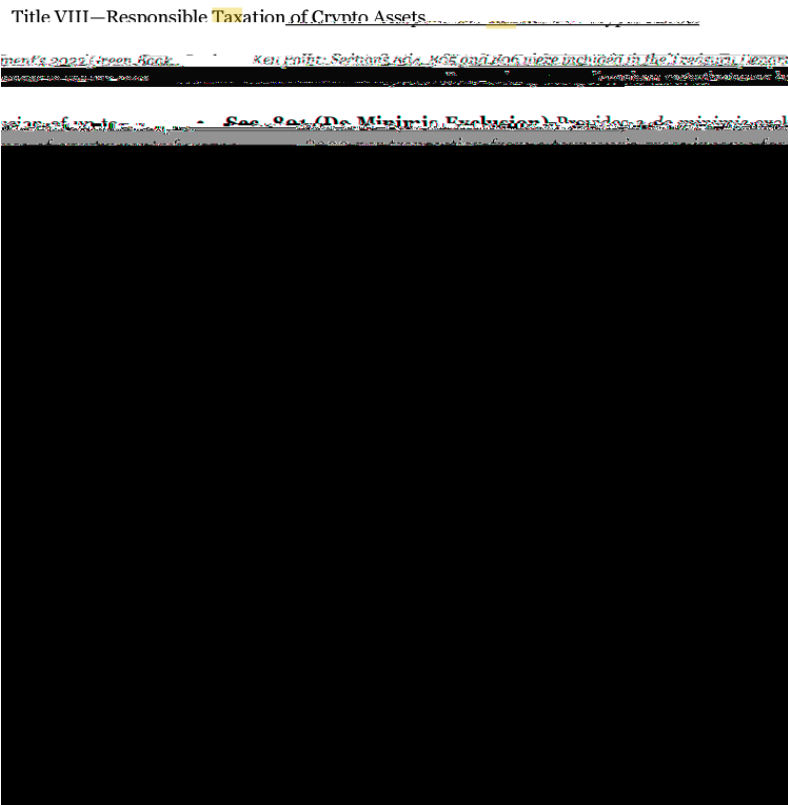
Senate Finance Committee Seeks Input on Various Digital Asset Questions Where Statutory Change Might Be Warranted + JCT Report – 7/11/23

Following topics, SFC provides specific questions for each:

1. Marking-to-Market for Traders and Dealers (IRC Section 475)
2. Trading Safe Harbor (IRC Section 864(b)(2))
3. Treatment of Loans of Digital Assets (IRC Section 1058)
4. Wash Sales (IRC Section 1091)
5. Constructive Sales (IRC Section 1259)
6. Timing and Soul(S)-11kggan397(u1(S4)-13.4(S)-2(a))-3.C1.003 yT63622M3(g)iH3 2M3/

Tax provisions in Loomis-Gillibrand crypto bill, S. ____

(summary from sponsors; important to see details in legislative proposals!)



Information on Proposed Regs on §6045 Digital Asset Broker Reporting
REG-122793-19 (8/29/23)

-2023-08-

Special Analysis

VII. Request for Comments

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