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IRS Delays Reporting Requirements on Digital Assets for "Brokers" But Not Businesses that Receive Digital Assets in Excess of \$10,000

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The Infrastructure Investment and Jobs Act (H.R. 3684), ("Infrastructure Law") was passed in 2021, and contained two provisions that target the reporting of digital assets.

The first new provision required additional reporting from "brokers." Under prior law, brokers of securities were required to report the sales of securities made by their customers by filing the Form 1099-B with the IRS to detail the sales of securities made during the year. The Infrastructure Law expanded the definition of "broker" to include any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. This provision is broad enough to require reporting for transaction by software developers, protocol developers, and validators – many of whom have no access to the information they would be required to report.

The new law was applicable to tax returns required to be filed, and statements required to be furnished, after December 31, 2023 which would include transactions occurring on or after January 1, 2023.

In Announcement 2023-2, the IRS stated that the Department of the Treasury and the IRS intend to publish regulations specifically addressing the reporting of digital assets by brokers. Brokers will not be required to report or furnish additional information with respect to dispositions of digital assets or file any returns with the IRS on transfers of digital asset until those new final regulations are issued.

The second new provision of the Infrastructure Law required reporting to the IRS from any person who in the course of their trade or business receives more than \$10,000 in digital assets in a single transaction or series of transactions. Those businesses must file a Form 8300 with the IRS to report the transaction. This provision was previously limited to businesses that received cash in excess of \$10,000 in a single transaction or series of transactions.

The requirement to report cash transactions is buttressed with steep penalties. Penalties apply for the failure to file Form 8300 with the IRS and the failure to provide a copy to the named taxpayer. Failure to comply can result in penalties of up to \$3 million a year, or the greater of \$25,000 or the amount received if the failure is due to the intentional disregard of filing requirements. Willful failure is a felony.

To date, the IRS has made no statements with regard to delaying the effective date for reporting the receipt of more than \$10,000 in digital assets in the course of a taxpayer's trade or business. This reporting is set to become effective on January 1, 2024, which may explain why the IRS chose not to extend this deadline.



If you have any questions concerning these developing issues, please do not hesitate to contact either of the following Paul Hastings Los Angeles lawyers:

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