



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

ASSISTANT SECRETARY
FOR LEGISLATIVE AFFAIRS

April 5, 2022

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Representative McHenry:

Thank you for your letter and your interest in the implementation of the Infrastructure Investment in Jobs Act (IIJA).

We share your belief that information reporting on digital asset transactions is necessary. Section 80603 of the IIJA provides more certainty for Americans looking to invest in digital assets by ensuring that they receive the same tax documents from brokers as those Americans 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 also share your goal of achieving greater certainty through clear regulations for Americans looking to invest in digital assets. 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.

Section 80603 of the IIJA clarifies the meaning of the term “broker” for information reporting purposes. The Treasury Department's view is 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. Accordingly, the Treasury Department does not intend to require unworkable customer reporting. 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.

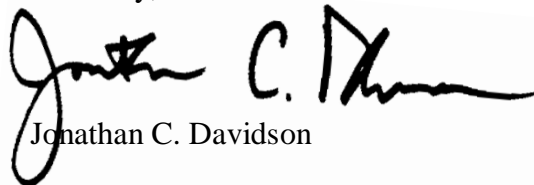
The Treasury Department will consider the extent to which other parties in the digital asset market, such as centralized exchanges and those often described as decentralized exchanges and peer-to-peer exchanges, should be treated as brokers in light of the clarification provided by Section 80603. The Treasury Department intends to propose regulations that reflect the Treasury Department's view regarding the appropriate scope of the broker definition.

Section 80603 of the IJA also provides a statutory definition of the term “digital asset.” We share your view that it is crucial to specify clearly the information that is intended to be captured by a broker when transferring a digital asset to an account maintained by a non-broker. The Treasury Department intends to propose regulations that reflect the Treasury Department's view regarding the appropriate scope of the digital asset definition and the information that brokers will need to report with respect to digital assets.

We also agree with your view that the addition of “any digital asset” to the definition of cash for purposes of Section 6050I of the Internal Revenue Code should be carefully examined prior to its implementation. As with the regulations that the Treasury Department intends to propose relating to broker reporting on digital assets, the Treasury Department intends to follow the notice-and-comment rulemaking process described above before issuing final regulations implementing the IJA amendment to Section 6050I. Affected taxpayers, industries and other interested parties therefore will be able to meaningfully participate in the process.

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. Thank you again for your interest and thoughtfulness.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan C. Davidson". The signature is fluid and cursive, with the first name "Jonathan" being particularly prominent and stylized.

Jonathan C. Davidson

cc: The Honorable Tim Ryan
The Honorable Kevin Brady
The Honorable Ro Khanna
The Honorable Tom Emmer
The Honorable Eric Swalwell
The Honorable Warren Davidson
The Honorable Darren Soto
The Honorable Anthony Gonzalez
The Honorable Ted Budd
The Honorable French Hill