



March 4, 2024

The Honorable Lily Batchelder
Assistant Secretary of Tax Policy
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable Marjorie Rollison
Chief Counsel & Treasury Assistant General Counsel
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

The Honorable Daniel I. Werfel
Commissioner
Internal Revenue Service
1111 Constitution Ave, NW
Washington, DC 20224

Re: Additional Comments on the Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions Section 6045 Proposed Regulations ([REG-122793-19](#))

Dear Ms. Batchelder, Ms. Rollison, and Commissioner Werfel:

The American Institute of CPAs (AICPA) is submitting additional comments to the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) on the section¹ 6045 proposed regulations regarding gross proceeds and basis reporting by brokers and determination of amount realized and basis for digital asset transactions ([REG-122793-19](#)), “proposed regulations.”

We offer these comments focusing on the proposed regulations’ definitions and examples in addition to our previously submitted comments, including our [November 8, 2023](#), first submission of section 6045 proposed regulation comments, and our [October 28, 2022](#), pre-release comments on section 6045 and section 6050I needed guidance.²

¹ 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. §” and “Prop. Reg. §” are to the Treasury regulations promulgated under the Code.

² The AICPA has previously provided comments on virtual currency taxation matters including: “[Comments on the Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions Proposed Regulations \(REG-122793-19\)](#),” November 8, 2023; “[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; “[AICPA Proposed IRS Frequently Asked Questions \(FAQs\) Pertaining to the 2022 Form 1040 Digital Asset Question](#),” February 17, 2023; “[Guidance Needed on the Tax Treatment of Losses of Digital Assets](#), April 14, 2023; “[Notice 2023-27 on Non-Fungible Tokens \(NFTs\)](#),” June 16, 2023; and [Comments on the IRS Draft 2023 Forms 1040, 1065, 1120, and 1120-S Digital Asset Question](#),” July 28, 2023; “[Digital Assets Taxation](#),” September 8, 2023.

The Honorable Lily Batchelder
The Honorable Marjorie Rollison
The Honorable Daniel I. Werfel
March 4, 2024
Page 2 of 3

The attached additional comments include the following recommendations:

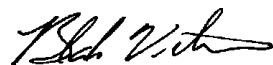
1. Clarify terms and ordering in Prop. Reg. § 1.6045-1.
2. Define terms “digital representation of value,” “cryptographically secured distributed ledger,” and “any similar technology” used at section 6045(g) and Prop. Reg. § 1.6045-1(a)(19) in defining “digital asset.”
3. Clarify definitions of “broker” in Prop. Reg. § 1.6045-1(a)(1) and Prop. Reg. § 1.6045-1(b)(1).
4. Modify and clarify the definition of digital asset payment processor in Prop. Reg. § 1.6045-1(a)(22).
5. Clarify certain examples in Prop. Reg. § 1.6045-1(b).
6. Clarify Example 1 in Prop. Reg. § 1.1001-7(b)(5)(i).

* * * * *

The AICPA is the world’s largest member association representation the accounting profession, with more than 415,000 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 Digital Assets Tax Task Force, at (408) 924-3508 or Annette.Nellen@sjsu.edu; Peter Mills, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9272 or Peter.Mills@aicpa-cima.com; or me at (830) 372-9692 or bvickers@alamo-group.com.

Sincerely,



Blake Vickers, CPA, CGMA
Chair, AICPA Tax Executive Committee

The Honorable Lily Batchelder
The Honorable Marjorie Rollison
The Honorable Daniel I. Werfel
March 4, 2024
Page 3 of 3

cc: Mr. Krishna P. Vallabhaneni, Tax Legislative Counsel, Department of the Treasury
Mr. Brett York, Deputy Tax Legislative Counsel, Department of the Treasury
Ms. Natasha Goldvug, Deputy Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury
Ms. Erika Nijenhuis, Senior Counsel, Office of Tax Policy, Department of the Treasury
Ms. Kamela Nelan, Attorney-Advisor, Office of Tax Policy, Department of the Treasury
Ms. Julie A. Foerster, Project Director for Digital Assets, Internal Revenue Service
Mr. Christopher Wrobel, Special Counsel to the Associate Chief Counsel, Income Tax & Accounting, Internal Revenue Service
Mr. Ronald J. Goldstein, Senior Technician Reviewer, Income Tax & Accounting, Branch 2, Internal Revenue Service
Ms. Alexa T. Dubert, Senior Technician Reviewer, Income Tax & Accounting, Internal Revenue Service
Mr. Mark C. Hansmeier, Guidance Lead, Digital Asset Initiative, Internal Revenue Service
Mr. Michael Fiore, Area Counsel, 1 (Manhattan) (Small Business/Self-Employed), Office of Chief Counsel, Internal Revenue Service
Ms. Roseann Cutrone, Special Counsel, Office of the Associate Chief Counsel (Procedure and Administration), Internal Revenue Service
Mr. Kyle Walker, Attorney, Office of the Associate Chief Counsel (Income Tax and Accounting), Internal Revenue Service
Mr. Harith Razaa, Attorney, Office of the Associate Chief Counsel (Income Tax and Accounting), Internal Revenue Service
Mr. John Sweeney, Senior Counsel, Office of Associate Chief Counsel (International), Internal Revenue Service
Mr. Alan Williams, Attorney, Office of Associate Chief Counsel (International), Internal Revenue Service
Ms. Pamela Lew, Senior Counsel, Office of Associate Chief Counsel (Financial Institutions and Products), Internal Revenue Service
Mr. Sulolit "Raj" Mukherjee, Executive Advisor, Digital Asset Initiative, Internal Revenue Service
Mr. Seth Wilks, Executive Advisor, Digital Asset Initiative, Internal Revenue Service

AMERICAN INSTITUTE OF CPAs

Additional Comments on the Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions Section 6045 Proposed Regulations ([REG-122793-19](#))

March 4, 2024

We offer these comments focusing on the proposed regulations' definitions and examples in addition to our previously submitted comments, including our [November 8, 2023](#), first submission of section¹ 6045 proposed regulation comments, and our [October 28, 2022](#), pre-release comments on section 6045 and section 6050I needed guidance.²

The attached additional comments include the following recommendations:

1. Clarify terms and ordering in Prop. Reg. § 1.6045-1.
2. Define terms “digital representation of value,” “cryptographically secured distributed ledger,” and “any similar technology” used at section 6045(g) and Prop. Reg. § 1.6045-1(a)(19) in defining “digital asset.”
3. Clarify definitions of “broker” in Prop. Reg. § 1.6045-1(a)(1) and Prop. Reg. § 1.6045-1(b)(1).
4. Modify and clarify the definition of digital asset payment processor in Prop. Reg. § 1.6045-1(a)(22).
5. Clarify certain examples in Prop. Reg. § 1.6045-1(b).
6. Clarify Example 1 in Prop. Reg. § 1.1001-7(b)(5)(i).

BACKGROUND

With respect to certain digital asset sales and exchanges, the proposed regulations address information reporting, determination of amount realized and basis, and backup withholding. Brokers (including digital asset trading platforms, digital asset payment processors, and certain digital asset hosted wallets) would be required to file information returns and furnish payee

¹ 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. §” and “Prop. Reg. §” are to the Treasury regulations promulgated under the Code.

² The AICPA has previously provided comments on virtual currency taxation matters including: “[Comments on the Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions Proposed Regulations \(REG-122793-19\)](#),” November 8, 2023; “[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; “[AICPA Proposed IRS Frequently Asked Questions \(FAQs\) Pertaining to the 2022 Form 1040 Digital Asset Question](#),” February 17, 2023; “[Guidance Needed on the Tax Treatment of Losses of Digital Assets](#),” April 14, 2023; “[Notice 2023-27 on Non-Fungible Tokens \(NFTs\)](#),” June 16, 2023; and [Comments on the IRS Draft 2023 Forms 1040, 1065, 1120, and 1120-S Digital Asset Question](#),” July 28, 2023; “[Digital Assets Taxation](#),” September 8, 2023.

statements on dispositions of digital assets in certain sale or exchange transactions. Real estate reporting persons would also be required to include the fair market value of digital asset consideration received by real estate sellers in reportable real estate transactions on filed information returns and furnished payee statements. A similar reporting requirement would also apply with respect to certain real estate purchasers.

COMMENTS

1. Clarify Terms and Ordering in Prop. Reg. § 1.6045-1

Recommendations

- One term – either “retailer” or “merchant” (not both), should be used throughout the preamble and regulatory text of Prop. Reg. § 1.6045-1.
- Definitions in Prop. Reg. § 1.6045-1(a) should be listed in alphabetical order.
- When cross-referencing to other definitions, descriptive parentheticals should be included.

Analysis

Both the term “retailer” and “merchant” are used in the regulations, although merchant seems to be used more frequently. Use of different terms adds unnecessary confusion. If there is a reason why both terms are used, it should be noted and explained.

Also, it would be helpful to taxpayers and practitioners to have the definitions set forth in the regulation alphabetical order, making it easier to find a specific term and its meaning. In addition, when a definition cross-references to another definition, descriptive parentheticals would make it easier and quicker to find and understand the definition and related terms. That is, if one term depends on another, a reference can be added such as “also see paragraph (a)(5) for the definition of “x.”

2. Define the Terms “Digital Representation of Value,” “Cryptographically Secured Distributed Ledger,” and “Any Similar Technology” Used at Section 6045(g) and Prop. Reg. § 1.6045-1(a)(19) in Defining “Digital Asset”

Recommendations

- The regulations should include a definition of “digital representation of value” and “cryptographically secured distributed ledger.”
- The regulations should provide examples of what is considered “any similar technology.”

Analysis

The terms “digital representation of value,” “cryptographically secured distributed ledger,” and “any similar technology” used in in the statutory definition of digital asset at section 6045(g)(3)(D) and at Prop. Reg. § 1.6045-1(a)(19), are not defined in the proposed regulations, creating

uncertainty for taxpayers and practitioners.³ Accordingly, we recommend that they be defined in the regulations.

The term “digital representation of value” can be interpreted broadly to encompass any asset maintained in a digital format such as art, books, music, investments, business records, and points maintained for customer rewards such as airlines, hotels, credit card companies and many vendors offer. Often though, these digital assets are not tradable via a distributed ledger, even if their details are maintained on either a public or private blockchain. Possible definitions include:

- Per Notice 2014-21: A digital representation that functions as a medium of exchange, a unit of account, and/or a store of value.” Note that in Rev. Rul. 2019-24, “and/or” was changed to “and.”
- Per a suggestion offered by the AICPA in a February 17, 2023 letter to the IRS:⁴ “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.”

A possible definition for “cryptographically secured distributed ledger:” “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.”⁵

The preamble explains that the “similar technology standard [is intended] to ensure that the definition of digital assets captures digital representations of value that reflect advancements to the techniques, methods, and technology, upon which digital assets are based.” See 88 FR 59582. However, without being defined or limited, use of the similar technology standard leaves the definition open-ended and vague, meaning that taxpayers will be unable to determine whether a new technology is subject to rules applicable to digital assets. Accordingly, we recommend that this term be defined or explained in the regulations, and that examples be provided. Advances in technology that the IRS intends to treat as “similar technology” should be included in published guidance, such as a revenue procedure and this should be noted in the regulations. For example, add a statement such as: “If the IRS identifies future technologies that are similar to a cryptographically secured distributed ledger, as relevant under section 6045 and other provisions where this term is used, it will be noted in published guidance. Such future guidance may also clarify when a technology is not similar to a “cryptographically secured distributed ledger.”

³ The AICPA has previously requested definitions of these terms as they are used in the forms and instructions (Forms 1040, 1120, 1120-S, 1065, 1041, and 709). See AICPA comment letters, “[Comments on the IRS Draft 2023 Forms 1040, 1065, 1120, and 1120-S Digital Asset Question](#),” July 28, 2023, and “[AICPA Proposed IRS Frequently Asked Questions \(FAQs\) Pertaining to the 2022 Form 1040 Digital Asset Question](#),” February 17, 2023.

⁴ See AICPA comment letter, “[AICPA Proposed IRS Frequently Asked Questions \(FAQs\) Pertaining to the 2022 Form 1040 Digital Asset Question](#),” February 17, 2023.

⁵ This definition was previously offered to the IRS by the AICPA in 2023; see “[AICPA Proposed IRS Frequently Asked Questions \(FAQs\) Pertaining to the 2022 Form 1040 Digital Asset Question](#),” February 17, 2023.

3. Clarify the Definition and Examples of “Broker” in Prop. Reg. § 1.6045-1(a)(1) and Prop. Reg. § 1.6045-1(b)(1)

Recommendations

- Proposed Reg. § 1.6045-1(a)(1) should clarify that although a person may meet the definition of a broker subject to reporting with respect to one customer, that person may not necessarily be treated as a broker with respect to all customers and transactions.
- The Treasury and the IRS should clarify that broker status is an annual determination and reporting is only required if the customer subject to reporting in a prior year engages in a reportable transaction in the current calendar year.

Analysis

Just because a person is a broker in one tax year, that person may not necessarily be a broker in other tax years and with respect to all customers. For instance, consider this example:

In Calendar Year 1, a person offers a hosted wallet and services (in addition to solely offering a hosted wallet in Calendar Year 1) that makes the person a broker in Calendar Year 1 (effects sales of digital assets). A customer needs to sign up for specific services it wants to participate in with the person providing the hosted wallet. In Calendar Year 2, the person offering the hosted wallet chooses not to offer services other than custody services and no longer effects sales, nor acts as principal, agent, middleman, etc. This person is a broker in Calendar Year 1, but it is not a broker in Calendar Year 2. Further, in Calendar Year 1, the person is a broker only with respect to customers for whom it provides services that make a person a broker. No broker reporting should be required for a customer, even for a customer who signs up for a service that would make the person providing the hosted wallet a broker, if such customer does not engage in a reportable digital asset transaction in that calendar year.

The proposed regulations should be clarified to expressly state that the determination of whether a person is a broker is determined on an annual basis and that being a broker in one calendar year does not necessarily mean that the person is a broker in another calendar year. Similarly, the proposed regulations should be clarified to expressly state that being a broker with respect to one customer does not mean that the person has a reporting obligation with respect to customers with respect to whom it is not a broker. Consistent with this recommendation, Prop. Reg. § 1.6045-1(b)(1), Example 1, Paragraph (vi) and (xi) should be clarified to illustrate that broker status is an annual determination and that required reporting is only required for customers with respect to whom the person is a broker.

4. Modify and Clarify the Definition of Digital Asset Payment Processor in Prop. Reg. § 1.6045-1(a)(22)

Recommendation

- The Treasury and the IRS should modify and clarify the definition of digital asset payment processor in Prop. Reg. § 1.6045-1(a)(22) to revise paragraph (i) and remove paragraphs (ii) and (iii).

Analysis

Paragraph (i) of Prop. Reg. § 1.6045-1(a)(22) should be revised because it is not clear why being a third-party settlement organization (TPSO) under section 6050W is listed separately as paragraph (B) rather than being treated as a subset or example of the types of actions that would be captured under paragraph (A).

Paragraphs (ii) and (iii) of Prop. Reg. § 1.6045-1(a)(22) should be removed because it is unclear why these two paragraphs are needed. First, the same rule in paragraph (ii) exists in Prop. Reg. § 1.6045-1(a)(9)(ii)(D) (that a transfer of digital asset to a payment processor is treated as a payment by the transferor to the payment processor), except there is no mention of a processor agreement in Prop. Reg. § 1.6045-1(a)(9)(ii)(D). Second, the definition of processor agreement in paragraph (iii) appears focused on temporarily fixing the exchange rate, which is a concept that relates to the determination of gross proceeds for reporting purposes and should be addressed in Prop. Reg. § 1.6045-1(d)(5)(ii). The introduction of the term “processor agreement” in these paragraphs is confusing and unnecessary given that for clarity, the substance of paragraph (ii) and (iii) should be (and in the case of paragraph (ii) already is) covered in other parts of the regulation.

5. Clarify Certain Examples in Prop. Reg. § 1.6045-1(b)

Recommendation

- Prop. Reg. § 1.6045-1(b) should be clarified to accurately reflect the rules intended to be illustrated and provide helpful guidance to interpret these complex rules. Below are some specific issues in examples 12 through 23 and example 27 that should be considered for clarification.

Analysis

The regulations should be revised to provide greater clarification. Many examples are confusing because the focus is not obvious. Also, some examples lack sufficient facts to support the conclusion in the analysis, while others lack sufficient analysis to be helpful in illustrating the focus of the example. In addition, there are several examples that do not track the language from the text of the regulations. Providing the suggested clarifications below will assist taxpayers and practitioners with better understanding who, how, and when to report the appropriate broker reporting digital asset transactions. Finally, all examples should include a specific statement of

which party (if any) is required to report (or is not required to report) under section 6045 (or also any other section, such as section 6050W).

- **Example 12**

- This example (and Example 13, discussed below) is confusing because there are four concepts potentially being illustrated based on the facts:
 - Role of CPP as digital payment processor.
 - Whether merchant is a broker.
 - CPP’s potential reporting obligations to Z and R.
 - CPP’s role as a TPSO under section 6050W.

Examples are most effective and easiest to understand when they illustrate a single point. Clarification is needed to make this example more understandable. Eliminating some aspects of the example might also make it more understandable. For instance, the interaction of section 6050W and the digital asset broker reporting rules might be better in its own example and excluded from this example and Example 13.

- Use of the word “facilitate” should not be included in the facts as that word is operative in the definition (facilitative service, which is also defined). Instead, the terms of Z’s contract with CPP should be the only facts.
- In paragraph (ii) of Example 12, the language should stay closer to the definition of payment processor in Prop. Reg. § 1.6045-1(a)(22)(i). For instance, the language should state “stands ready to effect” rather than “effects.” Also, the “by” clause needs to be closer to the definition in Prop. Reg. § 1.6045-1 (a)(22)(i)(A) if that is what it applies to.
- The facts that would make CPP a payment processor, but not a TPSO, should be clarified. For instance, if it is just the threshold amount, the facts should be clarified to say whether the section 6050W threshold is satisfied and then the analysis should include that discussion. The example states that CPP’s payment to Z “may also be a third party network transaction under [Prop. Reg.] § 1.6050W-1(c).” It would be more helpful to have a definitive situation where the transaction definitely is or is not a third party network transaction under Prop. Reg. § 1.6050W-1(c), even if another example is needed to illustrate this important point. A definitive statement should be made in such examples of whether the transaction is a reportable transaction under section 6050W with respect to Z.
- The coordination rule between section 6050W and digital asset reporting should be cited in this example.

- **Example 13**

- The following in paragraph (i) should be clarified:
 - Crafting the facts in a way that talks about generic Z purchasers and generic CPP instructions, without connecting it to R’s interaction with Z and CPP is confusing,

especially when reading the analysis in paragraph (ii). For instance, it is unclear who Z's purchasers are.

- It is unclear what is meant by “pursuant to” and “passes along to its purchasers” in the following: “transfer their units of DE to a digital asset address owned by Z pursuant to a temporarily fixed exchange rate of DE for cash, which CPP communicates to Z and which Z passes along to its purchasers.”
 - It is unclear how the purchasers are required to provide CPP with the information and why these facts are relevant to what the example is trying to illustrate.
 - It is unclear what this sentence means: “To effect the purchase of Z’s merchandise, R transfers 15 units of DE equal directly to Z’s wallet.” In addition, in that sentence, the term “effect” refers to sales. This word does not seem appropriate when referring to a customer purchasing goods and services. It may be more accurate to say that R is paying for goods and services by transferring 15 units of DE.
 - It is unclear what is meant by “similar services” in the sentence: “CPP provides similar services to other retail purchasers and merchants.”
- Paragraph (ii):
 - The first sentence should more closely track the definition of payment processor. For instance, it should say “effects sales” rather than “effects payments.”
 - It is unclear what is meant by “pursuant to a temporarily fixed exchange rate of DE for cash.”
 - The style in this example of including the parenthetical explanation for the first person and second person is inconsistent with Example 12, which is the reference example.
 - A cross-reference to Prop. Reg. § 1.6045-1(a)(22)(iii) would be helpful when a reference is made to “temporary fixing of the exchange rate.”
 - A cross-reference to Prop. Reg. § 1.6045-1(a)(22)(ii) would be helpful when a reference is made to “as if R paid the digital assets to CPP in exchange for cash or digital assets.”
 - Clarification is needed of what facts would make CPP a payment processor, but not a TPSO. For instance, if it is just the threshold amount, the facts should be clarified to say whether the section 6050W threshold is satisfied and then the analysis should include that discussion. See comments above regarding Example 12.

- **Example 14**

- The difference between Examples 12, 13, and 14 is not clear. It might be more understandable if in Example 12, the facts state clearly that CPP is not a TPSO with respect to Z and have that fact apply in Example 13.
- It appears that CPP would also be a broker under Prop. Reg. § 1.6045-1(a)(22)(i)(A) in this example. Clarification would be helpful.
- Clarification is needed about the fact that CPP is required to report under Prop. Reg. § 1.6045-1 and not under section 6050W with a cite to the rules in the regulations under both sections relating to coordination of the two provisions.

- The example should be clearer about CPP’s reporting obligation with respect to R and Z.
- **Example 15**
 - The example (or Example 12) needs to clarify that Z is solely in the business of selling goods or services and does not provide any other services that could be considered as standing ready to effect sales of digital assets or any other property subject to reporting under section 6045 and is not otherwise required to report under any other reporting provisions (e.g., Z is not an online marketplace that could be a TPSO).
- **Example 16**
 - Paragraph (i)
 - It should be clarified that Bank X is referred to as the issuing bank.
 - The generic sentence regarding the flow of payments is not helpful. The sentence should be more specific referencing Bank X, S, M and MAB.
 - The facts should be reordered to make the example more understandable. For instance, the sentence regarding MAB should precede the sentence regarding the flow of payments.
 - The protocols for whether M is paid in DE or cash should be explained in the facts.
 - Paragraph (ii)
 - Clarification should be provided regarding all the reporting obligations: Bank X to Bank MAB, Bank X to S, and Bank MAB to M. It would also be helpful to contrast this example with the rule in Prop. Reg. § 1.6050W-1(a)(4)(ii) (where under section 6050W Bank X would not have a reporting obligation to Bank MAB).
- **Example 17**
 - The following should be clarified in paragraph (i)
 - The facts, rather than the analysis, should clarify that P2X is a partnership (or corporation) that meets the definition of operating a trade or business.
 - Whether Z is unrelated to the individuals.
 - Who the miners are unrelated to.
 - Whether the miner fee was embedded in the original software as developed by Z or whether P2X changed the software to add the fee.
 - Whether the miner fee and transaction fee are fiat, digital asset, etc.
 - Where the 1% fee transferred to P2X is transferred to.
 - What happens to the fees transferred to P2X (do the individuals get a share of the fees? Is there an agreement to that effect?).
 - What is meant by “an additional 1% transaction fee.” Specifically, the fee is 1% of what?

- Paragraph (ii)
 - The first sentence is confusing. There should be sufficient facts in paragraph (i) to identify that P2X is either a partnership or a sole proprietorship. Merely stating in the analysis that the result depends on the facts, where there are no facts, does not provide an understanding of the principle being illustrated.
 - The example is trying to address two concepts (who is a person and facilitative services), which is confusing. These issues should be addressed in two separate examples or the facts should be clarified to state that P2X is a partnership (or corporation) operating a trade or business.
 - The words “digital marketplace” is not in Prop. Reg. § 1.6045-1(a)(21)(iii)(A). The example should use language directly from the regulation instead.
 - P2X is the facilitative service. According to the first sentence of paragraph (ii), the group of individuals that operate P2X are treated as the “person” for purposes of determining whether they have sufficient control or influence. However, paragraph (ii) says that “P2X is also in a position to know” the identity and the nature of the transactions. This statement is not correct and should be corrected.
 - The analysis is conclusory with respect to being in a position to know the identity of the parties that make the sales and the nature of the transaction. Proposed Reg. § 1.6045-1(a)(21)(ii)(A) says that a person is in the position to know the identity of the parties to the sale if the person maintains sufficient control or influence over the facilitative services provided to have the ability to set or change the terms under which its services are provided to request name, address, and TIN. That section further provides that the ability to change the fees charged for facilitative services is an example of someone with sufficient control and influence. However, the facts in paragraph (i) are not clear regarding who is the person who has the ability to change the fees charged. Although the facts state that the software is modified to charge a 1% fee, the facts should be clarified regarding whether this modification is a “change” as referenced in Prop. Reg. § 1.6045-1(a)(21)(ii)(A) and if it is a change, who is the person who made that change.
 - The analysis says that P2X is in a position to know the nature of the transaction “because it can determine that information from the transaction fees P2X collects from each transaction.” However, that is not the standard in Prop. Reg. § 1.6045-1(a)(21)(iii)(B). The analysis should more closely track the language in Prop. Reg. § 1.6045-1(a)(21)(iii)(B) and apply that standard to the facts.
 - The last sentence should summarize why P2X is a digital asset middleman by explaining that the person (to be identified) ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds from the sale.

- Paragraph (iii)
 - The facts in paragraph (i) should more clearly establish that Z has “no connection to P2X.” The facts merely say they are unrelated.

- **Example 18**

- There are not enough facts to determine whether Miner M is providing facilitative services, and the analysis is conclusory without any analysis.
- The relevance of Individual K using an unhosted wallet is unclear for this example.

- **Example 19**

- Paragraph (i)
 - The reference back to Example 17 is unclear because the facts in Example 17 do not state that the fee is contingent on the value of the transaction. In addition, it is unclear what “value of the transaction” means.
 - It would be helpful for the example to clarify what is meant by “flat transaction fee” and to provide a specific figure.
- Paragraph (ii)
 - The same comment regarding who should be treated as the “person” who is in a position to know the identity and the nature of the transaction identified in Example 17 applies here. However, for convenience, the following comments reference P2X because it is referenced in Example 19.
 - More analysis should be included to explain why P2X cannot know the nature of the transaction with the flat fee.
 - The comments with respect to Example 17 regarding whether P2X has sufficient control or influence also apply in this example.
 - More analysis should be included to explain why the provision of facilitative services matching buyers and sellers means that P2X is in a position to know the nature of the transaction.
 - The last sentence should summarize why P2X is a digital asset middleman by explaining that the person (to be identified) ordinarily would know or be in a position to know the identity of the party that makes the sale and the nature of the transaction potentially giving rise to gross proceeds from the sale.

- **Example 20**

- Clarify the following in paragraph (i)
 - What is meant by “at the direction of P2X.”
 - P2X’s transaction fee (e.g., is it flat or a percentage of the sale).
 - Whether the NFT is a digital representation of J’s artwork or whether it represents an interest in J’s artwork, a license in J’s artwork or something else.
 - What is meant by transferring the transaction fee “to P2X.”
- Paragraph (ii)
 - Clarification should be provided regarding the fact that J is not effecting the sale means that they are not a broker and so does not have a reporting obligation.

- The example should address who is the broker and who does have a reporting obligation.
- **Example 21**
 - Paragraph (i)
 - It should say to execute “a transfer” not “the transfer.”
 - Paragraph (ii)
 - The analysis should go through the facts to explain why the sale of the software is not a facilitative service and why H is not a person standing ready to effect sales.
- **Example 22**
 - Paragraph (i)
 - Clarification should be provided regarding the transaction fee (1% of what?).
 - Paragraph (ii)
 - There should be a conclusion regarding S’s reporting obligation.
 - There should be a statement regarding the potential reporting obligation of the unrelated non-custodial trading platforms.
- **Example 23**
 - Paragraph (ii) should provide an analysis of why, based on the facts, the software licensed by S provides S-Wallet users solely with the ability to control digital assets directly from their S-Wallets and why this means that S is not providing a facilitative service. Contrasting with the facts in Example 22 in the analysis would be helpful to understand the difference between the two conclusions.
- **Example 27**
 - The facts should include a statement that M purchased its interest in the fund with cash and that at no point does the fund receive digital assets from M nor does the fund provide M with digital assets. The facts should also rule out the fact that M does not provide any other type of facilitative service with respect to the fund.

6. Clarify Example 1 in Prop. Reg. § 1.1001-7(b)(5)(i)

Recommendation

- Example 1 in Prop. Reg. § 1.1001-7(b)(5)(i) should be modified to address additional facts and issues that can arise in the transfer of a digital asset.

Analysis

Example 1 in Prop. Reg. § 1.1001-7(b)(5)(i) can be broadened to address a transaction common for bitcoin and several other types of cryptocurrencies when a taxpayer uses a portion of their digital asset holding for a transaction and receives “change” (generally referred to as unspent transaction output (UTXO)). We suggest the following modifications which are underlined and in bold italics:

- *Facts:* TP owns a total of 20 units of digital asset A, and each unit has an adjusted basis of \$0.50. **TP acquired all 20 units 3 years ago in a single transaction. All 20 units are held in TP’s wallet and identified by a single code or hash.** X, an unrelated person, agrees to perform cleaning services for TP in exchange for **12** units of digital asset A. The fair market value of the services performed by X equals **\$12**. X then performs the services, and TP transfers **12** units of digital asset A to X. Additionally, TP pays, in cash, \$1 of transaction fees to dispose of digital asset A. **When TP pays X, all 20 units of A leave TP’s wallet. TP will get 8 units in change (with a new code or hash) X will get 12 units in payment (with a new code or hash).**

Analysis: Under paragraph (b)(1) of this section, TP has a disposition of **12** units of digital asset A for services received. Under paragraphs (b)(2)(i) and (b)(2)(ii)(A) of this section, TP has digital asset transaction costs of \$1, which must be allocated to the disposition of digital asset A. Under paragraph (b)(1)(i) of this section, TP’s amount realized on the disposition of the units of digital asset A is **\$11**, which is the fair market value of the services received, **\$12**, reduced by the digital asset transaction costs allocated to the disposition of digital asset A, \$1. TP recognizes a gain of **\$5** on the exchange (**\$11** amount realized reduced by **\$6** adjusted basis in **12** units). **There is no change to the basis of the 8 units that were returned to TP as change.**

These changes will make the example simpler to follow because it clarifies that all 20 units were acquired by TP at the same time and held in TP’s wallet as one code or hash. This approach also clarifies that the 8 units returned to TP still have a basis of \$4 and that there is no gain or loss when those units are returned because there was no exchange.⁶ Also, changing the fair market value of the services provided by X to \$12 will make the example easier to follow because the payment given and change received will be different amounts.

⁶ See section 1001 and *Cottage Savings Association v. Commissioner*, 499 U.S. 554 (1991).