



August 29, 2022

The Honorable Charles P. Rettig  
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: Comments on Virtual Currency Question on the Form 1040 and Instructions**

Dear Commissioner Rettig and Principal Deputy Chief Counsel Paul:

The American Institute of CPAs (AICPA) appreciates the opportunity to submit comments on the virtual currency question<sup>1</sup> on the [2021 Form 1040](#), *U.S. Individual Income Tax Return and instructions* (and its variations including the 2021 [1040-SR](#), *U.S. Tax Return for Seniors*, and 1040-NR, *U.S. Nonresident Alien Income Tax Return*) and [draft 2022 Form 1040](#) (as of July 27, 2022).<sup>2</sup> We offer these comments with the hope that the question can be clarified before the 2022 forms are finalized in order to provide greater certainty to taxpayers and their preparers in confidently and properly complying with the question and overall reporting requirements for virtual currency.

The AICPA recommends that the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) clarify the virtual currency question on the first page of the Form 1040 and its instructions. We make the below recommendations now to be considered for the finalized 2022 Form 1040 and other variations of Form 1040.

1. Clarify the meaning of virtual currency.
2. Do not ask about “digital assets” until this term has been defined in final regulations under section 6045.<sup>3</sup>
3. Modify the virtual currency question for simplicity and clarity.
4. Include additional elements into the Form 1040 instructions for the virtual currency question.
5. Explain if a taxpayer needs to answer “yes” if a dependent had a virtual currency event but does not have a filing requirement.

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<sup>1</sup> 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; and “[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. These comments are in addition to our prior comments.

<sup>2</sup> 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).

<sup>3</sup> Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and references to a “Treas. Reg. §” are to the Treasury regulations promulgated under the Code.

## RECOMMENDATIONS

### *1. Clarify the meaning of virtual currency.*

#### Background

Formal and informal guidance from the IRS provide variations on the definition of virtual currency, as explained here.

The instructions to the 2021 Form 1040 provide (page 17):

“Virtual currency is a digital representation of value, other than a representation of the U.S. dollar or a foreign currency (“real currency”), that functions as a unit of account, a store of value, **or** a medium of exchange. Some virtual currencies are convertible, which means that they have an equivalent value in real currency or act as a substitute for real currency. The IRS uses the term “virtual currency” to describe the various types of convertible virtual currency that are used as a medium of exchange, such as digital currency and cryptocurrency. Regardless of the label applied, if a particular asset has the characteristics of virtual currency, it will be treated as virtual currency for Federal income tax purposes.” [emphasis added]

[Virtual currency FAQ-1](#) defines virtual currency similar to the Form 1040 instructions but not exactly. Per FAQ-1:

“Virtual currency is a digital representation of value, other than a representation of the U.S. dollar or a foreign currency (“real currency”), that functions as a unit of account, a store of value, **and** a medium of exchange. Some virtual currencies are convertible, which means that they have an equivalent value in real currency or act as a substitute for real currency. The IRS uses the term “virtual currency” in these FAQs to describe the various types of convertible virtual currency that are used as a medium of exchange, such as digital currency and cryptocurrency. Regardless of the label applied, if a particular asset has the characteristics of virtual currency, it will be treated as virtual currency for Federal income tax purposes.” [emphasis added]

[Notice 2014-21](#) addresses the taxation of convertible virtual currency and states “the term “virtual currency” as used in Section 4 refers only to convertible virtual currency.”

[Revenue Ruling 2019-24](#) offers the following definition:

“Virtual currency is a digital representation of value that functions as a medium of exchange, a unit of account, and a store of value other than a representation of the United States dollar or a foreign currency.”

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The terms “medium of exchange,” “unit of account,” and “store of value” are not defined in IRS official guidance, FAQs, or the Form 1040 instructions.

### Recommendation

We recommend the IRS modify the definition of virtual currency as described in the first paragraph of the Form 1040 instructions to make it consistent with the definition in Rev. Rul. 2019-24 and Notice 2014-21. The Rev. Rul. And Notice documents are binding guidance from the IRS. Thus, consistent with Notice 2014-21,<sup>4</sup> the definition in the instructions should state that IRS uses the term “virtual currency” to refer only to convertible virtual currency. Additionally, examples of convertible virtual currency should be included in the Form 1040 instructions.

Clarification is also needed on whether the terms (traits) below must all be present (use of “and” as in Rev. Rul. 2019-24) or just one must be present (use of “or” in the Form 1040 instructions for 2021):

- Unit of account
- Store of value
- Medium of exchange

In addition, each of these terms should be defined (ideally in binding guidance).

The reference in the definition in the 2021 Form 1040 instructions to any asset with the “characteristics of virtual currency” should be removed as this is not part of IRS official, binding guidance (Rev. Rul. 2019-24 and Notice 2014-21), creates confusion, and is potentially broad beyond the definition of virtual currency provided in IRS binding guidance.

### Analysis

The definitions of virtual currency used in the Form 1040 instructions and IRS binding guidance differ in the following significant ways that create confusion in understanding the Form 1040 question regarding virtual currency (the Form 1040 question).

- The instructions use the term “or” while Rev. Rul. 2019-24 and FAQ-1 use the term “and” in noting the following traits of virtual currency:
  - Medium of exchange
  - Unit of account
  - Store of value

The use of “and” versus “or” leads to completely different definitions of virtual currency. Also, the lack of definitions for these three terms results in individual filers having non-

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<sup>4</sup> Notice 2014-21 on the taxation of virtual currency states “the term “virtual currency” as used in Section 4 refers only to convertible virtual currency.”

uniform understanding of them and no confidence that their interpretation will match that of the IRS.

- The instructions and FAQ-1 state that an asset with the characteristics of virtual currency is treated as virtual currency. These characteristics are not listed or defined anywhere, and this phrase is not used in the binding guidance on virtual currency. This statement can be interpreted to imply that the Form 1040 question also applies to a non-convertible virtual currency. Given the clear statement in Notice 2014-21 that “virtual currency” means convertible virtual currency, that implication is incorrect. The broadening of the term “virtual currency” by including anything with its (undefined) characteristics creates significant confusion in answering the virtual currency questions, conflicts with IRS binding guidance and appears to not be needed. This statement should be removed from the Form 1040 instructions and from FAQ-1.

The inconsistency among IRS-provided definitions of virtual currency, and omission of definitions of terms used in these definitions, create confusion for taxpayers and tax practitioners on what assets should be considered in answering the Form 1040 question.<sup>5</sup> It is not clear whether a “yes” response to the Form 1040 question is required for the following assets.

- NFTs or non-fungible tokens:  
While such tokens do not appear to be a unit of account (they are non-fungible), they appear to be a store of value. Therefore, because Rev. Rul. 2019-24 requires the asset to be both a unit of account and a store of value (and a medium of exchange), an NFT is not a virtual currency per the ruling. However, the Form 1040 instructions use the term “or”, so an NFT appears to be covered by the Form 1040 question since it likely is a store of value.
- Gaming currency or tokens such as V-Bucks and Roblox:  
Prior to February 2020, the IRS website on virtual currencies stated that examples of convertible virtual currencies were “Bitcoin, Ether, Roblox, and V-bucks.”<sup>6</sup> The latter three were removed in February 2020. However, Roblox and V-bucks (gaming currencies) are a medium of exchange and convertible to and from U.S. dollars. It is not clear how use of these currencies pertains to the Form 1040 question given their removal from the virtual currency IRS website when they appear to be a unit of account, medium of exchange and store of value.<sup>7</sup>

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<sup>5</sup> Relief should be provided to taxpayers who answered the virtual currency question incorrectly in prior years because they used the definition of virtual currency in Rev. Rul. 2019-24 (binding guidance) rather than the definition in the Form 1040 instructions (non-binding). Also, some taxpayers and their tax advisors may not have noticed the use of “or” in the instructions rather than “and” as used in Rev. Rul. 2019-24 and FAQ-1.

<sup>6</sup> See archived IRS website at <https://web.archive.org/web/20200114132733/https://www.irs.gov/businesses/small-businesses-self-employed/virtual-currencies>.

<sup>7</sup> On Feb. 14, 2020, the [IRS posted a statement](https://www.irs.gov/newsroom/irs-statement-on-changes-to-virtual-currency-webpage) noting that the prior language (likely the reference to gaming currencies) “potentially caused concern for some taxpayers.” Available at <https://www.irs.gov/newsroom/irs-statement-on-changes-to-virtual-currency-webpage>.

- Certain gift card and loyalty point systems:  
Some companies offer various gift card and loyalty point programs that can function as virtual currency in that the card or points are used for purchases rather than U.S. dollars. Also, the card or points are usually acquired using U.S. dollars and can often be converted back to U.S. dollars.<sup>8</sup>

Unlike virtual currencies such as bitcoin, most gift card and loyalty point systems operate similar to the use of U.S. currency and are always worth their specified U.S. dollar amount. Thus, there is unlikely to be any taxable event from their use (unless received as compensation or a prize). Also, different from most virtual currencies, gift cards and loyalty points are unlikely to be verified using distributed ledger technology. However, the definitions of virtual currency listed earlier, make no reference to the currency being verified and tracked on a distributed ledger. FAQ 3 defines cryptocurrency as a *type* of virtual currency “digitally recorded on a distributed ledger, such as a blockchain.” But the Form 1040 question and official IRS guidance refer only to “virtual currency” with no mention of the transactions having to be recorded or verified using distributed ledger technology.<sup>9</sup>

Examples of the assets that can potentially warrant a “yes” answer to the Form 1040 question should be provided, along with a clarified definition of “virtual currency”, to provide greater clarity to filers and reduce the risk of error in answering the virtual currency question.

***2. Do not ask about “digital assets” until this term has been defined in final regulations under section 6045.***

Background

The Infrastructure Investment and Jobs Act ([P.L. 117-58](#)) modified the broker reporting rules of sections 6045 and 6045A. This change includes a new definition of “digital asset” at section 6045(g)(3)(D) as follows:

“Digital asset. 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.”

The draft 2022 Form 1040 released on July 27, 2022, includes a few modifications to the page 1 virtual currency question, including replacing the term “virtual currency” with “digital asset.”<sup>10</sup>

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<sup>8</sup> Laws in many states require issuers of gift cards to redeem them for cash if they are worth less than a specified dollar amount.

<sup>9</sup> In 2019, the IRS sent over 10,000 letters to taxpayers who might have misreported virtual currency transactions. The letters referred to both crypto and non-crypto virtual currencies, without explanation. [IR-2019-132](#) (July 26, 2019). This statement implies though that not all virtual currencies are verified using cryptography and distributed ledger technology thus leaving open questions on whether the Form 1040 question applies to gaming currencies, gift cards and similar assets used in place of the U.S. dollar.

<sup>10</sup> IRS, Draft Tax Forms, Form 1040 draft of July 27, 2022; <https://www.irs.gov/pub/irs-dft/f1040--dft.pdf>.

### Recommendation

We recommend that the virtual currency question on page 1 of Form 1040 continue to use the term “virtual currency” until final regulations are issued to officially define the term “digital asset” as added to section 6045 by the Infrastructure Investment and Jobs Act.

### Analysis

As indicated above, new section 6045(g)(3)(D) defines digital asset, but it also provides authority to the Treasury Department and IRS to both contract and expand the definition. We expect regulations will eventually be issued with the final definition.<sup>11</sup> Because proposed regulations have not yet been issued (as of the date of this letter), it is unlikely that the term “digital asset” will be officially defined in final regulations by the time the filing period for 2022 tax returns begins in early 2023.

To prevent confusion by having a definition in the instructions to the 2022 Form 1040 that is not the final one in regulations, the IRS should wait until final regulations are issued under section 6045 before changing the Form 1040 question from “virtual currency” to “digital assets.”

### **3. *Modify the virtual currency question for simplicity and clarity.***

### Background

The 2021 Form 1040 includes a question about virtual currency. This question first appeared on the Form 1040 in 2019 on Schedule 1. For 2020 and 2021, the question was more prominent and clearly applicable to all filers as it appears immediately following the taxpayers name and address. Each year, the question and instructions have been modified.

For the 2021 Form 1040, this yes/no question read:

*At any time during 2021, did you receive, sell, exchange, or otherwise dispose of any financial interest in any virtual currency?*

In contrast, for the 2020 Form 1040, this yes/no question read:

*At any time during 2020, did you receive, sell, send, exchange, or otherwise acquire any financial interest in any virtual currency?*

The draft Form 1040 for 2022 (July 27, 2022) proposes the following version of the yes/no question:

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<sup>11</sup> The Treasury/IRS Priority Guidance Plan has listed a project involving information reporting of virtual currency under section 6045 since the 2019-2020 plan. See plan listings at <https://www.irs.gov/privacy-disclosure/priority-guidance-plan>.

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

### Recommendation

We recommend the Form 1040 virtual currency question be modified as follows:

*At any time during 2022, did you have a taxable event involving virtual currency? See instructions.*

*\_\_ Yes \_\_ No.*

### Analysis

The phrasing of the Form 1040 virtual currency question creates confusion for taxpayers beyond the definitional issues noted earlier. Some taxpayers believe the question only warrants a “yes” answer if there are tax consequences from their virtual currency event or transaction. Because “financial interest” is not defined, individuals are not aware of what to consider in answering this question and might not have sufficient information to answer the question correctly.

Examples of some of the confusion created by the current wording of the 2019, 2020 and 2021 virtual currency question includes the following.

- If the taxpayer received virtual currency as a gift, they must answer “yes”, but there is no tax consequence of receiving the gift and it is not reported on Form 1040. Will the IRS possibly send a notice to the taxpayer asking where their virtual currency transaction is reported on the return?
- If the virtual currency transaction is taxable, such as an employee paid in bitcoin or a taxpayer earning virtual currency from microtasks,<sup>12</sup> should the taxpayer add an explanation anywhere on the tax return, or include a statement as an attachment to the tax return, to state where the transaction is reported (under an assumption that the IRS expects a “yes” answer to mean there is a virtual currency labeled item on Form 8949, *Sales and other Dispositions of Capital Assets*).
- The verbs “receive, sell, exchange” are commonly used terms. The question adds to that string of actions “or otherwise dispose” which causes confusion, as the preceding verb “receive” is the opposite of “dispose.” This awkward wording could cause filers to lack confidence if they answered the question correctly.
- Regarding the term “financial interest,” must a partner, trust beneficiary, or owner of a mutual fund ask the partnership, trust or fund administrator whether the entity received,

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<sup>12</sup> CCA 202035011 (Aug. 28, 2020) illustrates receipt of virtual currency for the performance of various small tasks with such virtual currency included in income at its fair market value when received.

sold, exchanged, or otherwise disposed of virtual currency? If yes, what if they are unable to obtain such information? Absent guidance, these taxpayers would not know to ask for this information and partnerships and trusts are not required to report this information.

We believe the intent of the Form 1040 virtual currency question is to know if the individual filer had a transaction involving virtual currency that is required to be reported on their tax return. Thus, we suggest the question be modified, as described above, to clearly ask if the individual was party to a taxable event involving virtual currency.

Should the IRS want to know if a partnership, trust, or other entity had a taxable event involving virtual currency, a similar question should be asked on the tax returns of those respective entities. The partnership, trust or other entity have the direct knowledge to answer that question.

Thus, we believe new wording of the question, as follows, will provide clarity and simplicity:

*At any time during 2022, did you have a taxable event involving virtual currency? See instructions.*

*\_\_ Yes \_\_ No.*

**4. Include additional elements into the Form 1040 instructions for the virtual currency question.**<sup>13</sup>

Background

The Form 1040 instructions for 2021 include almost a page of instructions for individual filers to answer the virtual currency question. The instructions include a definition (see our recommendations above to clarify that portion of the instructions) and describe a few virtual currency transactions. Few specific examples are provided on what warrants a “yes” versus a “no” answer.

Recommendation

Following our recommendation above, we recommend the IRS include the following elements into the Form 1040 instructions for the virtual currency question.

- Define virtual currency as recommended above.
- In line with the new wording of the virtual currency question we recommend the IRS provide examples of taxable (warranting a “yes” answer) and non-taxable events (warranting a “no” answer). Suggestions follow:

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<sup>13</sup> While we highly recommend that the wording of the question be changed for 2022 (see recommendation 3), the recommendations we further make for the instructions in parts 4 and 5 of this letter should be considered for the instructions even if the IRS does not modify the question to improve taxpayer understanding of the question.



- Examples of a taxable event in virtual currency (answer “yes” to the question):
  - The sale or exchange of virtual currency for cash or other property.
  - Using virtual currency to acquire goods, services, or another virtual currency.
  - Using virtual currency to acquire an interest in a partnership or other entity.
  - Receiving virtual currency as wage or bonus compensation (included in Form W-2).
  - Receiving virtual currency from a customer (such as Schedule C gross receipts or Schedule E rental receipts) (whether included in Form 1099-NEC or 1099-MISC).
  - Receiving virtual currency from a hard fork (per Rev. Rul. 2019-24).
  - Receiving virtual currency for the performance of microtasks or as a prize.
  - Receiving virtual currency from the sale of a personal use item where you realized a gain.
  - Donating virtual currency to a charitable organization if you itemize your deductions on Schedule A.<sup>14</sup>
  
- Example of non-taxable event in virtual currency (answer “no” to the question):
  - Receiving virtual currency as a gift.
  - Moving your virtual currency between wallets you control or to or from a virtual currency exchange.
  - Holding virtual currency unless there was a taxable hard fork or airdrop during the year.
  - Donating virtual currency to a charitable organization but you do not itemize your deductions on Schedule A.

### Analysis

To answer the virtual currency question with confidence, clear explanations of the question and specific examples are needed. For example, adding the caveat that a holder of virtual currency must also verify if they experienced a hard fork or air drop will enable the individual filer to answer the question correctly.

***5. Explain if the individual filer needs to answer “yes” if a dependent had a virtual currency event but does not have a filing requirement.***

### Background

The virtual currency question is broad and unlike other elements of Form 1040, it asks about non-taxable events. A filer might wonder if the question also addresses virtual currency transactions

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<sup>14</sup> It would also be helpful to donors and transferors to know what is considered a complete transfer of virtual currency (for example, transferring the code electronically or on paper versus transferring the asset to the recipient’s wallet).

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their child, or other dependent, claimed on their return may have had that did not rise to the level of a filing obligation for that child or dependent.

### Recommendation

We recommend the instructions specify that a virtual currency event of a child, or dependent claimed on the return does not require the individual filer to answer “yes.”

The instructions should also state that an individual filer who otherwise does not have a filing obligation is not required to file Form 1040 just to the answer “yes” to the virtual currency question.

### Analysis

A child or a dependent might have disposed of virtual currency (including gaming currency if included in the definition of virtual currency for the Form 1040 question) generating income below the filing threshold. The existing instructions are unclear if the filer (such as the parent) needs to answer “yes” even though they are not the direct owner of the virtual currency.

Some individuals with virtual currency transactions or events may be below the filing threshold yet the current instructions do not state whether a return is still required just to answer the virtual currency question. We suggest the instructions clarify that if a taxpayer is below the filing threshold, no return is required just to answer the virtual currency question.

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The AICPA is the world’s largest member association representing the CPA profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

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](mailto:Annette.Nellen@sjsu.edu); Melanie Lauridsen, AICPA Director – Tax Practice & Ethics, at (202) 434-9235 or [Melanie.Lauridsen@aicpa-cima.com](mailto:Melanie.Lauridsen@aicpa-cima.com); Robert Amarante, AICPA Senior Manager – Tax Policy & Advocacy, at (919) 402-4582 or [Robert.Amarante@aicpa-cima.com](mailto:Robert.Amarante@aicpa-cima.com); or me at (601) 326-7119 or [JanLewis@HaddoxReid.com](mailto:JanLewis@HaddoxReid.com).

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Sincerely,

A handwritten signature in black ink, appearing to read "Jan Lewis". The signature is fluid and cursive, with a large initial "J" and "L".

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  
Mr. Thomas C. West, Jr., Tax Legislative Counsel, Department of the Treasury  
Ms. Natasha Goldvug, Associate Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury  
Mr. Christopher Wrobel, Special Counsel to the Associate Chief Counsel, Income Tax & Accounting, Internal Revenue Service  
Ms. Erin Collins, National Taxpayer Advocate, Internal Revenue Service