

November 13, 2023

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized
and Basis for Digital Asset Transactions
Docket ID: REG-122793-19

To Whom It May Concern:

My name is Nicholas Anthony, and I am a policy analyst at the Cato Institute's Center for Monetary and Financial Alternatives. I appreciate the opportunity to provide input to assist the Internal Revenue Service (IRS) in its effort to comply with the cryptocurrency provisions in the Infrastructure Investment and Jobs Act.¹ The Cato Institute is a public policy research organization dedicated to the principles of individual liberty, limited government, free markets, and peace, and the Center for Monetary and Financial Alternatives focuses on identifying, studying, and promoting alternatives to centralized, bureaucratic, and discretionary monetary and financial regulatory systems. The opinions I express here are my own.

Background

The Infrastructure Investment and Jobs Act should have never included provisions covering cryptocurrency.² The provisions were rushed, lacked a proper rationale, and risked sending an emerging innovation overseas.³ Although the IRS's proposal may not be as bad as what Congress set the foundation for, the proposal provided is yet another piece of evidence that the law should not have been enacted with the cryptocurrency provisions intact. Simply put, the proposal would

¹ Internal Revenue Service, "Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions," *Federal Register*, August 29, 2023, <https://www.federalregister.gov/documents/2023/08/29/2023-17565/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.

² Nicholas Anthony, "The Infrastructure Investment and Jobs Act's Attack on Crypto: Questioning the Rationale for the Cryptocurrency Provisions," *Cato Institute*, November 15, 2021, <https://www.cato.org/briefing-paper/infrastructure-investment-jobs-acts-undue-attack-crypto>; Abraham Sutherland, "Research Report," *Proof of Stake Alliance*, September 17, 2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4137761.

³ Nicholas Anthony, "The Infrastructure Investment and Jobs Act's Attack on Crypto: Questioning the Rationale for the Cryptocurrency Provisions," *Cato Institute*, November 15, 2021, <https://www.cato.org/briefing-paper/infrastructure-investment-jobs-acts-undue-attack-crypto>.

still require a sweeping surveillance program, set a huge burden on small businesses, and put cryptocurrency at an unfair disadvantage to be used as money.

Unjust Surveillance

The language in the IRS's proposal may be a marginal improvement over the language in the Infrastructure Investment and Jobs Act because it excludes some miners and software developers, but it is still the wrong approach.

The proposal itself acknowledges that it would result in broad, if not sweeping, surveillance. For example, the proposal states that “The Treasury Department and the IRS expect that this clarified proposed definition will ultimately require operators of some platforms generally referred to as decentralized exchanges to collect customer information and report sales information about their customers, if those operators otherwise qualify as brokers.”⁴ If the service is decentralized, there should be no third party that is in a position to report this information. So, what's written here is either a failure to properly define terms or a failure to properly limit the application of the law. In either event, it marks the wrong approach.

The proposal creates further cause for concern when it states that “in recognition of the fact that some digital asset trading platforms ... have a policy of not requesting customer information or requesting only limited information [but] have the ability to obtain information about their customers by updating their protocols as they do with other upgrades to their platforms.”⁵ Taken to its logical extreme, it's unclear how this policy would not apply to every American. For example, a grocery store could update its employee training to have cashiers request social security numbers from customers. Likewise, online retailers could update their websites to request similar information at checkout. The present consideration may be slightly limited given that it is coupled with the requirement that someone is also providing services to transfer cryptocurrencies. However, it again marks a wrong approach.

Burdens on an Emerging Industry

Yet surveillance itself does not exist in a vacuum. It's important to also be mindful of the costs of reporting. For example, the IRS director of digital assets, Julie Foerster, reportedly said that the IRS expects to get 8 billion new returns if this proposal is enacted.⁶ Director Foerster went on to note that this would be about double what IRS now receives and the ability to process these

⁴ Internal Revenue Service, “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions,” *Federal Register*, August 29, 2023, <https://www.federalregister.gov/documents/2023/08/29/2023-17565/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.

⁵ Internal Revenue Service, “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions,” *Federal Register*, August 29, 2023, <https://www.federalregister.gov/documents/2023/08/29/2023-17565/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.

⁶ Jonathan Curry, “IRS Prepping for at Least 8 Billion Crypto Information Returns,” Tax Notes, October 26, 2023, <https://www.taxnotes.com/featured-news/irs-prepping-least-8-billion-crypto-information-returns/2023/10/25/7hhdp>.

returns will depend on updates approved by the Inflation Reduction Act.⁷ In its initial comment letter to this proposal, the company Coinbase similarly estimated that the IRS would receive “billions of annual filings (with zero or negligible taxable income) if broker reporting is expanded to include stablecoins and other everyday transactions arising from the growing use” of cryptocurrency.⁸

If these estimates are accurate, it’s unclear how this proposal will benefit anyone given both an emerging industry and the IRS will be overwhelmed with both reports and the compliance costs surrounding the process as a whole. At the very least, the impact on businesses and the IRS must be investigated further before pushing this proposal forward.

Yet, that’s not to say the proposal does not acknowledge the compliance burden. In fact, the proposal explicitly acknowledges that it would be shackling an emerging industry with new upfront compliance costs—costs that will create a barrier to entry for those seeking to enter this industry. As noted in the proposal, the IRS anticipates that “9,350 of the 9,500 (or 98 percent) impacted issuers in the upper bound estimate could be small businesses.”⁹ What the proposal does not fully acknowledge, however, is that this approach is likely to force small businesses across borders. Put simply, if innovation is going to be kept in the United States, small businesses cannot continue to be forced to face ever-increasing barriers to entry. Furthermore, it must be noted that driving businesses out of the country goes directly against the premise of the Infrastructure Investment and Jobs Act. Not only do ever-increasing costs undermine U.S. jobs, but those costs can also reduce the tax base to the extent businesses do in fact leave the country.

So again, before this proposal moves forward in any form, there needs to be a more robust study on the impact it would have on businesses of varying sizes, the IRS itself, and the American people at large.

Tilting the Playing Field Away from Competition

Finally, one unexpected piece of the proposal was the revised definition of “cash” to include central bank digital currency (CBDC) issued both in the United States and abroad. For example, the proposal states:

Proposed § 1.6045–1(a)(12) revises the definition of *cash* to include U.S. dollars and any convertible foreign currency that is issued by a government or a central bank, whether in physical or digital form. Pursuant to that definition, a central bank digital currency may be treated as cash for purposes of these proposed regulations and not as digital assets. The revised definition is also intended to exclude privately-issued digital assets from the

⁷ Jonathan Curry, “IRS Prepping for at Least 8 Billion Crypto Information Returns,” Tax Notes, October 26, 2023, <https://www.taxnotes.com/featured-news/irs-prepping-least-8-billion-crypto-information-returns/2023/10/25/7hhdp>.

⁸ Lawrence Zlatkin, “Re: Gross Proceeds and Basis Reporting by Brokers for Digital Asset Transactions,” *Coinbase*, October 12, 2023, <https://www.regulations.gov/comment/IRS-2023-0041-0199>

⁹ Internal Revenue Service, “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions,” *Federal Register*, August 29, 2023, <https://www.federalregister.gov/documents/2023/08/29/2023-17565/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.

definition of *cash* for purposes of the reporting requirements under existing § 1.6045–1. ... For purposes of these regulations, the definition of *cash* (including the U.S. dollar and foreign currency) does not include so-called stablecoins, which are a form of digital assets in which the underlying value of the coins generally are linked to another asset or assets.¹⁰

Much like how capital gains taxes already make it difficult for people to use cryptocurrencies for transactions,¹¹ this change would mark another tilting of the playing field in favor of state money over alternatives. Worse yet, it does so specifically with CBDCs in mind even though Congress has not authorized a U.S. CBDC and the Federal Reserve has not yet created one for the public. Doing so now only seems to be stacking the deck in favor of a CBDC over private alternatives despite the lack of one being available. This move should be removed from the proposal entirely.

Conclusion

Aside from the comments made here today, public criticisms of this rule from others have already covered a wide range of issues.¹² In fact, at the time of this writing, over 120,000 comments have been filed.¹³ As the IRS moves forward with this proposal, these criticisms should be both reviewed and addressed in full. The IRS did well to limit the proposal from what could have been much worse under the law, but there is still much to do to further limit the policies proposed.

Sincerely,

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¹⁰ Internal Revenue Service, “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions,” *Federal Register*, August 29, 2023, <https://www.federalregister.gov/documents/2023/08/29/2023-17565/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.

¹¹ Nicholas Anthony, “Congress Should Welcome Cryptocurrency Competition,” *Cato Institute*, May 2, 2022, <https://www.cato.org/briefing-paper/congress-should-welcome-cryptocurrency-competition>.

¹² Peter Van Valkenburgh, “Treasury’s Proposed ‘Broker’ Rules Expand Surveillance Well Beyond,” *Coin Center*, September 14, 2023, <https://www.coincenter.org/treasurys-proposed-broker-rules-expand-surveillance-well-beyond-a-third-party-doctrine-thats-already-stretched-thin/>; Jake Chervinky and Marisa Coppel, “RE: IRS Proposed Rulemaking REG–122793–19; Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions (“Proposed Regulations”),” *Blockchain Association*, September 15, 2023, <https://www.regulations.gov/comment/IRS-2023-0041-0012>; Miles Jennings, Michele Korver, Brian Quintenz, and Marianne Winkler, “Re: Request for Extension of Comment Period for REG–122793–19,” *Andreessen Horowitz*, October 12, 2023, <https://www.regulations.gov/comment/IRS-2023-0041-0164>; Lawrence Zlatkin, “Re: Gross Proceeds and Basis Reporting by Brokers for Digital Asset Transactions,” *Coinbase*, October 12, 2023, <https://www.regulations.gov/comment/IRS-2023-0041-0199>; Miller Whitehouse-Levine and Amanda Tuminelli, “Re: Comment on the Proposed Rule on Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions” November 7, 2023, https://www.defieducationfund.org/_files/ugd/e53159_40d4255857d142f2a1744be79fdab3f.pdf.

¹³ Internal Revenue Service, “Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions,” *Federal Register*, August 29, 2023, <https://www.federalregister.gov/documents/2023/08/29/2023-17565/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.