



Select Resources on Taxation of Digital Assets

Many of these links include background information and links to additional resources.

Assembled by Professor Annette Nellen

https://www.sisu.edu/people/annette_nellen/

<http://www.21stcenturytaxation.com/virtual-currency-and-tax.html>

Resources - IRS

- Digital Asset website
 - Includes links to binding and non-binding guidance
 - <https://www.irs.gov/businesses/small-businesses-self-employed/digital-assets>
- Virtual Currency FAQs
 - <https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions>
- National Taxpayer Advocate
 - <https://www.taxpayeradvocate.irs.gov/get-help/general/digital-assets/>

Resources - AICPA

- Comment letters on tax matters include:
 - 4/14/23 on losses - <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/56175896-aicpa-comments-on-digital-currency-losses-submit.pdf>
 - 6/16/23 on Notice 2023-27 request for comment on NFTs as collectibles – <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-comments-on-notice-2023-27-on-nfts-16-jun-23-final-submitted.pdf>
 - Other AICPA letters (see links in above letters and *The Tax Adviser* article of Jan. 2024 attached)
- AICPA Digital Assets Tax Resources (some are for members only)
 - <https://www.aicpa-cima.com/resources/landing/digital-assets-and-virtual-currency-tax-guidance-and-resources>

AICPA Digital Asset Accounting

- <https://www.aicpa-cima.com/resources/landing/digital-assets-and-blockchain-resources>

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Comments Submitted to Senators Wyden and Crapo – 7/11/23 request

(often these include background information on tech and tax matters)

- SFC letter soliciting input on specific question on taxation of digital assets
 - <https://www.finance.senate.gov/chairmans-news/wyden-crapo-solicit-policy-input-on-taxation-of-digital-assets>
 - JCT, Selected Issues Regarding The Taxation of Digital Assets, June 2023 - https://www.finance.senate.gov/imo/media/doc/jct_report_on_digital_assets.pdf
- ABA Tax Section - <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2023/090823comments.pdf>
- AICPA Tax Section - <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-sfc-digital-assets-taxation-comment-letter-9-7-23-final-submit.pdf>
- Blockchain Association - <https://theblockchainassociation.org/wp-content/uploads/2023/09/Blockchain-Association-Letter-to-Senate-Finance-Committee-RFI-09-08-2023-.pdf>
- Coin Center - <https://www.coincenter.org/app/uploads/2023/08/Coin-Center-Response-to-WydenCrapo-Tax-RFI-Aug-2023.pdf>

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Select Comments on Proposed §6045 Broker Reporting of Digital Assets ([REG-122793-19](#); 8/29/23)

• U.S. Chamber of Commerce

- “overbroad definition of broker” beyond intent of statute
 - “adopt a new and expansive definition of the verb “effect” whereby any person providing facilitative services that effectuate sales of digital assets by customers would be considered a broker.”
 - Suggest broker only include persons “who *directly* effectuate digital asset transactions”
- “overbroad definition of digital assets”
 - Should not include stablecoins
- “impracticable implementation timeline”
- <https://www.uschamber.com/taxes/comments-on-proposed-regulations-to-implement-gross-proceeds-and-basis-reporting-by-brokers-on-digital-asset-transactions>

• New York State Bar Association

- “Treasury should create a “qualified digital asset reporting person” (“QDARP”) regime partially modeled after existing regimes that streamline information reporting and withholding in the cross-border payment and employment contexts.” + 9 other recommendations
- <https://www.regulations.gov/comment/IRS-2023-0041-44127>

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Select Comments on Proposed §6045 Broker Reporting of Digital Assets (REG-122793-19) - more

• AICPA (11/10/23)

- A. Basis Tracking Issues [see example on next slide]
- B. Cost Basis in Determination of Gain or Loss and Broker Notification
- C. Duplicate Reporting
- D. Penalty Relief
- E. Taxpayer Privacy and Need for a De Minimis Rule
 - “In the absence of a de minimis rule for reporting such merchant transactions, 13 Treasury and the IRS should provide guidance in the final regulations on how a digital asset payment processor should be collecting sensitive taxpayer information to comply with such reporting requirements.
 - Alternatively (or in addition to), provide a de minimis rule such that a Form 1099-DA is not required to be filed by payment processors on purchases of \$500 or less with such amount adjusted annually for inflation. In instructions to Form 1040 and 1099-DA, taxpayers can be reminded that they are still required to report gains (and possibly losses) from use of digital assets to acquire goods and services even if no Form 1099-DA is received. “
- F. Request for Comments #44
- G. Need for Delay in Effective Date of Infrastructure Investment Jobs Act (“IIJA”) Changes to Section 6050I
 - <https://www.regulations.gov/comment/IRS-2023-0041-39734>
 - <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2023/aicpa-comment-letter-on-proposed-6045-regulations-11-8-23-final-submit.pdf>

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Select Comments on Proposed §6045 Broker Reporting of Digital Assets (REG-122793-19) - more

- ABA Tax Section (12/20/23)
 - I. Negative Impacts of Proposed Regulations
 - II. The Definition of Broker Should be Narrowed
 - III. The Definition of Digital Assets Should Be Narrowed
 - IV. Treasury and the Service Should Issue Guidance Clarifying Substantive Issues Regarding Dispositions of Digital Assets Prior to Broker Reporting Requirements Becoming Effective
 - V. Specific Identification of Basis
 - VI. Effective Date
 - VII. Application to Non-U.S. Brokers is Overly Broad
 - VIII. The US Should Adopt the OECD's CARF
 - <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/2023/122023comments.pdf>

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- Members of House Financial Services Committee
 - <https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=409048>
- Coinbase (2 letters)
 - <https://www.regulations.gov/comment/IRS-2023-0041-42332>
- Coin Center
 - <https://www.regulations.gov/comment/IRS-2023-0041-40586>
- TaxBit
 - Focus on tax reporting of digital assets
 - Some brokers already issue 1099-B + 1099-MISC for income such as from staking
 - <https://www.regulations.gov/comment/IRS-2023-0041-28324>

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Select Comments on Proposed §6045 Broker Reporting of Digital Assets (REG-122793-19) - more

- Fidelity Investments
 - “Sales of tokenized (i.e., non-digital native) securities or commodities should be subject to tax reporting under the Existing Broker Reporting Regulations, rather than under the digital asset reporting regime.”
 - Stablecoins should not be digital assets
 - Add de minimis rule to exempt smaller G/L from reporting
 - + other recommendations
 - <https://www.regulations.gov/comment/IRS-2023-0041-44247>
- Wall Street Blockchain Alliance
 - <https://www.regulations.gov/comment/IRS-2023-0041-44194>
- The Chamber of Digital Commerce
 - <https://www.regulations.gov/comment/IRS-2023-0041-44231>
- Securities Industry and Financial Markets Association (SIFMA)
 - <https://www.regulations.gov/comment/IRS-2023-0041-44204>
- North Carolina Blockchain Initiative
 - <https://www.regulations.gov/comment/IRS-2023-0041-43684>
- Global Blockchain Business Council (GBBC)
 - <https://www.regulations.gov/comment/IRS-2023-0041-44108>
- National Taxpayers Union Foundation
 - <https://www.regulations.gov/comment/IRS-2023-0041-28599>

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Select Comments on Proposed §6045 Broker Reporting of Digital Assets (REG-122793-19) - more

- NYU Tax Law Center
- “pre-IJA categories of brokers were sufficiently broad to reach centralized digital asset exchanges and other categories of digital asset brokers.”
 - “Position to Know” Standard Is
 - “Administrable”
 - “Can Provide Substantial Certainty”
 - “is Not Excessively Burdensome on Brokers”
 - “Significantly Eases Administrative Burden on Customers and on the IRS”
 - “Is Critical to Promoting Horizontal Equity and Complying with International Agreements on Digital Asset Reporting”
 - And should be finalized.
 - <https://www.regulations.gov/comment/IRS-2023-0041-44319>
- DiFi Education Fund
 - <https://www.regulations.gov/comment/IRS-2023-0041-38788>
- Fenwick & West LLP
 - <https://www.regulations.gov/comment/IRS-2023-0041-43972>

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Other Resources

- NYSBA comment letter on Notice 2023-27 and NFTs, 6/18/23
 - <https://nysba.org/app/uploads/2023/06/1478.pdf>
- NYSBA comment letter on cryptocurrency and other fungible digital assets, 4/18/22
 - <https://nysba.org/app/uploads/2022/04/1461-Report-on-Cryptocurrency-and-Other-Fungible-Digital-Assets.pdf>
- NYSBA comment letter on cryptocurrency and forks, 1/26/20
 - <https://nysba.org/app/uploads/2020/03/Report-1433.pdf>
- ABA Tax Section comment letter on hard forks for 2017, 3/19/18
 - <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/031918comments2.pdf>
- ABA Tax Section comment letter on Notice 2014-21, 3/24/15
 - <https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/032415comments.pdf>
- Professor Nellen website on virtual currency and blockchain
 - <http://www.21stcenturytaxation.com/virtual-currency-and-tax.html>



AICPA tax advocacy on digital assets

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This novel and evolving form of assets continues to raise tax questions that an AICPA task force puts forward with suggestions for IRS guidance and congressional legislation.

A swap for pizza started a need

Today's cryptocurrency launched in 2008 with the release of a whitepaper, "Bitcoin: A Peer-to-Peer Electronic Cash System," under the pseudonym "Satoshi Nakamoto." The first bitcoin transaction occurred in 2009, and the famous purchase of two pizzas for 10,000 bitcoin occurred on May 22, 2010 (now known as Bitcoin Pizza Day). At the time, this large quantity of bitcoin was worth under \$50, but it was worth over \$340 million in late October 2023.

Attention from the pizza purchase led to greater involvement by people interested in holding a nonfiat currency usable throughout the world, investing in it, creating new cryptocurrencies (over 9,000 types exist today), developing hardware and software to support the use and verification of decentralized currencies, and creating new and modified financial instruments and methods for it.

Guidance on how tax laws apply to cryptocurrencies did not emerge until the IRS released Notice 2014-21 in March 2014 (in time for filing 2013 returns). The key point of this notice was that cryptocurrency (referred to as "virtual currency" by the IRS and other agencies at the time) is not a foreign currency but should be treated as property. In 2023, nearly two years after El Salvador had designated bitcoin as

legal tender, the IRS clarified that virtual currency was still not a foreign currency for federal tax purposes (Notice 2023-34, modifying Notice 2014-21).

Notice 2014-21 addressed 16 questions and observed that taxpayers may have additional questions, and that both Treasury and the IRS were interested in receiving comments on virtual currency transactions in need of guidance.

The AICPA Tax Division's Individual and Self-Employed Tax Technical Resource Panel had several questions in need of guidance, and in 2015, the Virtual Currency Task Force was formed.

From virtual currency to digital assets

Although initial tax guidance used the term "virtual currency," it was both too broad and too narrow. The IRS's use of the term "convertible virtual currency" in Notice 2014-21 could bring in some gaming currency even though it generally had no use outside the game. And continual development of digital assets that could function securely via software and cryptography in place of a third-party verifier made the term "virtual currency" too limited. Beyond virtual currency, other types of "tokens" and assets maintained on a distributed ledger such as the blockchain

emerged, such as nonfungible tokens (NFTs). And more tax questions emerged as well.

With the Infrastructure Investment and Jobs Act of 2021 (IIJA), P.L. 117-58, Congress added the term “digital assets” to Sec. 6045, calling for brokers to issue information reports on gross proceeds and basis of these assets. Sec. 6045(g)(3)(D) defines a digital asset as follows: “Except as otherwise provided by the Secretary, the term ‘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.” And still more tax questions arose. To continue to identify and raise the questions (and, usually, to suggest answers) with the IRS and provide resources to help AICPA members with digital assets, the task force evolved to become the Virtual Currency and Digital Assets Tax Task Force.

AICPA tax advocacy for virtual currency and digital assets

The task force’s work has primarily focused on offering suggestions and making requests of the IRS for reporting digital asset transactions and clarifying the virtual currency/digital asset question that first appeared on Form 1040, *U.S. Individual Income Tax Return*, for tax year 2019. Although Notice 2014-21 provides that, generally, the tax rules of property transactions govern when no other specific guidance exists, some digital asset activities, such as a “hard fork,” are unique, where existing rules create more questions than answers. Comment letters generated by the task force have addressed many of these issues. As of Nov. 13, 2023, the task force has issued 12 letters, with all but one directed to the IRS and Treasury.

The comment letters include a good amount of background information, making them helpful resources for

The AICPA submitted comments noting some challenges of the proposed approach and requested a single definition of ‘virtual currency,’ due to different ones used by the IRS in prior guidance.

members dealing with digital asset issues. The task force also continues to work on member resources following the release of [Crypto Loss Tax Reporting: Fact or Fiction](#) in June 2023 and [Questionnaire for Individual Clients — Digital Asset Activities](#) in October 2023. Both, as well as more resources, are available on the AICPA’s [Digital Assets and Virtual Currency Tax Guidance and Resources](#) landing page.

The following is a chronology and summary of the 11 comment letters submitted to the IRS and one issued to the Senate Finance Committee.

June 10, 2016 — [Comments on Notice 2014-21](#): This letter requests additional guidance, including on valuation, treatment of costs of obtaining virtual currency, holding virtual currency in retirement accounts, charitable contributions, and foreign reporting.

May 30, 2018 — [Comments on Notice 2014-21](#): The letter repeats the 2016 request for guidance and, this time, offers FAQs to address them. A novel suggestion is offered to create a reporting mechanism for a “hard fork” that is similar to a Sec. 83(b) election.

Feb. 28, 2020 — [Comments on Rev. Rul. 2019-24, Form 1040 question and IRS FAQs](#): This letter with 28 pages of comments attached provides a detailed analysis of chain splits, requests guidance on the receipt of unsolicited property from virtual currency events, and again offers a tax approach modeled on a Sec. 83(b) election, this time for all unsolicited

property from virtual currency events. Various issues and solutions are offered due to lack of clarity regarding some of the IRS FAQs and the Form 1040 question on virtual currency.

Aug. 29, 2022 — [Comments on the digital asset question for Form 1040 and instructions](#): The IRS changed “virtual currency” to “digital assets” with the 2022 Form 1040. Because there was no guidance from the IRS yet on this new term at Sec. 6045, the task force suggested the IRS not change the question until final regulations were issued. Additional comments sought clarification of some aspects of the question, such as whether answering “yes” due to receipt of a digital asset by gift should be clarified on the return, since it is nontaxable.

Oct. 28, 2022 — [Comments on needed guidance for IIJA changes to Secs. 6045 and 6050I](#): Ahead of the issuance of proposed regulations, the task force highlighted various areas that should be addressed in the proposed regulations on IIJA digital asset provisions. The proposed regulations were not issued until late August 2023 (REG-122793-19).

Dec. 16, 2022 — [Comments on draft instructions to the 2022 Form 1040](#): With the IRS’s release of the final version of Form 1040, using “digital assets” rather than “virtual currency,” the task force suggested that the Form 1040 instructions define the terms “cryptographically secured distributed ledger,” “any similar technology,” and “characteristics of a digital asset,” as well as suggesting that

With some digital asset exchanges declaring bankruptcy and some assets dropping significantly in value, questions arose about losses in 2022.

the instructions provide examples, including receipt of gifts and what warranted a “yes” answer for the 2021 tax return question that now warrants a “no” answer using the draft 2022 Form 1040 question, and vice versa.

Feb. 17, 2023 – Comments offering FAQs to help answer the Form 1040 digital asset question: Because there was no guidance defining “digital asset,” the task force offered FAQs to the IRS that defined some of the terminology the Service used in the Form 1040 instructions, such as “cryptographically secured distributed ledger.”

April 14, 2023 – Comments seeking guidance on certain losses arising from digital assets: With some digital asset exchanges declaring bankruptcy and some assets dropping significantly in value, questions arose about losses in 2022. The IRS issued Chief Counsel Advice memo 202302011, which provided some explanation, but additional issues on the treatment of losses remained. This comment letter provides a detailed overview of the tax rules on losses as well as some of the open issues for certain digital asset events in need of guidance.

June 16, 2023 – Comments on NFTs and collectibles: In Notice 2023-27, the IRS proposed a lookthrough method to determine if an NFT is a collectible subject to a 28% capital gains tax rate. The AICPA submitted comments noting some challenges of the proposed approach and requested a single definition of “virtual currency,” due to different ones used by the IRS in prior guidance.

July 28, 2023 – Comments on IRS draft Forms 1040, 1065, 1120, and 1120-S digital asset question: Draft entity returns for 2023 dated June 23, 2023, included the Form 1040 digital asset question. This comment letter reiterated suggestions offered to the IRS in February 2023 on the need for definitions related to digital assets and encouraged the IRS to note in form instructions that the answer to the digital asset question on Forms 1065, *U.S. Return of Partnership Income*; 1120, *U.S. Corporation Income Tax Return*; and 1120-S, *U.S. Income Tax Return for an S Corporation*, is relevant only to the entity and not to the owners.

Sept. 8, 2023 – Comments to the Senate Finance Committee: In July 2023, Senate Finance Committee Chair Ron Wyden, D-Ore., and ranking member Mike Crapo, R-Idaho, invited the digital asset community to provide answers to several questions involving marking to market, lending digital assets, wash sales, staking, mining, a *de minimis* rule, donations, and foreign reporting. The AICPA issued a detailed letter addressing most of the questions posed where a legislative solution is likely needed to clarify or resolve certain tax issues involving digital assets.

Nov. 8, 2023 – Comments on proposed Sec. 6045 broker reporting regulations: On Aug. 29, 2023, the IRS and Treasury released the long-awaited regulations defining “digital asset” and “broker” under Sec. 6045 as modified by the IIJA. The IRS also sought answers to 51 questions posed in the preamble to the regulations. The comments submitted by the

AICPA primarily addressed questions and suggestions regarding the potential number and accuracy of anticipated reporting forms to be issued by brokers, as broadly defined in the regulations.

Besides tax resources on digital assets, the AICPA has extensive materials on accounting and auditing of digital assets available at its [Auditing Blockchain & Digital Assets](#) portal.

Looking forward

The AICPA Virtual Currency and Digital Asset Tax Task Force has become increasingly busy since its formation in 2015. With extensive digital asset/broker reporting regulations proposed in August 2023 and more guidance needed for IIJA changes as well as continuing and emerging tax issues, the group will continue to serve members with detailed comment letters as needed and member resources to help understand tax matters related to digital assets.

Readers can stay abreast of the task force’s work by using the [Digital Assets and Virtual Currency Tax Guidance and Resources](#) page. ■

Contributor

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