



June 16, 2023

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

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Internal Revenue Service
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Washington, DC 20224

Mr. Brett York
Deputy Tax Legislative Counsel
Department of the Treasury
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Re: Notice 2023-27 on Non-Fungible Tokens (NFTs)

Dear Commissioner Werfel, Mr. Paul, and Mr. York:

The American Institute of CPAs (AICPA) is providing comments on [Notice 2023-27](#) on the treatment of certain NFTs as collectibles under section¹ 408(m). As the Treasury Department (“Treasury”) and Internal Revenue Service (IRS or “the Service”) plan to prioritize providing additional guidance as stated in strategic initiative 1.7 in the [IRS Inflation Reduction Act \(IRA\) Strategic Operating Plan](#),² we encourage Treasury and IRS to issue guidance on the issues that we have suggested in our comments. Treasury and IRS should consider the below comments in developing further guidance to assist taxpayers in properly reporting transactions with virtual currency and digital assets.

We offer these comments, in addition to previously submitted comments,³ with the hope that IRS will provide additional guidance to clarify how digital asset transactions are treated and handled in various scenarios and will consider our suggestions regarding the treatment of NFTs. Such guidance will provide greater certainty to taxpayers and their preparers in confidently and properly

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. §” are to the Treasury regulations promulgated under the Code.

² See [IRS IRA Strategic Operating Plan](#), FY 2023-2031, April 5, 2023, strategic initiative 1.7 “Provide earlier legal certainty: Taxpayers will have greater upfront clarity and certainty additional guidance on tax issues,” page 32.

³ 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 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; and “[Guidance Needed on the Tax Treatment of Losses of Digital Assets](#),” April 14, 2023.

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complying with their overall reporting requirements for digital assets, and better ensure consistent application of the tax law among taxpayers.

In this letter, we recommend Treasury and IRS:

- Clarify and provide a single definition of virtual currency and digital assets. A single definition will provide certainty and simplification to taxpayers.
- Review and consider the administrative burden the look-through analysis will impose on many taxpayers, particularly if the estimate of one trillion NFTs is accurate.
- Consider the administrative burden the look-through analysis would impose on NFTs that represent more than one associated right or asset such as bifurcating the valuation of each associated right or asset the NFT represents.
- Clarify whether the legislative intent of the collectible tax rate applies to NFTs.

BACKGROUND

Definitions

[Notice 2014-21](#) addresses the income taxation of virtual currency. It defines virtual currency as “a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.” [Revenue Ruling 2019-24](#) on the tax treatment of hard fork modified this definition to: “a digital representation of value that functions as a medium of exchange, a unit of account, and a store of value other than a representation of the United States dollar or a foreign currency.” While not binding, the [instructions](#) to the virtual currency question on the 2021 Form 1040 defined virtual currency as: “a digital representation of value other than a representation of the U.S. dollar or a foreign currency (“real currency”), that functions as a unit of account, a store of value, or a medium of exchange.”

The classification of a non-fungible token varies within these definitions. Arguably, an NFT is a store of value, but not a unit of account due to each NFT being unique. Per [Revenue Ruling 2019-24](#), an NFT is not “virtual currency” but under the 2021 Form 1040 instructions, an NFT is virtual currency (use of “and” in the ruling versus “or” in the instructions regarding the three traits describing virtual currency).

The Infrastructure Investment and Jobs Act⁴ adds the term “digital asset” to the Code. Per new section 6045(g)(3)(D): “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.” No regulations have

⁴ P.L. 117-58 (11/15/21).

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been issued as of June 16, 2023. Thus, it is not yet known if an NFT will be considered a digital asset under the broker reporting rules of section 6045 (and merchant reporting rule of section 6050I (also changed by the IIJA to address digital assets)).

[IR-2023-12](#) (1/24/23) explains that common digital assets include:

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

Similarly, the instructions to the 2022 Form 1040 digital asset question also provide that an NFT is an example of a digital asset.⁵

NFT Guidance Related to Collectibles and Special Capital Gains Tax Rate

[Notice 2023-27](#), released March 21, 2023, states that Treasury and IRS intend to issue guidance on the tax treatment of non-fungible tokens (NFTs) under section 408(m) on collectibles which is also relevant under section 1(h) imposing a 28 percent tax rate on capital gains from the sale or exchange of collectibles. This notice offers a definition of NFTs and seeks comments on five specific questions.

[Notice 2013-27](#) defines an NFT as follows (footnote as shown in the original):

An NFT is a unique digital identifier that is recorded using distributed ledger technology and may be used to certify authenticity and ownership of an associated right or asset. Ownership of an NFT may provide the holder a right with respect to a digital file (such as a digital image, digital music, a digital trading card, or a digital sports moment)¹ that typically is separate from the NFT. Alternatively, NFT ownership may provide the holder a right with respect to an asset that is not a digital file, such as a right to attend a ticketed event, or certify ownership of a physical item. For purposes of this notice, the right that an NFT provides or the ownership of an asset that an NFT certifies is referred to as the NFT's associated right or asset.

¹ A digital file is not the same as a digital asset, as defined in section 6045(g). For purposes of reporting by brokers under section 6045(g), a digital asset is defined as, except as provided by the Secretary, any digital representation of value that is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

Per [Notice 2023-27](#), the IRS intends to apply a “lookthrough” analysis to determine whether an NFT constitutes a Section 408(m) collectible. Under the look-through analysis, an NFT constitutes a section 408(m) collectible if the NFT's associated right or asset is a section 408(m) collectible.

⁵ See <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf>, page 15.

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For example, a gem is a section 408(m) collectible under section 408(m)(2)(C) so an NFT representing ownership of a gem is a collectible. In contrast, an NFT representing a right to use or develop a plot of land is not a collectible because the land rights are not a collectible.

In the specific comments section of this letter, we list and address the five questions posed by the IRS in [Notice 2023-27](#).

We appreciate that it is challenging for the IRS to issue complete and timely guidance in the digital asset area. While existing guidance in the Code, regulations, revenue rulings, and court opinions is helpful, sometimes the unique nature of digital assets and transactions involving digital assets do not clearly fit within the existing guidance, thus leaving taxpayers and practitioners with uncertainty for reporting purposes.

Further guidance is needed for taxpayers to correctly calculate and report their transactions involving digital assets and NFTs. In this letter, we offer our recommendations, as requested in [Notice 2023-27](#), for further guidance regarding the treatment of NFTs. We note though that there are additional tax questions related to NFTs including whether they are ever a virtual currency or digital asset.

GENERAL COMMENTS

As noted above, the definition of “virtual currency” has not been consistent among [Notice 2014-21](#), [Revenue Ruling 2019-24](#), and the instructions for the 2021 Form 1040 virtual currency question.⁶ It is also not clear if any NFT meets the definition of a “digital asset” under section 6045(g) although [IR-2023-12](#) (1/24/23) and the instructions for the 2022 Form 1040 digital asset question state that NFTs are digital assets.⁷ Further discussed below, the definition of NFT in Notice 2023-27 implies that not all NFTs are digital assets.

Clarification is needed for many reasons beyond NFTs to provide a single definition of virtual currency and digital assets. A single definition will provide certainty and simplification to taxpayers.

SPECIFIC COMMENTS

Below are answers to the five specific questions posed in [Notice 2023-27](#) regarding NFTs and collectibles for section 408 purposes. We note that there are other tax matters related to NFTs beyond their possible classification as a collectible under sections 408 and 1(h).

⁶ See <https://www.irs.gov/pub/irs-prior/i1040gi--2021.pdf>, page 17.

⁷ See <https://www.irs.gov/pub/irs-pdf/i1040gi.pdf>, page 15.

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Our overall recommendations based on these answers are that Treasury and IRS:

- Review and consider the administrative burden the look-through analysis will impose on many taxpayers, particularly if the estimate of one trillion NFTs is accurate.
 - Consider the administrative burden the look-through analysis would impose on NFTs that represent more than one associated right or asset such as bifurcating the valuation of each associated right or asset the NFT represents.
 - Clarify whether the legislative intent of the collectible tax rate applies to NFTs.
1. *Does this notice provide an accurate definition of an NFT or are there other definitions of NFTs that should be used in future guidance?*

Generally, the definition of NFT in the Notice is not inappropriate; however, we believe that NFTs should be subject to general federal income tax principles applied to financial contracts rather than an NFT-specific set of rules. An NFT can be defined as a (1) unique digital identifier recorded on a distributed ledger, that (2) associates specified rights with respect to other property. Similar to other financial contracts, the property rights represented by an NFT can be less than a complete ownership interest in property. This fact implies that each NFT agreement must be read, and the rights in the associated property may need to be disaggregated and evaluated (and valued) separately for purposes of the Internal Revenue Code. NFT agreements can be designed to create results inconsistent with the intent of a static set of specific rules.

We agree with the distinction made in the Notice (at footnote 1): A digital file is not the same as a digital asset, as defined in section 6045(g). And, generally, an NFT would not be treated as a digital asset for purposes of reporting by brokers under section 6045(g).

2. *With respect to the look-through analysis—*

- a) *Are there instances in which there are concerns with applying the analysis and in which an alternate analysis may be more appropriate?*

There are instances in which there are concerns with applying the analysis and in which an alternate analysis may be more appropriate. The “look-through analysis” may be straight forward to apply when the NFT is simply a digital representation of an underlying tangible asset – in other words, when there is only a singular right or asset. However, there are concerns that arise when applying the “look-through analysis” in situations where the NFT represents ownership of more than just one singular right or asset. [Notice 2023-27](#) does not outline nor detail a framework for understanding how to apply the “look-through analysis” when the NFT represents more than one singular right or asset. For instance, is determining if the NFT is a collectible a binary choice? Or would a taxpayer have to value each

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underlying asset or right of the NFT? For example, a popular NFT project, called “Bored Ape Yacht Club,” provides NFT owners the ownership of a digital image file and also provides the same owner with exclusive access to their “club.” In this example, how does a taxpayer determine if the NFT is a collectible given that the ownership of the NFT is not solely a digital image which could be construed as a work of art pursuant to IRC 408(m)? While the digital image is a part of the NFT, most of the value of the NFT is likely derived from the exclusive access to the “club.”

In some instances, it may be possible to separately value the NFT and the access to the club. But we might suggest that the Service borrow a concept from state and local sales tax, known as the true object test. Sales tax is generally imposed on the sale of tangible property and not services, however, some transactions may involve both services and the transfer of tangible property. If the true object is the service per se, the transaction is not subject to sales tax although some tangible personal property is transferred. Conversely, if the true object is the property rather than the service, the entire transaction would be a taxable sale of tangible personal property.

Consider another example involving Bitcoin Ordinals (also known as BRC-20 tokens), a new type of NFT native to the Bitcoin blockchain. BRC-20 tokens are not the same as NFTs on the Ethereum or Solana blockchains. A BRC-20 token is a small unit of Bitcoin that has been inscribed with a piece of information such as text or image. The NFT and the unit of Bitcoin are not separable; they are a fungible token and non-fungible token at the same time because the Bitcoin unit is fungible, but the BRC-20 inscribed within the Bitcoin is non-fungible. Compared to an NFT on the Ethereum blockchain, for example, the NFT on the Ethereum blockchain is an entirely separate token. A BRC-20 token is most likely analogous to a rare coin. The coin can be spent for the denomination it is worth but may also carry value above and beyond the denomination on the face of the coin because of its scarcity.

Section 408(m)(2)(D) lists a “stamp or coin” as a collectible. Section 408(m)(3) excludes from the definition of a collectible certain coins such as gold, silver, and platinum coins described in section 5112 of title 31 of the United States Code. Section 408(m)(3) also excludes “a coin issued under the laws of any State” from being included as a collectible. It is not clear whether BRC-20 tokens fall under the definition of “stamp or coin” in section 408(m)(2)(D). Also important here is that unlike gold or silver coins, the BRC-20 token is an intangible asset. More clarity is needed.

In instances where an NFT represents multiple assets or rights, or in instances where the NFT is a BRC-20 token an alternative analysis is needed.

b) *What burdens does the analysis impose?*

The “look-through analysis” described in [Notice 2023-27](#) carries both an administrative burden and a tax rate burden. First, the administrative burden is mostly due to the growing number of NFTs. According to Dan Tapiero on the April 13, 2023 episode of The Pomp Podcast, there are roughly 1 trillion NFTs (timestamp 58:38), most of which likely have an associated right or asset. According to data from [Dune Analytics](#), the total number of weekly active NFT traders peaked at over 250,000 in 2022. The administrative burden to “look-through” each NFT that is traded in any one given year would require a lot of time and effort. To add to that, the look-through analysis is a manual determination and not something that can be easily automated, so taxpayers would not have the benefit of relying on a software product to help them perform the look-through analysis. This additional administrative burden will likely increase the cost of tax compliance for taxpayers.

Second, is the potential collectible tax rate burden imposed on NFTs in accordance with the legislative intent underlying sections 408(m) and 1(h)? The distinction between collectibles and other capital assets was first introduced in 1997, when the Taxpayer Relief Act (TRA) of 1997 was passed. Before the TRA of 1997 was enacted, the entire amount of net capital gains was taxed at a maximum rate of 28% with no distinction between gains from collectibles and non-collectibles. Under the new rules passed in the TRA of 1997, net capital gains were taxed at a maximum rate of 20%. When Congress chose to leave the maximum tax rate on collectible gains at 28%, they wanted to disincentivize the holding of collectibles because it was not “conducive to economic growth” (Source: [JCS-23-97 | Joint Committee on Taxation \(jct.gov\)](#)).

Does the same legislative intent of disincentivizing holding collectibles apply to NFTs? If the IRS were to determine that NFTs or certain NFTs should be taxed at the collectible gain tax rate, is the IRS applying the same legislative intent that buying and trading NFTs is not “conducive to economic growth?”

c) *How might the analysis be applied to an NFT with more than one associated right or asset (for example, if one of the associated rights or assets of an NFT is a section 408(m) collectible but another one is not a section 408(m) collectible)?*

The IRS should devise a framework that simplifies the “look-through analysis” for NFTs with more than one associated right or asset. First, a binary test should be established by creating a bright line test. This bright line test would create an “all or nothing” outcome when determining if an NFT with more than one associated right or asset is a collectible. The administrative burden would be much too difficult to comply with if the IRS were to require taxpayers to assign a valuation to each associated right or asset tied to the same NFT.

As noted earlier, one analogous example of this can be found within sales tax rules. Generally, when a transaction involves a taxable and a nontaxable component, if 10% or less of the fair market value of the total bundle is taxable, then the entire bundle is not subject to sales tax (Source: [ARTICLE I \(streamlinedsalestax.org\)](#) page 95). A similar framework could be applied when determining if NFTs are collectibles. For example, if an NFT has more than one associated right or asset and the fair market value of the associated right or asset that is a collectible exceeds 50%, then the entire NFT is considered to be “tainted” and all of the NFTs associated rights or assets value are determined to be a collectible.

Alternatively, if the IRS made the determination that all NFTs were or were not collectibles, there would be no ambiguity and the administrative burden would be drastically reduced and taxpayers could likely rely on more automation. However, this result would go beyond section 408(m) by making numerous intangible assets collectibles when it appears the intent of this provision was that only tangible assets are potentially collectibles.

Lastly, the IRS may consider providing taxpayers a safe harbor. For example, the IRS could offer a 60/40 split between a collectible and non-collectible similar to section 1256 contracts where the gain or loss is split 60/40 between short-term and long-term holding periods. We are not suggesting NFTs be shoe-horned into section 1256, rather using 1256 as an example where the IRC provides a case where the type of capital gain is split between short-term and long-term holding periods. In addition, as a safe harbor it should provide a simplification for taxpayers to alleviate the need for a challenging determination that would exist for many NFTs that represent various asset rights.

- d) *How might the potential for the owner of an NFT to receive additional rights or assets (such as additional NFTs) due to ownership of the NFT (even in the absence of a specific contractual right under the NFT) be treated?*

First, specific to when the owner of an NFT receives additional rights or assets due to ownership of the NFT, the IRS should consider providing guidance on what triggers a recognition event. For example, if an NFT represents a ticket to an event, when the taxpayer redeems the NFT for access to the event, does this trigger a recognition event in which the taxpayer must determine a capital gain or loss at the time of the redemption? It is likely that the taxpayer anticipated the future benefit when they originally purchased the NFT, so no recognition event should occur upon redemption, rather when the NFT is later sold or traded.

We can look at an analogous real-world example. A taxpayer can purchase a physical ticket to an event, such as the Super Bowl, and keep the physical copy of the ticket as a reminder or keepsake. In this example, is the paper ticket as a keepsake considered a collectible under section 408(m) after the taxpayer redeemed it to access the event? If it is, a

recognition event likely does not occur until the taxpayer later sells or trades the physical ticket, not at the time the taxpayer redeems the ticket to enter the event. This same analogy can be applied to NFTs that offer the owner additional rights or assets due to ownership of the NFT.

For ease of tax administration, the taxpayer should only be taxed upon disposition of the NFT even if additional valuable rights are granted when holding the NFT. Attempting to value additional rights imposes an unnecessary (and perhaps unfair) burden on the NFT holder, particularly if the additional rights decrease in value while held by the taxpayer.

Second, what guidance can the IRS provide related to the character of the gain or loss when an NFT owner receives additional rights or assets due to ownership of the NFT? Are there instances where the character of the gain or loss changes for each additional associated right or asset? Or does it remain the same as its “parent” NFT?

3. *Are there other factors to consider when determining whether an NFT is a section 408(m) collectible?*
 - a) *What factors might be considered to determine whether a digital file constitutes a “work of art” under section 408(m)(2)(A)?*

Factors to help to determine if a digital file is a “work of art” include both the form and substance of the transactions including the terminology used by the parties involved. However, as a digital file, there is no tangible property involved so it appears that this type of right or asset cannot be a collectible under section 408(m). In defining “collectible,” section 408(m)(2)(F) refers to “any other tangible personal property ...”, thus, implying that collectibles must be tangible.

We recommend that the IRS specify that if an NFT’s value is tied solely to an intangible asset or right, it is not a collectible under section 408(m).

- b) *What factors might be used to determine whether an asset is “tangible personal property” under section 408(m)(2)(F), particularly in the context of digital files?*

State sales tax laws tend to define tangible property as something that “may be seen, weighed, measured, felt, or touched, or which is in any other manner perceptible to the senses.”⁸ A similar definition should be considered for section 408(m) purposes.

- c) *What factors might be relevant if the NFT’s associated right is less than full ownership of an asset (for example, if the associated right is simply personal use of a digital file)?*

⁸ See for example, Alabama Code section 40-12-220(8), Georgia Code Ann. Section 48-8-2(37), and California Revenue & Taxation section 6016.

First, consider a real-life example of when fractionalizing an asset does not change the nature of the underlying asset. For example, a taxpayer owns a physical piece of art and then fractionalizes it into NFTs. Owning merely a fraction of that piece of art does not change the character of the underlying asset. Would this not be similar to selling a pizza by the slice instead of as a whole pizza? In contrast, consider another example where fractionalizing the underlying asset may change the asset in its entirety. Owning a vehicle and then, upon dissolution fractionalizing (e.g., selling) each part of the vehicle (for example to a scrap yard), would create an event where the underlying asset is no longer a vehicle.

As shown in the two examples above, fractionalizing an asset, whether physically or on a blockchain as an NFT, can change the nature of the asset in its entirety and the administrative burden to determine if the underlying asset is a collectible as a whole versus fractionalized would cause too much of an administrative burden. Therefore, for administrative burden purposes, the same rules should apply to NFTs that represent less than full ownership of an asset as they do NFTs that represent full ownership of an asset. Returning to legislative intent, does characterizing fractionalizing assets in the form of NFTs as collectibles adhere to the idea that holding these NFTs are not “conducive to economic growth?” One could argue that fractionalizing assets does not change the character of the asset, rather it mostly creates more liquidity for the asset, which likely is conducive to economic growth.

4. *Does the application of section 408(m) to an individually directed account under a qualified plan raise any issues other than those raised for individual retirement accounts?*

There is an exception under section 4975(c)(3) from the excise tax on prohibited transactions for individual retirement accounts (Special Rule for Individual Retirement Accounts) if with respect to the transaction, the account ceases to be an individual retirement account by reason of application of section 408(e) (2)(A). However, there is no similar exception for a prohibited transaction under a self-directed qualified plan (401(k)).

5. *What other guidance relating to NFTs would be helpful?*

- [Treasury Reg § 1.1\(h\)-1](#) includes a collectible look-through on sales of interests in partnerships, S corps and trusts. Has the IRS reviewed this regulatory framework for applicability to NFTs with more than one underlying asset attached to it?
- [Notice 2014-21](#) should be updated to clarify the definition of “virtual currency” as used in that ruling. As noted earlier, the three traits used to describe virtual currency (medium of exchange, a unit of account, a store of value) should consistently use “and” or “or” as part of this description.

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- Guidance under the section 6045 regulations should clearly explain when, if ever, an NFT is a digital asset. For example, some NFTs might not be maintained on a distributed ledger.
- Section 6045(g)(3)(D) defines a digital asset: 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. [Notice 2023-27](#) (page 1 footnote) states that a digital file is not the same as a digital asset, as defined in section 6045(g). However, NFTs are digital representations of value recorded on a cryptographically secured distributed ledger even though the look through analysis considers the digital file typically referenced by the transaction hash recorded in the ledger. The definition of digital asset defined under 6045(g) may be broadly interpreted by taxpayers to include NFTs. Taxpayers need clarity as to whether NFTs fall under the definition of a digital asset under section 6045(g) to avoid confusion.

In a previous comment letter, we addressed issues concerning the digital asset definition broadly and specifically for NFTs.⁹ The definition of covered security was modified to include digital assets and the broker definition was modified to include any person who provides services effectuating transfers of digital assets on behalf of another person. Therefore, the definition of an NFT as a digital asset or not impacts whether a broker is required to report NFT transactions on broker reporting statements. We also requested examples of who would be considered a broker under section 6045 including NFT related services because some service providers may not consider themselves brokers or have information available for the broker reporting requirements.

The Infrastructure Investment and Jobs Act broadened the section 6050I reporting requirement to file Form 8300, *Report of Cash Payments Over \$10,000 Received in a Trade or Business*, to include when digital assets are used in business transactions. The definition of an NFT as a digital asset or not affects this reporting requirement. We also addressed several concerns related to section 6050I in the previous comment letter,¹⁰ such as when counterparties are not known, reporting information can’t be obtained, what constitutes a trade of business, and more. A transaction could involve the exchange of one digital asset for an NFT and result in a reporting requirement for both parties depending on how the NFT is defined. Guidance is needed generally and more specifically regarding NFTs and the application of section 6050I as noted in the comment letter.

Furthermore, the marketplaces for cryptocurrencies and NFTs are typically different platforms and taxpayers may engage with a large variety of NFT marketplaces thus creating even more disjointed tracking and reporting issues. Some taxpayers may engage in large

⁹ AICPA Comment Letter, “[Comments on Virtual Currency Reporting under Internal Revenue Code Section 6045 and Section 6050I, and the Form 8300 and Instructions](#),” October 28, 2022.

¹⁰ AICPA Comment Letter, “[Comments on Virtual Currency Reporting under Internal Revenue Code Section 6045 and Section 6050I, and the Form 8300 and Instructions](#),” October 28, 2022.

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volumes of high value NFT trading thus creating an onerous reporting requirement for each NFT sale. The tax administration for taxpayers and brokers could be overly burdensome for the application of both section 6045(g) and section 6050I and the IRS should consider defining NFTs not as a digital asset.

* * * * *

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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 Policy and Advocacy, at (202) 434-9256 or Eileen.Sherr@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: 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
Ms. Erika Nijenhuis, Senior Counsel, Office of Tax Policy, Department of the Treasury
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Mr. Mark C. Hansmeier, Guidance Lead, Digital Asset Initiative, Internal Revenue Service

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