



December 16, 2022

Mr. Douglas W. O'Donnell
Acting Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Mr. William M. Paul
Principal Deputy Chief Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Re: IRS Draft Instructions to 2022 Form 1040 Pertaining to Digital Assets

Dear Acting Commissioner O'Donnell and Principal Deputy Chief Counsel Paul:

The American Institute of CPAs (AICPA) appreciates the opportunity to submit comments on digital assets, as referenced, in the [draft instructions to the 2022 Form 1040, U.S. Individual Income Tax Return](#) (dated October 17, 2022).¹

We offer these comments, in addition to previously submitted comments,² with the hope that the 2022 Form 1040 instructions can be modified to provide greater certainty to taxpayers and their preparers in confidently and properly complying with the question and overall reporting requirements for digital assets.

Background

Beginning with the 2019 Form 1040, a yes/no question was added about virtual currency. In 2019, the question was on Schedule 1 and in 2020 and 2021, the question was on page 1 of Form 1040. In 2021, the question read: "At any time during 2021, did you receive, sell, exchange, or otherwise dispose of any financial interest in any virtual currency?"

The 2022 Form 1040 changed the prior version of the question to:

"At any time during 2022, did you: (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, gift, or otherwise dispose of a digital asset (or a financial interest in a digital asset)? (See instructions.)"

¹ Our references to Form 1040 and its instructions in this letter is intended to refer to all variations of Form 1040, such as Form 1040-NR, U.S. Nonresident Alien Income Tax Return, and 1040(SP), U.S. Individual Income Tax Return (Spanish version).

² The AICPA has previously provided comments on virtual currency taxation matters including on the Form 1040 question. See: "[Comments on Notice 2014-21: Virtual Currency Guidance](#)," June 10, 2016; "[Updated Comments on Notice 2014-21: Virtual Currency Guidance](#)," May 30, 2018; "[Comments on Revenue Ruling 2019-24, the New Question on Schedule 1 \(Form 1040\), and the Internal Revenue Service's Frequently Asked Questions on Virtual Currency Transactions](#)," February 28, 2020; and "[Comments on Virtual Currency Question on the Form 1040 and Instructions](#)," August 29, 2022.

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The term “digital asset” has been used for decades to describe a variety of items, such as digital books and photographs, software, corporate stock, legal documents, currency and features used in online games, point systems offered to customers by businesses, cryptocurrencies, and tokens used for various purposes, including to represent ownership of tangible and intangible assets.

The draft instructions for the 2022 Form 1040, dated October 17, 2022 define “digital assets” as follows:

“Digital assets are any digital representations of value that are recorded on a cryptographically secured distributed ledger or any similar technology. For example, digital assets include non-fungible tokens (NFTs) and virtual currencies, such as cryptocurrencies and stablecoins. If a particular asset has the characteristics of a digital asset, it will be treated as a digital asset for federal income tax purposes.”

These terms and taxpayers’ understanding of them, particularly if they are not sure if their digital assets are maintained on a cryptographically secured distributed ledger or similar technology, will result in different responses when answering the Form 1040 digital asset question.

For 2019 through 2021, the Form 1040 virtual currency question and instructions did not refer to these terms: digital assets or cryptographically secured distributed ledger. These will be new terms for many taxpayers. Taxpayers who own cryptocurrency, stablecoins, or NFTs will likely have confidence in answering the digital asset question. However, millions of other filers who own other types of digital assets, such as stock, software, books, photographs, rights to purchase merchandise and services, will likely be unaware of whether these assets are recorded on a cryptographically secured distributed ledger or similar technology, so will be uncertain of how to answer the question.

In addition, not all virtual currency, as that term has been used by the IRS, meets the above definition of digital asset. IRS definitions of virtual currency generally have not included references to cryptography or distributed ledgers and thus, could have included, for example, gaming currency not recorded on such a ledger. Thus, some filers who answered “yes” to the Form 1040 question in prior years may now need to answer “no” to the 2022 Form 1040 question.

Recommendation

The 2022 Form 1040 instructions should:

- Provide a definition for the term “cryptographically secured distributed ledger;”
- Provide examples of what is considered “any similar technology;”
- Identify characteristics as used in the phrase “characteristics of a digital asset;” and
- Provide examples, including receipt of gifts, of 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.

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Analysis

These terms “cryptographically secured distributed ledger,” “any similar technology,” and “characteristics of a digital asset” are not defined in the Code, regulations, or other binding guidance, creating uncertainty for taxpayers and practitioners.³

Due to the revised wording of the digital asset question on the 2022 Form 1040, it appears that receiving virtual currency as a gift would not require a “yes” answer to the question for 2022, but it required a “yes” response for 2021.

Absent guidance for the items outlined above, filers may look elsewhere for clarification. This may cause incorrect responses to the question and result in a greater burden for practitioners, taxpayers, and the IRS to deal with potential incorrect responses.

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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Annette Nellen, Chair, AICPA Virtual Currency Task Force, at (408) 924-3508 or Annette.Nellen@sjsu.edu; Melanie Lauridsen, AICPA Director – Tax Practice & Ethics, at (202) 434-9235 or Melanie.Lauridsen@aicpa-cima.com; Robert Amarante, AICPA Senior Manager – Tax Policy & Advocacy, at (919) 402-4582 or Robert.Amarante@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Sincerely,



Jan Lewis, CPA
Chair, AICPA Tax Executive Committee

cc: The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
Mr. Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury

³ Unless otherwise indicated, references to the Code are to the Internal Revenue Code of 1986, as amended (the “Code”), and references to regulations are to the Treasury regulations promulgated under the Code.

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Mr. Thomas C. West, Jr., Tax Legislative Counsel, Department of the Treasury

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