



February 17, 2023

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
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Re: AICPA Proposed IRS Frequently Asked Questions (FAQs) Pertaining to the 2022 Form 1040 Digital Asset Question

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

The American Institute of CPAs (AICPA) is providing proposed FAQs for the Internal Revenue Service (IRS or "the Service") to consider posting on their website to assist taxpayers in responding to the new digital asset question on the [2022 Form 1040, U.S. Individual Income Tax Return](#) and discussed in the [instructions](#).¹

We offer these comments, in addition to previously submitted comments,² with the hope that IRS will consider posting these or similar FAQs on the website for this 2022 tax return filing season and that the 2023 Form 1040 instructions will be modified for next year 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

The Infrastructure Investment and Jobs Act ([P.L. 117-58](#)), 11/15/21) added a broker reporting requirement for digital assets. Code section 6045(g)(3)(D) defines 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.

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; "[Comments on Virtual Currency Question on the Form 1040 and Instructions](#)," August 29, 2022; "[Comments on Virtual Currency Reporting under Internal Revenue Code Section 6045 and Section 6050I, and the Form 8300 and Instructions](#)," October 28, 2022; and "[IRS Draft Instructions to 2022 Form 1040 Pertaining to Digital Assets](#)," December 16, 2022.

Mr. Douglas W. O'Donnell
Mr. William M. Paul
February 17, 2023
Page 2 of 7

Likely due to the 2021 law change, the 2022 Form 1040 on page 1 now asks about a filer's digital assets rather than the filer's virtual currency, as was the situation for 2019 through 2021. The 2022 Form 1040 asks all filers to answer this question:

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.) ___ Yes ___ No

Digital Assets	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.) <input type="checkbox"/> Yes <input type="checkbox"/> No
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The instructions to the 2022 Form 1040 include the following explanation for the digital asset question on page 1 of Form 1040:

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 nonfungible 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.

[IR-2023-12](#) (1/24/23) provides “updates” to the Form 1040 digital asset question. It states:

A digital asset is a digital representation of value which is recorded on a cryptographically secured, distributed ledger. Common digital assets include:

- Convertible virtual currency and cryptocurrency
- Stablecoins
- Non-fungible tokens (NFTs)

IR-2023-12 does not use the term “or any similar technology” or broaden the term to include any asset with “characteristics of a digital asset.”

AICPA Suggested FAQs to Help Taxpayers and Tax Preparers with the 2022 Form 1040 Digital Asset Question

Recommendation

We recommend the following FAQs be added to the IRS website to help taxpayers and tax preparers in answering the digital asset question. For several of these suggested FAQs, we provide our rationale or provide a further explanation or observations about the answer but do not intend that would be part of the posted FAQ.

Q1. What is a digital representation of value?

A1. A digital representation of value refers to any intangible asset capable of being stored on a computer or similar device and that can be converted to U.S. dollars or a fiat currency, or an asset with market value.

Q2. What is a cryptographically secured distributed ledger as used in the Form 1040 question?

A2. A cryptographically secured distributed ledger is a type of data storage and transmission file which uses cryptography to allow for a decentralized system of verifying transactions. Generally, the stored information is an immutable database and includes an embedded system of operation. A blockchain is a type of distributed ledger.

Observation: Following is a more technical answer that could be considered.

A cryptographically secured distributed ledger is a type of append only database storage and transmission secured with asymmetric cryptography to allow for a decentralized system of verifying transactions. Generally, the stored information is an immutable database replicated on participating nodes and includes an embedded system of operation. A blockchain is a type of distributed ledger.

Q3. How do I determine if my digital asset is recorded on a cryptographically secured distributed ledger?

A3. A digital asset is considered recorded on a cryptographically secured distributed ledger only if it can be transferred by the ledger's protocol. If only data about the asset is stored on the ledger, it is not a digital asset for purposes of the Form 1040 question. For example, if data about stock ownership or title to real property is maintained on a cryptographically secured distributed ledger, but that ledger is not used to facilitate transfer of the stock or real property and does not represent a transferable token, the information is not considered a digital asset for purposes of the Form 1040 digital asset question.

Generally, digital assets listed on cryptocurrency exchanges or data aggregator websites (such as CoinMarketCap.com or coingecko.com) are recorded on cryptographically secured distributed ledgers. However, other digital assets recorded on cryptographically secured distributed ledgers may not be listed on public reference sites. Digital assets recorded on cryptographically secured distributed ledgers should have a transaction hash that references their inclusion in the ledger with the ledger available for public display.

Q4. What is considered "similar technology" to a cryptographically distributed ledger?

A4. Until final regulations are issued under Code section 6045(g), taxpayers do not need to consider "similar technology" in answering the 2022 Form 1040 question.

Rationale: Section 6045(g) refers to “similar technology as specified by the Secretary.” No guidance has been issued to define this term and it was omitted in IR-2023-12 that explains the 2022 Form 1040 question.

Alternative answer: Distributed ledgers (DLTs) are typically described as a vehicle to transfer digital assets without the need for a central authority. Public, private, hybrid and consortium DLTs have varying degrees of decentralization, however they share a cryptographic audit trail maintained by at least one node. Any technology with a cryptographic audit trail is considered a similar technology regardless of centralized control or the number of nodes maintaining the ledger.

Q5. What are the “characteristics of a digital asset” as that term is used in the 2022 Form 1040 instructions?

A5. Until the IRS specifies such characteristics in published guidance, only digital assets that are a representation of value recorded on a cryptographically secured distributed ledger are to be considered in answering the 2022 Form 1040 digital asset question.

Rationale: Reference to characteristics potentially makes the question quite broad including assets that might not be kept on a distributed ledger. Also, without any list of the characteristics, taxpayers will have varying interpretations of this statement resulting in varied meanings of the answer to the Form 1040 digital asset question.

Alternative answer: Some characteristics of digital assets include but are not limited to transfers represented by transaction hashes, tradability on centralized and decentralized digital assets exchanges, listings on data aggregator cryptocurrency websites and the ability to self-custody the assets in a wallet.

Q6. The 2022 Form 1040 asks whether at any time during 2022, the taxpayer (a) received (as a reward, award, or payment for property or services); or (b) sold, exchanged, gifted, or otherwise disposed of a digital asset (or a financial interest in a digital asset.) During 2022, I received a gift of digital assets (rather than I gifted digital assets to someone). Must I answer yes to the Form 1040 question if receipt of digital assets by gift was my only digital asset event for 2022?

A6. No. If you only received a digital asset by gift in 2022, you should answer “no” to the Form 1040 digital asset question.

Q7. The 2022 Form 1040 asks whether at any time during 2022, the taxpayer (a) received (as a reward, award, or payment for property or services); or (b) sold, exchanged, gifted, or otherwise disposed of a digital asset (or a financial interest in a digital asset.) Are the forms of receipt listed in the parentheses at (a) the only forms of receipt to be considered?

A7. Yes. A taxpayer is only treated as receiving a digital asset if it is received as a reward, award, or for payment for property or services provided by the taxpayer. Examples of such receipt include digital assets paid to an employee as wages or paid for the performance of microtasks, digital assets received from a hard fork or airdrop or for holding NFTs, or digital assets received from the sale or other transfer of an asset.

Q8. Does a “yes” answer to the 2022 Form 1040 digital asset question mean that I have tax consequences from digital asset transactions that should be reported on my 2022 Form 1040?

A8. Generally, yes. Receipt of digital assets as a reward, award or as payment for goods or services represents taxable income. Disposition of a digital asset held for business or investment use generally produces a taxable gain or loss. A digital asset held for personal purposes generates taxable income if disposed of at a gain but has no tax effect if sold at a loss. Loss from abandonment or worthlessness of a digital asset generally produces an unusable loss if generated in 2018 through 2025 (due to the suspension of any deduction for miscellaneous itemized deductions subject to the 2%-of-AGI threshold under section 67).

Rationale: The terminology following “receive” in the question does not indicate other types of receipt. Unlike the wording in past years, the wording of the 2022 question for parts (a) and (b), sounds like it is only asking about taxable transactions.

Observation: It would be helpful to refer taxpayers to an IRS publication that covers the information included in CCA 202302011 on cryptocurrency losses.

Q9. The 2022 Form 1040 asks about disposition of a financial interest in a digital asset. The Form 1040 instructions explaining financial interest does not include ownership in a partnership that holds digital assets. If I am an owner of a passthrough entity that received or disposed of a digital asset in 2022, should I answer “yes” to the question?

A9. No. The only financial interests to consider for 2022 are the examples in the Form 1040 instructions which provide:

“You have a financial interest in a digital asset if you are the owner of record of a digital asset, or have an ownership stake in an account that holds one or more digital assets, including the rights and obligations to acquire a financial interest, or you own a wallet that holds digital assets.”

Rationale: Passthrough entities are not required to separately report digital asset transactions to owners so owners likely will not have the information needed to answer the digital asset question.

Q10. What are some types of transactions that warranted a “yes” answer to the virtual currency question on the 2021 Form 1040, but warrant a “no” answer to the 2022 digital asset question?

Mr. Douglas W. O'Donnell
Mr. William M. Paul
February 17, 2023
Page 6 of 7

- A10. The virtual currency question in 2021 could have included certain online gaming currency and merchant point or award systems. Generally, these items are not digital representations of value recorded on a cryptographically secured distributed ledger. Thus, use or disposition of such items alone does not warrant a yes answer to the 2022 digital asset question.
- Q11. Does the Form 1040 digital asset question only pertain to the taxpayers signing the Form 1040 or also to any dependents claimed on the return?
- A11. The digital asset question should be answered based only on assets owned directly by the taxpayers who sign the return.
- Q12. Are digital assets as defined at Code section 6045(g) considered “property” for tax purposes as described in Notice 2014-21 for virtual currency?
- A12. Digital assets as defined at Code section 6045(g) are considered property for tax purposes just as virtual currency is considered property per Notice 2014-21 but is not considered a foreign currency.

Observations: The [IRS digital asset website](#) states: “For federal tax purposes, digital assets are treated as property. General tax principles applicable to property transactions apply to transactions using digital assets.” We encourage the IRS to update Notice 2014-21 to clarify how the questions and answers in the notice apply more broadly to digital assets as defined at section 6045(g), rather than have the Q&As only apply to virtual currency unless the Q&A only pertains to virtual currency and not to other types of digital assets.

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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 suggested FAQs and 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; Eileen Sherr, AICPA Director – Tax Practice & Ethics, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; or me at (601) 326-7119 or JanLewis@HaddoxReid.com.

Mr. Douglas W. O'Donnell
Mr. William M. Paul
February 17, 2023
Page 7 of 7

Sincerely,

A handwritten signature in cursive script, appearing to read "Jan Lewis".

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