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Part III - Administrative, Procedural, and Miscellaneous

Reporting and Penalty Relief for Brokers for Certain Digital Asset Transactions Under Section 6045

Notice 2024-57

SECTION 1. PURPOSE

This notice provides that brokers are not required to file information returns and furnish payee statements with respect to certain transactions involving digital assets identified in this notice and that the Internal Revenue Service (IRS) will not assert penalties under section 6721 (failure to file correct information returns) or section 6722 (failure to furnish correct payee statements) of the Internal Revenue Code (Code)¹ with respect to these identified transactions.

SECTION 2. BACKGROUND

.01 Section 6045

Section 6045(a) provides that every person doing business as a broker shall make a return to the IRS showing the name and address of each customer, with details regarding gross proceeds and other information as required. These rules apply when

¹ Unless otherwise specified, all “section” or “§” references are to sections of the Internal Revenue Code or the Income Tax Regulations (26 CFR part 1).

required by the Secretary of the Treasury or her delegate (Secretary) and in accordance with regulations prescribed by the Secretary. Brokers required to make returns under section 6045 with respect to digital assets do so by filing Form 1099-DA, Digital Asset Proceeds From Broker Transactions.

Section 80603 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1339 (2021) (Infrastructure Act) made several changes to the broker reporting provisions under section 6045 to clarify the rules regarding how certain digital asset transactions should be reported by brokers and to expand the categories of assets for which basis reporting is required to include all digital assets. On June 28, 2024, final regulations (TD 10000) were filed for public inspection with the Federal Register (XX FR XXXXX) (final regulations) to require brokers, including certain digital asset trading platforms, certain processors of digital asset payments, certain digital asset hosted wallet providers, and digital asset kiosks, to file information returns and furnish payee statements reporting gross proceeds and in certain circumstances adjusted basis on sales of digital assets effected for customers.

Section 1.6045-1(c)(2) provides that a broker generally is required to make an information return for each sale by a customer of the broker if, in the ordinary course of a trade or business in which the broker stands ready to effect sales to be made by others, the broker effects the sale or closes the short position opened by the sale.

Section 6045(c) defines a broker to include a dealer, a barter exchange, any person who (for consideration) regularly acts as a middleman with respect to property or services, and any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. Pursuant

to § 1.6045-1(a)(1), the term broker includes any person that in the ordinary course of a trade or business stands ready to effect sales made by others. Sections 1.6045-1(a)(10) and (21) define, in part, the term effect to mean, with respect to a sale, to act as: an agent for a party wherein the nature of the agency is such that the agent ordinarily would know the gross proceeds from the sale; an obligor retiring its own debt obligations, a corporation redeeming its own stock, or an issuer of digital assets redeeming those issued digital assets; a principal that is a dealer; or a digital asset middleman who provides a facilitative service.

Section 1.6045-1(a)(9)(i) defines the term sale to include any disposition of securities, commodities, options, regulated futures contracts, securities futures contracts, or forward contracts, and includes a redemption of stock, a retirement of debt instruments, and entering into short sales, but only to the extent any of these actions are conducted for cash. Section 1.6045-1(a)(9)(ii) defines the term sale to also include any disposition of a digital asset in exchange for cash or stored-value cards; any disposition of digital assets in exchange for a different digital asset; and the delivery of a digital asset pursuant to the settlement of a forward contract, option, regulated futures contract, any similar instrument, or any other executory contract which would be treated as a sale of a digital asset if the contract had not been executory.

Section 6045(g)(3)(D) and § 1.6045-1(a)(19) define the term digital asset to mean any digital representation of value that is recorded on a cryptographically secured distributed ledger (or any similar technology), without regard to whether each individual transaction involving that digital asset is recorded on that ledger, and that is not cash.

.02 Sections 6721 and 6722

Section 6721 imposes a penalty for any failure to file an information return on or before the required filing date, and for any failure to include all the information required to be shown on a return or the inclusion of incorrect information. Section 6724(d)(1)(B)(iii) defines an information return for this purpose as a return required by section 6045(a) or (d).

Section 6722 imposes a penalty for any failure to furnish a payee statement on or before the required furnishing date to the person to whom such statement is required to be furnished, and for any failure to include all the information required to be shown on a payee statement or the inclusion of incorrect information. Section 6724(d)(2)(H) defines a payee statement for this purpose as a statement required by section 6045(b) or (d).

SECTION 3. SCOPE

.01 The Treasury Department and the IRS have determined that certain digital asset transactions identified in sections 3.02, 3.03, 3.04, 3.05, 3.06, and 3.07 of this notice (identified transactions) require further study to determine how to facilitate appropriate reporting. Accordingly, until that determination is made, brokers are not required to make a return on these identified transactions under section 6045(a), and the IRS will not impose penalties under section 6721 or section 6722 for failure to file correct information returns or failure to furnish correct payee statements with respect to these identified transactions. The description of the transactions in sections 3.02, 3.03, 3.04, 3.05, 3.06, and 3.07 does not constitute or reflect a substantive analysis for Federal income tax purposes of any of the identified transactions or their component steps and no inference is intended as to how an identified transaction, or its component steps, is treated for substantive Federal income tax purposes. The descriptions are provided

solely for the purpose of describing the scope of the identified transactions covered by sections 3.02, 3.03, 3.04, 3.05, 3.06, and 3.07 of this notice and solely for purposes of determining the application of the broker reporting requirements under section 6045 pursuant to this notice. The inclusion of a transaction in section 3.02, 3.03, 3.04, 3.05, 3.06, or 3.07 of this notice is not intended to create an inference that the identified transaction is or is not a sale of a digital asset or that it would be required to be reported under section 6045(a) but for this notice.

.02 Wrapping and unwrapping transactions.

(1) An identified transaction described in this section 3.02 is:

(a) The transfer of a single type of digital asset that is native to one cryptographically-secured distributed ledger (or that cannot be used in certain automatically executing contracts) (digital asset A) in return for another digital asset (digital asset B) that is: (i) redeemable solely for digital asset A except as provided in section 3.02(1)(b) of this notice; and (ii) identical to digital asset A except that it is “wrapped” using an automatically executing contract (which may be referred to as a “smart contract”) or similar technology allowing it to be digitally represented and tradeable on a cryptographically-secured distributed ledger other than the one to which digital asset A is native (or that can be used in the smart contracts that digital asset A could not be used in); and

(b) The transfer or redemption of digital asset B described in section 3.02(1)(a) of this notice in return for digital asset A described in such section, regardless of whether airdrops or other digital assets attributable to the possession of digital asset A prior to such a transfer or redemption are also received or credited for the period during which

digital asset A was wrapped in a transaction described in section 3.02(1)(a) of this notice. The processes described in section 3.02(1)(a) and this paragraph (1)(b) may be referred to as “wrapping” and “unwrapping” or as exchanging a “wrapped digital asset” for an “unwrapped digital asset of the same type” and vice versa.

(2) The treatment of a transfer or redemption transaction described in section 3.02(1)(b) of this notice does not affect whether the receipt or crediting of airdrops, or other digital assets attributable to the possession of digital asset A for the period during which digital asset A was wrapped in a transaction described in section 3.02(1)(a) of this notice, should be treated as otherwise subject to information reporting under another Code section as rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, interest, or other fixed or determinable income.

.03 Liquidity provider transactions.

(1) An identified transaction described in this section 3.03 is:

(a) The transfer of one or more digital assets (for example, digital assets C and D) into an automatically executing contract and receipt of a different digital asset (digital asset L) that represents an interest in a pool of those digital assets that are used by an automatically executing contract to facilitate the trading (or to facilitate what digital asset market participants describe as lending) of those digital assets in an automated market maker system; and

(b) The redemption of digital asset L in return for a proportional share of the digital assets in the pool, regardless of whether the digital assets received or credited in the redemption include the same proportion of the units of digital assets in the pool that were previously deposited into the automatically executing contract in a transaction

described in section 3.03(1)(a) of this notice.

(2) The treatment of a redemption transaction described in section 3.03(1)(b) of this notice does not affect whether the receipt or crediting of digital assets or any other payment as compensation for the use of units of digital assets transferred to the pool is otherwise subject to information reporting under another Code section as rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, interest, or other fixed or determinable income.

.04 Staking transactions.

(1) An identified transaction described in this section 3.04 is:

(a)(i) The transfer of one digital asset (digital asset E) into an automatically executing contract for the purpose of being used as part of a proof-of-stake consensus mechanism to validate transactions on a distributed ledger in return for the opportunity to receive the transferred digital asset back plus validation rewards (if any);

(ii) The receipt of digital asset E from the automatically executing contract as described in section 3.04(1)(a)(i) of this notice, regardless of whether the receipt also includes the receipt or crediting of additional digital assets as a validation reward for the use of digital asset E that was previously transferred into the automatically executing contract.

(b)(i) The transfer of one digital asset (digital asset E) into an automatically executing contract in return for a different digital asset (digital asset S) that represents an interest in a pool of digital asset E that is used to validate transactions on a distributed ledger as part of a proof-of-stake consensus mechanism; and

(b)(ii) The redemption of digital asset S in return for a proportional share of digital

asset E, regardless of whether the redemption includes the receipt or crediting of additional digital assets as a validation reward for the use of digital asset E that was previously transferred into an automatically executing contract as described in section 3.04(1)(b)(i) of this notice.

(2) The treatment of a transfer or redemption transaction described in section 3.04(1)(a)(ii) or (1)(b)(ii) of this notice does not affect whether the receipt or crediting of validation rewards for the use of the disposed digital assets is otherwise subject to information reporting under another Code section as rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, interest, or other fixed or determinable income.

.05 Transactions described by digital asset market participants as lending of digital assets (type 1 transactions).

(1) An identified transaction described in this section 3.05 is a transaction described by digital asset market participants as lending of digital assets (type 1 transaction). In a type 1 transaction, a taxpayer (the original digital asset owner) transfers a digital asset to a third party (transferee) either directly or indirectly (such as through a centralized platform, or through the use of an automatically executing contract), subject to an obligation for the transferee to deliver the same type of digital asset back to the original digital asset owner in the future. At a later date, the transferee delivers the same type of digital asset to the original digital asset owner. The transferee may also deliver or credit additional digital assets or other consideration to the original digital asset owner as compensation for the use of the digital asset during the type 1 transaction or in respect of airdrops or other digital assets received or credited with

respect to the obtained digital asset during the type 1 transaction.

(2) The treatment of a type 1 transaction described in section 3.05(1) of this notice does not affect whether the delivery or crediting to the original digital asset owner of airdrops, or other digital assets attributable to the period during which the original digital asset owner did not hold the digital assets pursuant to the type 1 transaction should be treated as otherwise subject to information reporting under another Code section as rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, interest, or other fixed or determinable income.

.06 Transactions described by digital asset market participants as short sales of digital assets (type 2 transactions).

(1) An identified transaction described in this section 3.06 is a transaction described by digital asset market participants as a short sale of digital assets (type 2 transaction). In a type 2 transaction, a taxpayer obtains a digital asset from a third party (original digital asset owner), subject to an obligation to deliver the same type of digital asset to the original digital asset owner in the future. The taxpayer immediately sells the digital asset to an unrelated market participant. To satisfy its obligation to deliver the same type of digital asset to the original digital asset owner, the taxpayer may buy a replacement digital asset and deliver it to the original digital asset owner. Alternatively, the taxpayer may instead deliver a digital asset that it holds at that time to the original digital asset owner. The taxpayer may also deliver or credit additional digital assets or other consideration to the original digital asset owner as compensation for the use of the obtained digital asset (or in respect of airdrops or other digital assets received or credited with respect to the obtained digital asset) for the period between the time it is

obtained from the original digital asset owner and the time when the same type of unit is delivered to the original digital asset owner.

(2) The treatment of a type 2 transaction described in section 3.06(1) of this notice does not affect whether the delivery or crediting to the original digital asset owner of consideration for the use of the obtained digital asset, airdrops, or other digital assets attributable to the period during which the original digital asset owner did not hold the digital assets pursuant to the type 2 transaction should be treated as otherwise subject to information reporting under another Code section as rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, interest, or other fixed or determinable income.

.07 Notional principal contract transactions.

An identified transaction described in this section 3.07 is the transfer of a digital asset as a payment under, or on sale of, assignment of, or similar transaction with respect to a notional principal contract as defined in § 1.446-3 (whether or not the notional principal contract itself is a digital asset). An identified transaction described in this section 3.07 also includes a termination of a notional principal contract that is a digital asset.

SECTION 4. EFFECTIVE DATE

This notice is effective for identified transactions occurring on or after January 1, 2025.

SECTION 5. DRAFTING INFORMATION

The principal author of this notice is the Office of the Associate Chief Counsel (Procedure and Administration). For further information regarding sections 3.02, 3.03,

and 3.04 of this notice contact the Office of the Associate Chief Counsel (Income Tax and Accounting) at (202) 317-4718. For further information regarding sections 3.05, 3.06, and 3.07 of this notice, contact the Office of the Associate Chief Counsel (Financial Institutions and Products) at (202) 317-4520. For further information regarding the reporting rules, contact the Office of the Associate Chief Counsel (Procedure and Administration) at (202) 317-5436 (not toll-free numbers).