



122 C Street N.W., Suite 700, Washington, DC 20001

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Submitted via electronic mail at [pra.comments@irs.gov](mailto:pra.comments@irs.gov) and at [IRS.gov/FormsComments](https://www.irs.gov/FormsComments).

Internal Revenue Service  
Attn: Andres Garcia  
Room 6526  
1111 Constitution Avenue NW  
Ben Franklin Station  
Washington, DC 20224

**Re: Comments on the Proposed Digital Asset Proceeds From Broker Transactions (NTF 1099-DA)**

On behalf of National Taxpayers Union Foundation (“NTUF”) we write with comments on the Internal Revenue Service’s (“IRS”) proposed Digital Asset Proceeds From Broker Transactions (NTF 1099-DA).

**I. INTRODUCTION**

NTUF has been a leader in developing responsible tax administration for nearly five decades. We strive to offer practical, actionable recommendations about how our tax system should function. Our experts and advocates engage in in-depth research projects and informative, scholarly work pertaining to taxation in all aspects, including that of virtual currency.

In 2017, NTUF produced crucial research that guided policymakers as they overhauled the federal tax code for the first time in decades. Our annual Tax Complexity Report highlights the increasing time burden and out-of-pocket filing expenses imposed on taxpayers as they comply with the tax code each year. In 2023, NTUF commented on the IRS’s Proposed Rule on Gross Proceeds Reporting by Brokers and Determination of Amount Realized and Basis for Digital Transactions (REG-122793-19), urging the IRS to promulgate effective, and taxpayer conscious, digital asset regulations. By combining policy expertise, outreach know-how, and true non-partisanship, we seek to build lasting consensus for impactful reform.

Given this backdrop, we strongly urge the IRS to reconsider its proposed 1099-DA form. For the reasons listed below, the form and underlying taxation scheme, if implemented, will harm taxpayers, threaten a booming financial sector, and strain the IRS's resources. To remedy these issues, we recommend the IRS take a more practical and taxpayer friendly approach to digital asset taxation.

## II. COMMENTS

### A. The IRS Incorrectly Assumes a Broker's Involvement With a Digital Asset is Akin to a Stock Broker's Involvement With Traditional Stock.

#### 1. *Cryptocurrency Represents a New Financial Industry.*

The overarching issue with the proposed 1099-DA Form is that it is attempting to apply securities regulations and reporting requirements from the early twentieth century rather than creating a framework tailored for the unique characteristics of this asset. Such an approach would be already outdated from the beginning and ignores the fact cryptocurrency is a wholly virtual, digital currency.

The virtual aspect of cryptocurrency is the distinguishing factor between paper coin and post-modern day currency.<sup>1</sup> Physical U.S. notes can be held by its users and possess identifying numbers which correlate to one of the twelve Federal Reserve Banks. A crypto asset, on the other hand, "is nothing more than an entry in a ledger that specifies that a particular user, identified by a certain 'private key' . . . is the sole party able to exercise a discrete set of powers associated with the ledger entry."<sup>2</sup> This unique characteristic of cryptocurrencies alters the traditional concept of the monetary landscape by introducing a monetary system where anyone can issue virtual currency, there is no centralized reserve board or banking entity, and the crypto users retain control over their virtual assets. Indeed, "[a]t the heart of . . . [the cryptocurrency] impact was the material transformation of fiat currency from paper, polymer, and metallic promises composed of digital strings of ones and zeros."<sup>3</sup>

As a result, trade is no longer linked to paper. Rather, trade is now able to occur on a transnational basis over the internet. Cryptocurrency "activities and markets rely on complex and novel

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<sup>1</sup> Zac Rogers, *Blockchain and the state: Vehicle or vice?*, 89 AQ: AUSTRALIAN QUARTERLY 1, 8 (2018) (citing Alan Kohler, editor-at-large of Australian Business Review) (explaining cryptocurrency is, essentially, "anarchic").

<sup>2</sup> Shaanan Cohn, et. al, *Coin-Operated Capitalism*, 119 COL. L. REV. 591, 602 (2019).

<sup>3</sup> Rogers, at 8.

technology.”<sup>4</sup> Unlike stock markets which have a closing time, the trade of virtual assets can happen anywhere, at any time. It is now purely digital, handled and managed by complex computer programs and miners, and is occurring nonstop, at an often instantaneous rate. For instance, while trade on a typical stock market may take a few minutes to effectuate, trading on the blockchain happens instantly. Likewise, crypto users are now able to transfer their money across transnational borders without being subject to the elongated wiring times often imposed by various banking institutions. The practicality of cryptocurrency, and ease with which users can access it through trading platforms, has allowed for users who, absent cryptocurrency, would be unable to access this level of trading, selling, and buying.

Moreover, the method of offering coins on the decentralized market differs from that of a standard market as well. Unlike standardized stock exchanges, there is no formal initial coin offering procedure or requirements to officially become a virtual asset broker in the digital world.<sup>5</sup> An universal method for recording crypto transactions or organizing one’s virtual asset portfolio is non-existent or still in development.<sup>6</sup> Moreover, there is no secondary market as exists for paper currencies and securities. Rather, “crypto assets [are] traded on hundreds of upstart markets[;] . . . [t]hey are located in diverse jurisdictions and have been embroiled in a range of legal controversies.”<sup>7</sup> Thus, no longer is trade centralized on a stock exchange, but trade is universal through digital means, allowing any individual to access any currency, from any location, at any time. In other words, cryptocurrencies have the potential to be the next evolution of the monetary system, taking society from using a physical monetary system and the stock market to the digital age. The proposed taxation scheme here fail to adequately comprehend this fact. Rather, it continues to attempt to equate a purely digital asset with that of physical assets.

Such an approach ignores not only what cryptocurrency inherently is (a virtual asset), but also the ever evolving nature of virtual assets. The virtual aspect of cryptocurrency necessitates that any cryptocurrency regulations by administrative or government bodies must reflect the change in the financial system from a banking institution with paper coins to a decentralized financial conglomerate with virtual assets. Although cryptocurrency users and institutions may want some regulation of the crypto market to ensure stability, this is not to say requiring cryptocurrency assets to be reported and regulated in the same manner as paper securities are regulated is appropriate. In other words, the proposed 1099-DA Form is premature. For instance, the infrastructure of the cryptocurrency market is still growing. As discussed, virtual cryptocurrency asset portfolios are not widely used, unlike asset portfolios for common stock.

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<sup>4</sup> Financial Stability Oversight Council, REPORT ON DIGITAL ASSET FINANCIAL STABILITY RISKS AND REGULATION 2022, 4 (2022), <https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf>.

<sup>5</sup> Cohney, at 608.

<sup>6</sup> Id.

<sup>7</sup> Id. at 609 (internal citation omitted) (citation omitted).

Another example is that the proposed 1099-DA form places the onus of reporting on brokers. Although this proposed form is akin to that of the common securities markets, where such a requirement is easier because trading occurs on a centralized stock exchange, it ignores the virtual aspect of cryptocurrencies. Cryptocurrencies are transnational, allowing users to exchange funds globally. Given this nature of digital assets, an outdated reporting regulation may “induce people to transact increasingly through decentralized exchanges or directly through peer-to-peer trades where no central governing body oversees these transactions. Those are still extremely difficult for tax administrators to penetrate.”<sup>8</sup> As a result, it is possible advanced cryptocurrency users will be able to avoid these reporting requirements, while less advanced users will be subject to taxation. All in all, the IRS may not be able to obtain the revenue it hopes to obtain with this proposed 1099-DA form.

These cases illustrate how the proposed 1099-DA form fails to achieve the IRS’s goal while harming taxpayers. The proposed form’s use of outdated methods to tax cryptocurrencies is undermined by the digital aspect of cryptocurrency. Instead of taxing cryptocurrency with already-outdated regulations, the IRS should consider an innovative approach which blends the regulation methods used for the stock market, IT approaches, and cybersecurity methods to create a modern, twenty-first century tax form.

## 2. *Cryptocurrency Cannot All Be Defined As Stock.*

An inherent problem with the proposed Form 1099-DA is the IRS’s unilateral decision to categorize cryptocurrency as a security when it is processed by a broker. Although categorizing cryptocurrency as stock may be correct for many, or even the majority, of cryptocurrency uses, it is not correct for all cases.

Cryptocurrency is unique because it has the option to be interconnected to myriad traditional financial assets. For instance, cryptocurrency may, in some instances, be categorized as cash. “Cash” is defined as “[r]eady money; whatever can be used as money without being converted into another form; that which circulates as money, including bank-bills . . . .”<sup>9</sup> Cryptocurrency is “cash” in that it can be used as money without being converted into another form. For instance, major retailers such as Gucci and Ralph Lauren accept cryptocurrency as a form of payment for their goods.<sup>10</sup> If these major retailers continue to transact deals purely in cryptocurrency without

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<sup>8</sup> Katherine Baer, et al., *Crypto Poses Significant Tax Problems – and they Could Get Worse*, IMF BLOG (July 5, 2023), <https://www.imf.org/en/Blogs/Articles/2023/07/05/crypto-poses-significant-tax-problems-and-they-could-get-worse>.

<sup>9</sup> *Cash*, BLACK’S LAW DICTIONARY (2d ed.)

<sup>10</sup> Walter Loeb, *Gucci Leads in Crypto Transaction*, FORBES (Aug. 4, 2022, 8:03 p.m.) <https://www.forbes.com/sites/walterloeb/2022/08/04/gucci-leads-in-crypto->

converting it into the U.S. dollar, it is possible that cryptocurrency, in these instances, may be “used as money without being converted into another form.”<sup>11</sup> Given that the definition of “broker” is unsettled and could encompass retailers, requiring crypto users in this situation to file a 1099-DA form is nonsensical.

Furthermore, at least one court case has indicated a blanket categorization of cryptocurrency as stock is not correct. Last year, the Southern District of New York addressed the question of whether the sale of a cryptocurrency was a sale of a security.<sup>12</sup> There, Ripple Labs first “sold XRP directly to certain counterparties . . . pursuant to written contracts.”<sup>13</sup> Next, Ripple Labs “sold XRP on digital asset exchanges ‘programmatically,’ or through the use of trading algorithms.”<sup>14</sup> Third, Ripple Labs “distributed XRP to its employees as a form of employee compensation. Ripple also distributed XRP in conjunction with its Xpring initiative to fund third parties that would develop new applications for XRP and the XRP Ledger.”<sup>15</sup> The SEC alleged all of these sales concerned the sale of an “investment contract[]” and thus was a sale of an unregistered security.<sup>16</sup> The Court relied on the factors set by the Supreme Court in *SEC v. W.J. Howey Co.*, which “held that under the Securities Act, an investment contract is a contract, transaction, or scheme whereby a person (1) invests his money (2) in a common enterprise and (3) is led to expect profits solely from the efforts of the promoter or a third party.”<sup>17</sup> The Court noted that “the subject of a contract, transaction, or scheme is not necessarily a security on its face. The Court analyzed the economic reality and totality of circumstances surrounding the offers and sales of the underlying asset.”<sup>18</sup>

Applying the *Howey* standard, the Court concluded the first sale did violate *Howey*, but the second and third sale did not. Under the first sale, “reasonable investors would understand that Ripple would use the capital received from its Institutional Sales to improve the market for XRP and develop uses for the XRP Ledger, thereby increasing the value of XRP.”<sup>19</sup> This is markedly different from the second sale, where the third *Howey* prong could not be established as “[b]uyers could not have known if their payments of money went to Ripple, or any other seller of XRP.”<sup>20</sup>

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transactions/?sh=2e3f3fa7135b; Rosie Perper, *Ralph Lauren Miami Store to Accept Crypto Payments*, YAHOO FINANCE (Apr. 4, 2023), <https://finance.yahoo.com/news/ralph-lauren-miami-store-accept-204403614.html>.

<sup>11</sup> CASH, BLACK’S LAW DICTIONARY.

<sup>12</sup> *SEC v. Ripple Labs, Inc.*, No. 20 Civ. 10832 (AT), 2023 U.S. Dist. LEXIS 120486 (S.D.N.Y. Jul. 13, 2023).

<sup>13</sup> *Id.* at \*8.

<sup>14</sup> *Id.* at \*8-9.

<sup>15</sup> *Id.* at \*9.

<sup>16</sup> *Id.* at \*18.

<sup>17</sup> *Id.* (cleaned up) (quotation omitted).

<sup>18</sup> *Id.* at \*22.

<sup>19</sup> *Id.* at \*29-30.

<sup>20</sup> *Id.* at \*35-36.

The Court further concluded the third sale did not satisfy the *Howey* test as the recipients “did not pay money or ‘some tangible and definable consideration’ to Ripple.”<sup>21</sup>

In short, the IRS cannot apply the blanket label of “stock” to all cryptocurrency. In order to ensure the digital asset industry is properly regulated, the IRS should acknowledge all facets thereof and create a regulatory scheme which compliments, instead of harms, this crypto industry.

### 3. *The Proposed 1099-DA Form is Not Clear as to Who is a Broker.*

The proposed 1099-DA form fails to clarify who a broker is. Under the IRS’s proposed rulemaking on August 29, 2023, a broker is “any person . . . that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others.”<sup>22</sup> On the proposed 1099-DA form, the IRS indicates a kiosk operator, digital asset payment processor, hosted wallet provider, unhosted wallet provider, or other could be considered a broker.<sup>23</sup> Essentially, “‘brokers’ are people who are responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.”<sup>24</sup>

This definition is overly broad and problematic in the cryptocurrency context. As explained above, cryptocurrency’s use is in some instances akin to that of cash. The IRS’s proposed requirement that digital asset payment processors file a broker reporting form is not practical. For instance, if Gucci or Ralph Lauren runs a system which acts as a digital asset payment processor to assist their customers in purchasing goods with cryptocurrency, these stores will be required to file a 1099-DA form for every transaction. Such a notion is not only unduly burdensome, but is against common sense as to who must traditionally file broker reporting forms: brokers engaged in stocks, not retailers selling their goods.<sup>25</sup>

The lack of a clear definition of who is a “broker” is yet another problem with the proposed 1099-DA form. Instead of rushing to enact a taxation scheme based on the assumption cryptocurrency is always stock, the IRS should consider the multi-use functions of cryptocurrency and carefully craft a tax form which acknowledges this characteristic of digital assets. By doing so, the IRS will

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<sup>21</sup> *Id.* at \*40.

<sup>22</sup> Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 88 Fed. Reg. 59576, 59631 (Aug. 29, 2023).

<sup>23</sup> *Draft 1099-DA Form*, IRS, <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>, (last visited June 20, 2024).

<sup>24</sup> Joyce Beebe, *Debate Over the New Digital Asset Broker Reporting Rules: Striking the Right Balance*, BAKER INSTITUTE (Apr. 4, 2024), <https://www.bakerinstitute.org/research/debate-over-new-digital-asset-broker-reporting-rules-striking-right-balance>.

<sup>25</sup> See *Instructions for Form 1099-B (2024)*, IRS, <https://www.irs.gov/instructions/i1099b>, (last visited June 20, 2024) (explaining a broker is someone who “regularly issues its own debt obligations, or is a corporation that regularly redeems its own stock.”).

not only alleviate taxpayer burden, but also ensure a successful taxation scheme on the cryptocurrency industry.

### **B. The Proposed 1099-DA Form and Underlying Taxation Scheme Threatens a Booming Financial Sector.**

The proposed 1099-DA form threatens to cripple the booming cryptocurrency industry. The United States is one of the leading nations in the cryptocurrency market. In 2020, approximately \$ 4.1 billion USD was realized in bitcoin gains in the United States alone.<sup>26</sup> This is more than three times more than the second highest ranking country.<sup>27</sup> In 2022, the United States was ranked first in Coinclub's global rankings for Q4.<sup>28</sup> The crypto financial market itself has created new jobs as already established companies and new companies invest resources into this sector.<sup>29</sup> Moreover, the blockchain offers promising results for future uses in varying areas of society. Such status bolsters the American economy, provides more employment opportunities for Americans, and encourages American innovation which can be propagated on a global scale.

Under the current state of affairs, America has the potential to be a global leader in the cryptocurrency industry. As a result, it is imperative for the American economy that any cryptocurrency taxation scheme focuses on bolstering this economy instead of hindering it. This proposed taxation scheme and tax form, if adopted, will operate to slow down the cryptocurrency sector. By placing this taxation scheme on the crypto industry before a formal regulatory scheme has been enacted by Congress, the cryptocurrency market will be burdened.

### **C. The IRS Underestimates the Burden of Proposed Form 1099-DA's Reporting Requirements.**

Proposed 1099-DA form will impose a compliance scheme that is not quickly achievable by the cryptocurrency industry nor feasible for the IRS to administer. Regarding the cryptocurrency sector, there is no standard regulation for the crypto market. Essentially, the IRS is attempting to tax an industry that is unregulated. Although the crypto industry and its users are highly advanced, the necessary infrastructure to fully comply with these proposed reporting requirements will take time and monetary investments to develop. As a result, the industry will become crippled as

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<sup>26</sup> See Chainalysis Team, *Bitcoin Gains by Country: Who Benefits the Most from the 2020 Boom?*, CHAINALYSIS (June 7, 2021), <https://www.chainalysis.com/blog/bitcoin-gains-by-country-2020/>.

<sup>27</sup> *Id.*

<sup>28</sup> See Jon Lea, *Q4 2022 Coincub Global Crypto Ranking*, COINCUB, <https://coincub.com/ranking-update2.pdf>.

<sup>29</sup> See Lauren Bradford, *How Cryptocurrency Has Introduced New Careers In Tech*, FORBES (Dec. 18, 2017), <https://www.forbes.com/sites/laurencebradford/2017/12/18/how-cryptocurrency-has-introduced-new-careers-in-tech/?sh=6848fd0a3e79>.

litigation ensues and smaller cryptocurrency traders, investors, and platforms are pushed off the market due to lack of resources to comply if the proposed form is quickly put into force.

The IRS, also, is not prepared to handle the amount of tax returns which will result from this proposed 1099-DA form. As of May 13, 2023, the IRS had 4.3 million unprocessed individual tax returns.<sup>30</sup> Julie Foerster, IRS's project director of digital assets, predicted the IRS will receive "8 billion" information returns from the IRS's taxation of cryptocurrency.<sup>31</sup> This is more than double what the IRS currently receives in other 1099 Forms.<sup>32</sup> Foerster explained the IRS's "technology, the way it is today, will not support the data and the volume . . . ."<sup>33</sup> With the IRS already not able to timely process individual's tax returns, it should focus on bolstering its processing personnel, technology, and customer service sector to assist taxpayers before implementing a new taxation scheme.

Moreover, the proposed 1099-DA form will be costly to the IRS in the form of litigation challenging the form's flat approach of treating digital assets handled by brokers as incompatible with case law and, likely, likely Congress's categorization of cryptocurrency. As explained above, although a large portion of cryptocurrency may be categorized similar to stock in a traditional financial institution, this is not true for all cryptocurrency. The *SEC v. Ripple Labs, Inc.* case shows that at least one court does not agree with the blanket approach treating cryptocurrency is a stock. But the proposed form here tend to follow the SEC's position in *Ripple* that all cryptocurrency is stock. Adopting such a position will open up the IRS to a floodgate of litigation as the cryptocurrency industry, the courts, and the IRS grapples with when a cryptocurrency may be considered a stock.

Finally, since the proposed 1099-DA form is a new reporting requirement without an underlying regulatory scheme from Congress, it will not be easy for taxpayers to comply. The IRS should develop a sector of cryptocurrency experts within the IRS to assist taxpayers. The proposed 1099-DA form and underlying proposed taxation scheme are riddled with convoluted reporting and recording requirements and taxation schemes. Moreover, they are the first of their kind as there has yet to be a formal attempt to tax cryptocurrency users. Taxpayers, accountants, and lawyers will have questions regarding the Proposed 1099-DA form and need guidance on how to proceed. Ideally, these cryptocurrency experts could interpret the guidelines for taxpayers and offer advice

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<sup>30</sup> See Mark Friedlich, *IRS still has millions of tax unprocessed returns; timeline, what to do, where to check*, WOLTERS KLUWER (May 23, 2023), <https://www.wolterskluwer.com/en/expert-insights/irs-still-has-millions-of-tax-unprocessed-returns-timeline-what-to-do-where-to-check>.

<sup>31</sup> See Jonathan Curry, *IRS Prepping for at Least 8 Billion Crypto Information Returns*, TAXNOTES (Oct. 26, 2023), <https://www.taxnotes.com/featured-news/irs-prepping-least-8-billion-crypto-information-returns/2023/10/25/7hhdp>.

<sup>32</sup> See *id.*

<sup>33</sup> *Id.*



on best practices for compliance. By creating a group of cryptocurrency experts within the IRS will assist the IRS with compliance issues and ease the taxpayer's burdens.

### **III. RECOMMENDATIONS**

Given these issues with the proposed form, we offer the following recommendations to improve the reporting requirement and to minimize burdens on taxpayers and the IRS.

#### **A. The IRS Should Wait For Congressional Action Before Implementing A Digital Asset Taxation Scheme.**

We recommend that the IRS postpone implementing a tax form for cryptocurrency until Congress or the Securities and Exchange Commission acts to implement a cryptocurrency regulatory regime. Only then should the IRS promulgate taxation forms and regulations.

Rather than having to create a cryptocurrency taxation scheme, the IRS should implement a taxation scheme within a regulated cryptocurrency scheme. Indeed, Congress is already introducing legislation to regulate digital assets. Just last month, Representative Thompson's act to establish a regulatory framework for digital assets passed the House of Representatives with a vote of 279 to 136.<sup>34</sup> In April of this year, Senator Lummis and Senator Gillibrand introduced a bill to regulate stablecoins.<sup>35</sup> In 2023, Representative Davidson introduced a bill aiming to protect cryptocurrency's users ability to purchase goods or services with crypto.<sup>36</sup> That same year, Senator Lummis and Gillibrand also introduced a bill in the Senate to establish a regulatory regime for cryptocurrency.<sup>37</sup> Moreover, other sectors are working on developing draft regulations for the cryptocurrency sector. For instance, in 2017, the Uniform Law Commission promulgated a Uniform Regulation of Virtual Currency Business Act which provided model regulatory schemes

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<sup>34</sup> See An Act To provide for a system of regulation of digital assets by the Commodity Futures Trading Commission and the Securities and Exchange Commission, and for other purposes, H.R. 4763, 118th Cong. § 2 (engrossed in House 2024) (for more legislative history, see <https://www.congress.gov/bill/118th-congress/house-bill/4763/all-actions>).

<sup>35</sup> See A Bill To provide for effective regulation of payment stablecoins, and for other purposes, S. 4155, 118th Cong. § 2 (2024).

<sup>36</sup> See A Bill To prohibit Federal agencies from restricting the use of convertible currency by a person to purchase goods or services for the person's own use, and for other purposes, H.R. 4841, 118th Cong. § 1 (2024).

<sup>37</sup> See A Bill To provide for consumer protection and responsible financial innovation, to bring crypto assets within the regulator perimeter, and for other purposes, S. 2281, 118th Cong. § 1 (2023).

for digital currencies.<sup>38</sup> Traditional financial institutions, as well, are working towards regulations: “[s]ome banks reportedly have connections with stablecoin activities or have announced their intentions to build such connections. Some banks reportedly have partnered with stablecoin issuers for various activities, including holding assets for stablecoin issuers.”<sup>39</sup> Banks’ involvement in the cryptocurrency sector is promising for future regulations as banks are already bound to comply with traditional financial regulations.

Although the IRS may want to tax cryptocurrency as soon as possible, the tax form should be appropriate and workable. The IRS should allow Congress or other administrative bodies, such as the Securities and Exchange Commission, to first enact a regulatory framework for cryptocurrency.

### **B. The Term “Broker” Needs to be Clearly Defined.**

In order to avoid mass confusion in the digital asset community, the IRS needs to narrow the definition of broker. As it stands, the definition is too broad and will be difficult, if not impossible, to implement. Rather than trying to apply the traditional financial market’s definition of broker, the IRS needs to issue a definition of broker which recognizes the multi-faceted nature of cryptocurrency. By narrowly defining broker, the IRS will not only be easing taxpayer’s reporting burdens, but also lessening the IRS’s burden of having to clarify, enforce, and explain an unworkable definition.

### **C. How A Digital Asset Can be Used Needs to be Clearly Examined.**

Additionally, the IRS must recognize that cryptocurrency is not always a stock. Although it may be in a lot of instances, digital assets represent a new form of a financial arena which can consist of stocks, artwork, and cash. Applying the blanket definition that cryptocurrency is stock creates many problems ranging from enforcement to implementation for both the IRS and taxpayers. As such, the IRS needs to take the time to examine all aspects and uses of digital assets, and tailor regulations to each use.

### **D. A Sandbox Method Should Be Implemented.**

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<sup>38</sup> Regulation of Virtual-Currency Businesses, UNIFORM LAW COMMISSION, <https://www.uniformlaws.org/viewdocument/enactment-kit-45?CommunityKey=e104aaa8-c10f-45a7-a34a-0423c2106778&tab=librarydocuments> (last visited Nov. 9, 2023).

<sup>39</sup> Financial Stability Oversight Council, REPORT ON DIGITAL ASSET FINANCIAL STABILITY RISKS AND REGULATION 2022, 4 (2022), <https://home.treasury.gov/system/files/261/FSOC-Digital-Assets-Report-2022.pdf>.

Instead of trying to apply traditional financial taxation scheme to cryptocurrencies, the IRS should employ a sandbox method to develop appropriate and functionable tax regulations.

Under this sandbox method, the IRS could recruit cryptocurrency experts from outside the IRS. These experts should represent all areas of cryptocurrency: regulatory, taxation, trading platforms, cybersecurity, investors, brokers, and sellers. Then, in a controlled environment, this group would allow for the testing of ideas about “an intelligent, coherent national policy to provide certainty for the next wave of blockchain innovations.”<sup>40</sup> Notably, the IRS should not rush this process, but allow for a generous amount of time so that the individuals could address the potential issues in taxation regulations and how to solve them. From these discussions and exchange of ideas, the experts can identify for the IRS how to best implement a taxation scheme into the cryptocurrency exchange.

#### **E. Cryptocurrency Should Only be Taxed at Cash-Out, and the Tax Form Should Reflect This.**

The proposed 1099-DA form’s treatment of digital assets exchanged for digital assets or services is impractical and harmful to taxpayers. Instead, the IRS should only tax digital assets upon cash-out. Although there are many avenues for purchasing digital assets and even more options for how to use cryptocurrency, a majority of users still want their cryptocurrency converted into hard currency. Thus, to avoid the convoluted attempts to tax cryptocurrency, the IRS should only tax cryptocurrency when its users take the cryptocurrency out of the digital world in exchange for hard currency or assets. Not only would this simplify the taxation scheme for the IRS (and potential risk of litigation), but it would also decrease taxpayer’s filing burdens.

#### **IV. CONCLUSION**

Any proposed tax form and taxation scheme relating to the exchange of cryptocurrencies should contemplate the nature and characteristics of cryptocurrency as a virtual currency on a decentralized platform with a myriad of uses. This taxation scheme should clearly delineate between cryptocurrencies as a security and cash, and proposed modern methods of regulating digital assets. We believe the recommendations we have offered will serve the goal of alleviating any ambiguity in the statute while protecting taxpayers. We are grateful for your consideration. If you have any questions or concerns, please do not hesitate to contact us.

Sincerely,  
Lindsey Carpenter,  
Attorney, National Taxpayers Union Foundation

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<sup>40</sup> Lawrence J. Trautman, *Bitcoin, Virtual Currencies, and the Struggle of Law and Regulation to Keep Pace*, 102 Marq. L. Rev. 447, 474-75 (2018) (quotation omitted).