



July 28, 2023

The Honorable Daniel I. Werfel
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 the IRS Draft 2023 Forms 1040, 1065, 1120, and 1120-S Digital Asset Question

Dear Commissioner Werfel and Principal Deputy Chief Counsel Paul:

The American Institute of CPAs (AICPA) appreciates the opportunity to submit comments on the digital asset question that is first appearing on the draft 2023 Forms [1065](#), U.S. Return of Partnership Income (version dated June 23, 2023); [1120](#), U.S. Corporation Income Tax Return (version dated June 2, 2023); and [1120-S](#), U.S. Income Tax Return for an S Corporation (version dated June 22, 2023). We are also commenting on the draft 2023 [Form 1040](#), U.S. Individual Income Tax Return (version dated June 22, 2023), digital asset question.

We offer these comments, in addition to previously submitted comments,¹ with suggestions for the instructions for the draft digital asset question.

The AICPA recommends that the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) define specific terms used in the instructions for the digital asset question. Definitions of these terms are necessary for taxpayers and practitioners to properly respond to the digital asset question on Form 1040 that is now proposed to also be on Forms 1065, 1120, and 1120-S for 2023.

Specifically, we continue to suggest certain recommendations we made in 2022 regarding the digital asset question on Form 1040 and its instructions, and make a new recommendation for the instructions for Forms 1120, 1120-S and 1065 for the digital asset question. Our recommendations are below.

¹ The AICPA has previously provided comments on virtual currency taxation matters including: “[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 I \(Form 1040\), 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; and “[Notice 2023-27 on Non-Fungible Tokens \(NFTs\)](#),” June 16, 2023.

The form instructions should:

- Define “digital representation of value” and “cryptographically secured distributed ledger,” terms used in the 2022 Form 1040 instructions to define “digital asset.”
- Provide examples of what is considered “any similar technology” as this term was used in the 2022 Form 1040 instructions.
- Identify characteristics as used in “characteristics of a digital asset,” another phrase used in the 2022 Form 1040 instructions to explain the digital asset question.
- State in the instructions for the digital asset question proposed to be added to Form 1065 (question 30), Form 1120 (question 27), and Form 1120-S (question 16) that the answer is only relevant to the entity and not the owners. Thus, the answer does not affect an individual owner’s analysis in answering the Form 1040 digital asset question.

Background

Beginning with the 2019 Form 1040, a yes/no question was added about virtual currency. In 2019, the question was on Schedule 1, and in 2020, 2021 and 2022, the question was on page 1 of Form 1040. In 2022, the question read: “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.)”

The [2022 Form 1040 instructions](#) defined “digital assets” as follows:

“any digital representations of value that are recorded on a cryptographically secured distributed ledger or any similar technology. For example, digital assets include non-fungible 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.”

The draft 2023 [Form 1040](#) (June 22, 2023) on page 1, [Form 1065](#) (June 23, 2023) at line 30, Form 1120 (June 2, 2023) at line 27, and [Form 1120-S](#) (June 22, 2023) at line 16, include a similar question:

“At any time during this tax year, did the [partnership or corporation] (a) receive (as a reward, award, or payment for property or services); or (b) sell, exchange, or otherwise dispose of a digital asset (or financial interest in a digital asset)? See instructions.”

Recommendations

The 2023 instructions for Forms 1040, 1065, 1120, and 1120-S should:

- Define “digital representation of value” and “cryptographically secured distributed ledger,” terms used in the 2022 Form 1040 instructions to define “digital asset.”²

² Because the final 2022 Form 1040 instructions did not define terms used to define “digital assets,” the AICPA recommended that the IRS issue FAQs to define the terms. In that [comment letter of February 17, 2023](#), we also offered definitions of the terms.

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- Provide examples of what is considered “any similar technology” as this term was used in the 2022 Form 1040 instructions.
- Identify characteristics as used in “characteristics of a digital asset,” another phrase used in the 2022 Form 1040 instructions to explain the digital asset question.

The 2023 instructions for Forms 1065, 1120, and 1120-S should also:

- State that the answer is only relevant to the entity and not the owners. Thus, the answer does not affect an individual owner’s analysis in answering the Form 1040 digital asset question.

Analysis

These terms “cryptographically secured distributed ledger,” “any similar technology,” and “characteristics of a digital asset” used in the 2022 Form 1040 instructions for the digital asset question are not defined in the Code, regulations, or other binding guidance, creating uncertainty for taxpayers and practitioners.

Absent guidance for the items outlined above filers may look elsewhere for clarification. This may increase the number of incorrect responses to the question and result in more work for practitioners, taxpayers, and the IRS to deal with potential incorrect answers.

Owners of corporations and partnerships are separate taxpayers from the entity. The digital asset question proposed to be added to the 2023 Forms 1065, 1120, and 1120-S only pertains to the entity while individuals have their own digital asset question on Form 1040. Also, the 2022 Form 1040 instructions explained “financial interest in a digital asset” with examples that did not include owning an interest in an entity that owns digital asset. The instructions to these entity forms should be clear that this question relates only to the entity’s activity during the tax year and not the owners.


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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 Virtual Currency Task Force, at (408) 924-3508 or Annette.Nellen@sjsu.edu; Eileen Sherr, AICPA Director – Tax Policy and Advocacy, at (202) 434-9256 or Eileen.Sherr@aicpa-cima.com; Reema Patel, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9217 or Reema.Patel@aicpa-cima.com; or me at (830) 372-9692 or bvickers@alamo-group.com.

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Sincerely,



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

cc: The Honorable Lily Batchelder, Assistant Secretary for Tax Policy, Department of the Treasury
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