



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY
FOR LEGISLATIVE AFFAIRS

February 11, 2022

[REDACTED]
United States Senate
Washington, DC 20510

Dear Senator [REDACTED]

Thank you for your letter and your interest in the implementation of the Infrastructure Investment in Jobs Act (IIJA). I deeply appreciate your leadership in advancing this important piece of legislation.

Section 80603 of the IIJA provides welcome clarity on the types of market participants that may be treated as brokers required to report information on digital asset transactions to the Internal Revenue Service (IRS). This modification of Section 6045 provides more certainty for Americans looking to invest in digital assets by ensuring that they receive the same tax documents from brokers as those trading financial assets. This information ensures that taxpayers receive the information on sales of digital assets they need to file their tax return and pay their tax liabilities.

We share Congress's goal of achieving greater certainty for Americans looking to invest in digital assets. This is especially important given the novel nature of these assets and that this is one of the first efforts to address digital assets, including virtual currency, and incorporate them into our nation's tax code.

As you know, the Treasury Department and the IRS usually announce in a notice of proposed rulemaking when they intend to modify existing regulations or issue rules on matters not addressed in existing regulations. In either circumstance, the notice sets forth the proposed regulatory text and contains a preamble that explains the proposed rules and solicits public comments on them. In general, the notice also announces a public hearing on the proposed rules. This process allows the Treasury Department and the IRS to engage in a dialogue with affected taxpayers, industries, and other interested parties and enables the public to meaningfully participate in the regulatory process. Final regulations are issued after careful consideration of all public comments on the proposed regulations. The Treasury Department intends to use this process to govern the development of the regulations implementing information reporting by brokers of digital assets.

The Treasury Department is aware of a colloquy between Senator Portman and Senator Warner, members of the bipartisan group who negotiated the IIJA, regarding the purpose and meaning of

the modification made to the definition of “broker” in section 6045(c). That colloquy addressed several important points about tax compliance related to information reporting on digital asset transactions and the intended effect of changes to Section 6045 on persons solely validating distributed ledger transactions or providing certain hardware or software.

Among other things, the colloquy:

- 1) Recognized that taxes legitimately owed on digital asset transactions should be paid, and that full and accurate transaction reporting is a proven way to make that happen.
- 2) Acknowledged that a lack of information reporting for digital assets increases the potential for abuse and the creation of a shadow financial system beyond the reach of established rules to combat illicit finance and tax evasion.
- 3) Described the IIJA modification to Section 6045 as an effort to bring more clarity to the cryptocurrency industry and more certainty for people looking to invest in digital assets.
- 4) Asserted that persons solely involved with validating distributed ledger transactions through proof of work—commonly known as miners—would not be subject to broker reporting rules under section 6045.
- 5) Stated that persons solely staking digital assets for the purpose of validating distributed ledger transactions, or solely engaging in validating distributed ledger transactions through other validation methods associated with other consensus mechanisms, similarly would not be subject to these broker reporting rules.
- 6) Indicated that persons solely engaged in the business of selling hardware or software for which the only function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger would not be subject to broker reporting rules under section 6045.

This colloquy constitutes part of the legislative history of the IIJA amendment to the definition of “broker” in section 6045(c). The Treasury Department is considering these statements as part of the development of a notice of proposed rulemaking. They are consistent with the Treasury Department’s view that ancillary parties who cannot get access to information that is useful to the IRS are not intended to be captured by the reporting requirements for brokers. For example, persons who are just validating transactions through a consensus mechanism are not likely to know whether a transaction is part of a sale. And persons who are only selling storage devices used to hold private keys or persons who merely write software code are not carrying out broker activities. The Treasury Department also will consider the extent to which other parties in the digital asset market, such as centralized exchanges and those often described as decentralized exchanges and peer-to-peer exchanges, should be treated as brokers in light of the clarification provided by Section 80603. The Treasury Department intends to propose regulations that address the concerns expressed in the colloquy and reflect the Treasury Department’s view regarding the appropriate scope of the broker definition.

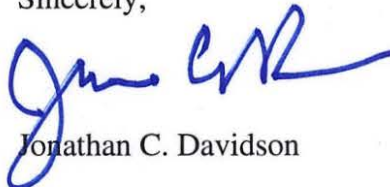
The Treasury Department also intends to carefully consider the technical explanation prepared by the Joint Committee on Taxation on Section 80603 and entered into the Congressional Record by Senator Portman.

Consideration of regulations in the notice of proposed rulemaking will be based on principles broadly similar to those applicable under current law for broker reporting on securities transactions. Treasury will consider the significant differences between the securities and digital

asset markets in light of the technological characteristics that drive the digital asset space. Existing regulations impose broker reporting obligations only on market participants engaged in business activities that provide them with access to information about sales of securities by taxpayers. Requiring information reporting by such persons (currently on a copy of IRS Form 1099-B) enables taxpayers to accurately prepare their tax returns and allows taxpayers to import IRS Form 1099 information directly into their tax returns. Requiring such information reporting facilitates the determination of whether taxpayers have complied with their tax reporting and payment obligations, which allows the IRS to focus its enforcement activities on potentially non-compliant taxpayers.

We appreciate Congress's leadership in addressing digital assets, and its continued willingness to work with the Administration to combat the use of digital assets for tax evasion. Thanks again for your interest and thoughtfulness.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jonathan C. Davidson".

Jonathan C. Davidson

Identical letter sent to:

The Honorable Mark R. Warner
The Honorable Mike Crapo
The Honorable Kyrsten Sinema
The Honorable Pat Toomey
The Honorable Cynthia M. Lummis