



Senate Infrastructure Bill Expands Cryptocurrency Tax Reporting

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On August 10, 2021, the Senate passed the Infrastructure Investment and Jobs Act (Infrastructure Bill). The bill contains significant provisions that expand the scope of tax information reporting in respect of cryptocurrency and other digital assets, in particular for entities that fall within a broadly expanded definition of “broker”:

- **Broker Definition Expanded.** IRC Section 6045 would be amended to define a broker as including “any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.” Industry participants and a number of Senators had voiced their concern that this provision was overbroad and could bring into scope certain non-custodial actors within the crypto ecosystem such as blockchain validators, sellers of hardware and software wallets and software protocol developers. But several proposed amendments to limit the scope of the definition of broker never made it into the final bill.
- **Digital Assets Defined.** Amended Section 6045 would also define digital assets as “any digital representation of value that is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.” This definition includes common cryptocurrencies but could have broader application to other (and newly developed) digital assets such as nonfungible tokens or NFTs.
- **Covered Securities.** Digital assets are treated as “covered securities” if acquired on or after January 1, 2023. Covered securities under Section 6045 are subject to cost basis reporting by the broker.
- **Transfer Reporting.** Section 6045A which currently governs the production of transfer statements when accounts are transferred between brokers would also cover transfers of digital assets. In addition, new Section 6045A(d) would require a broker to report transfers of digital assets to an account or address not maintained by a broker – for example, private wallets.
- **Receipt of Digital Assets.** Through an amendment to Section 6050(I), digital assets would also be treated as “cash” for purposes of the statutory requirement to report receipts of cash in excess of \$10,000. The provision applies to any person engaged in a

trade or business and who, in the course of such trade or business, receives more than \$10,000 in cash in one transaction or two or more related transactions. There is, however, an exception to Section 6050I reporting for certain financial institutions already subject to similar Title 31 currency transaction reporting rules.

The Senate bill next goes to the House, which is due to reconvene in September. It is expected that there will be continuing lobbying by industry participants to limit the scope of the “broker” definition.

What seems more and more evident from the new Senate bill and the current regulatory project under Section 6045 is that crypto tax reporting for exchanges and institutions that fall within the definition of “broker” would utilize a Form 1099-B or a new form with a similar format, rather than a Form 1099-K as may have been considered by crypto exchanges in the past. Moreover, the new bill specifies that digital assets would be “covered securities” subject to cost basis reporting if acquired on or after January 1, 2023. This will leave relatively little time for institutions to incorporate cost basis functionality into their core systems.

Developments in regard to the progress of the Infrastructure Bill and the associated IRS regulatory project need to be monitored. For those institutions that would likely fall within the broker definition (e.g., centralized exchanges), it may be an opportune time to begin assessing existing systems and procedures for cost basis and broader broker tax reporting readiness.

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