



June 13, 2024

Mr. Andrés Garcia
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Ms. Sara L. Covington
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Re: Comments on Form 4797, Sales of Business Property - OMB Control Number 1545-0184

Dear Mr. Garcia and Ms. Covington:

The American Institute of CPAs (AICPA) is submitting comments to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) on [Form 4797](#), *Sales of Business Property*. Our comments are focused on matters relating to digital assets.¹

BACKGROUND

[Form 4797](#) is used by taxpayers to report sales, exchanges, or involuntary conversions of assets used in a trade or business. It is also used to compute ordinary income from recapture and the recapture of prior year losses under section² 1231. The IRS and Treasury have requested comments on [Form 4797](#), concerning sales of business property – specifically on “ways to enhance the quality, utility, and clarity of the information to be collected.”³

¹ See AICPA comments: [“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; [“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.

² 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.

³ [89 Fed. Reg. 21174](#) (Mar. 26, 2024).

RECOMMENDATIONS

The AICPA recommends that the IRS and Treasury clarify the [Instructions for Form 4797](#) by:

- Providing more detail in the instructions for line 10 about what constitutes a “qualifying abandonment.” Ideally, the added detail will reference the relevant Code provision where such term is covered, and clarify whether individual investors in addition to business taxpayers report abandonment of an investment asset on [Form 4797](#).
- Indicating that losses from abandonment or worthlessness of a digital asset are not usable if generated in 2018 through 2025. Additionally, clarify if for years before 2018 and after 2025 an ordinary loss from abandonment of an investment asset is to be reported on [Form 4797](#).

ANALYSIS

Losses on digital asset investments that arise from abandonment or worthlessness are *ordinary* in nature because they are not sales or exchanges.⁴ Moreover, losses from abandonment or worthlessness of a digital asset held by individuals for investment purposes generally produce unusable losses 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(g)).⁵

The current [Instructions for Form 4797](#) direct the taxpayer to “[d]educt the loss from a qualifying abandonment of business or investment property on line 10.”⁶ These instructions stand in contrast to the position taken in [CCA 202302011](#) (i.e., that no loss deduction can be claimed). Hence, the instructions need to be clarified. Some taxpayers and preparers interpret [Form 4797](#), line 10, as allowing an abandonment loss from a digital asset held by an individual investor for investment, to be allowed as a “for” AGI deduction despite sections 62, 63 and 67 not supporting that treatment. Clarification is needed to the Form 4797 form and instructions on whether an individual investor should ever file [Form 4797](#) to report investment activity or whether this form is only to be filed to report activities of a business. Also, clarification of “qualifying abandonment” used in the

⁴ See section 1222.

⁵ [CCA 202302011](#); section 62, section 63, and section 67; AICPA letter, “[AICPA Proposed IRS Frequently Asked Questions \(FAQs\) Pertaining to the 2022 Form 1040 Digital Asset Question](#),” February 17, 2023. [CCA 202302011](#) further notes that even if a cryptocurrency substantially declines in value, that fact does not, by itself, give rise to a possible loss deduction. Moreover, the National Taxpayer Advocate Service published an article that follows the conclusion of [CCA 202302011](#). National Taxpayer Advocate Service, “[TAS Tax Tip: When Can You Deduct Digital Asset Investment Losses on Your Individual Tax Return?](#)” October 19, 2023.

⁶ The [Instructions for Form 4797](#) also refer to the discussion on abandonments in [IRS Pub. 544](#), *Sales and Other Dispositions of Assets*, on this issue.

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line 10 instructions should be clarified as this term is not used in the Code or in [IRS Pub. 544](#).⁷

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We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Annette Nellen, Chair, AICPA Digital Assets Tax Task Force, at (408) 924-3508 or Annette.Nellen@sjsu.edu; Melanie Lauridsen, AICPA VP – Tax Policy & Advocacy, at (202) 434-92735 or Melanie.Lauridsen@aicpa-cima.com; or me at (830) 372-9692 or bvickers@alamo-group.com.

Sincerely,



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

cc: Ms. Julie A. Foerster, Project Director for Digital Assets, IRS
Mr. Christopher Wrobel, Special Counsel to the Associate Chief Counsel, Income Tax & Accounting, IRS
Mr. Mark C. Hansmeier, Guidance Lead, Digital Asset Initiative, IRS
Ms. Pamela Lew, Senior Counsel, Office of Associate Chief Counsel (Financial Institutions and Products), IRS
Mr. Sulolit "Raj" Mukherjee, Executive Advisor, Digital Asset Initiative, IRS
Mr. Seth Wilks, Executive Advisor, Digital Asset Initiative, IRS

⁷ Note that [IRS Pub. 544](#) should also be updated to clarify if an investor with a loss from abandoned digital assets held for investment may claim that ordinary loss on their return (per section 62, section 63, section 67 and [CCA 202302011](#) the answer appears to be no for 2018 through 2025); and the same would be true for an ordinary loss from worthlessness of a digital asset held for investment.