

May 29, 2024

The Honorable Danny Werfel  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, D.C. 20224

By submission to [www.irs.gov/formscomments](https://www.irs.gov/formscomments)

**RE: NTF1099-DA, pursuant to REG-122793-19 (IRS), Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions**

Dear Commissioner Werfel:

Thank you for the opportunity to provide comments on the draft Form 1099-DA reflecting the notice of proposed rulemaking that appeared in the Federal Register on August 29, 2023 (draft regulations), which involved gross-proceed and basis reporting by brokers of digital assets. We appreciate the work the Internal Revenue Service has done in drafting this form and we hope the comments discussed below are helpful in finalizing that form.

*About TaxBit*

TaxBit, Inc. is a software technology company that specializes in tax compliance and financial reporting for digital assets. We assist businesses and governments with navigating complexities of digital assets, specifically the challenges of accurately reporting taxable gains, losses, and income from digital-asset activities, as well as complying with Generally Accepted Accounting Principles applicable to digital assets. Our tax and accounting platform is used by some of the largest digital-asset exchanges, payment processors, Fortune 500 adopters of digital assets, and government organizations around the world. We also work with many private small- and medium-sized businesses in the digital-asset industry and have been filing Forms 1099 on their behalf since 2019. In the past year alone, we have issued millions of tax forms to and on behalf of retail and enterprise clients and processed billions of transactions – and billions in asset value – through our tax and accounting platform.

*Summary of Comments*

We suggest changes to the proposed Form 1099-DA in the following four ways: (1) adding a checkbox for indicating whether any given asset is a collectible or a qualified opportunity fund for tax purposes, (2) providing more comprehensive instruction for filling in boxes 1a, 1b, 8, and 9, (3) changing the free-text box for “Explanation if no recipient TIN” to a checkbox to prevent unhelpful narrative, and (4) listing broker types to reflect possible differentiating treatment of such different brokers under final rules.

## 1. Checkbox for Collectibles/Qualified Opportunity Funds

As is the case for Form 1099-B<sup>1</sup>, the final Form 1099-DA should include a checkbox indicating, where applicable, that the asset at issue in the relevant transaction is a collectible or a Qualified Opportunity Fund. The draft regulations include non-fungible tokens (NFTs) as digital assets for tax-reporting purposes, including those that represent artwork.<sup>2</sup> Separately, the IRS proposed in Notice 2023-27 that an NFT will constitute a collectible under Sec. 408(m) of the Internal Revenue Code if the NFT's associated right or asset is a collectible under that section, thus subjecting it to a top capital-gains tax rate of 28 percent rather than 20 percent.<sup>3</sup> Under this look-through analysis, and assuming final regulations continue to include NFTs within the scope of digital assets, some reportable digital assets will inevitably be collectibles. In order for Form 1099-DA to effectively communicate to taxpayers' return preparers as well as to IRS form intake and validation systems that a transaction involves a collectible subject to the higher tax rate, it will have to affirmatively indicate that status through such a checkbox.

Furthermore, while we are not aware of the distribution of any Qualified Opportunity Funds by way of digital assets, we suspect the integration of the two is likely in the future. Under the proposed regulations, where a transaction involves the sale of a digital asset that is also a security, the broker must report the sale as that of a digital asset and not as a security.<sup>4</sup> Qualified Opportunity Funds, such as those that provide capital to Qualified Opportunity Zones<sup>5</sup>, offer tax advantages such as the deferral of gain for taxpayer investors. Any future Form 1099-DA issued to such taxpayers would have to recognize that beneficial treatment or else expose them to improper tax preparation and possibly unnecessary audit.

## 2. Providing Greater Instruction to Boxes 1a, 1b, 8, and 9

Box 1a of draft Form 1099-DA asks for a code of the digital asset disposed of, and box 8 of that form asks the "type of non-cash proceeds" received from the transaction if it resulted in the receipt of non-cash proceeds.<sup>6</sup> Box 1b of draft Form 1099-DA asks for a digital-asset name if box 1a is coded "999999," which would appear to refer to an asset without a code.<sup>7</sup> Similarly, Box 9 of that form asks for a "name and/or explanation of non-cash proceeds" if box 8 is coded "OTH."<sup>8</sup> These boxes ask for the application of codes or narrative explanations that do not appear in any instructions, draft or otherwise, that we are aware of. We recommend that the IRS provide a copy of such instructions to digital-asset brokers and third-party compliance entities with sufficient time to gather feedback on such instructions prior to preparing the tax reports on the timelines required by Treasury and the IRS in final reporting regulations.

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<sup>1</sup> Internal Revenue Service, Form 1099-B (2024), *available at* <https://www.irs.gov/pub/irs-pdf/f1099b.pdf>.

<sup>2</sup> Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 88 FR 59618 (proposed Aug. 29, 2023).

<sup>3</sup> Notice 2023-27, 2023-15 I.R.B. 634.

<sup>4</sup> Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 88 FR 59583 (proposed Aug. 29, 2023).

<sup>5</sup> Internal Revenue Service, Invest in a Qualified Opportunity Fund (March 31, 2024), *available at* <https://www.irs.gov/credits-deductions/businesses/invest-in-a-qualified-opportunity-fund>; *see also*, 26 U.S.C. Sec. 1400Z (2024) *et seq.*

<sup>6</sup> Internal Revenue Service, draft Form 1099-DA (April 18, 2024), *available at* <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

Furthermore, we recommend that the IRS not reuse codes for digital assets after any given digital asset might become obsolete or cease to exist. All assets that are different from other assets for tax purposes, regardless of how similar the two assets may be from a technological perspective, should have unique identifying codes.

### 3. Box for “Explanation if no recipient TIN”

We recommend that the existing free-text box for “Explanation if no recipient TIN” be replaced with a checkbox listing pre-designated options for why a recipient’s TIN might not be included on the form. We understand that limiting the reasons for such a lack of inclusion might prove difficult but we also suspect that a free-text field such as this box in its current form would invite unhelpful narrative descriptions. We recommend that such a change include checkbox options that are broad enough to reasonably encompass a variety of good-faith explanations for lacking a TIN but not so broad that it provides options that fail to tell the taxpayer, his or her return preparer, or the IRS anything of substantial value.

### 4. Listing of Broker Types

Draft Form 1099-DA’s checkbox for broker types involved in the relevant transaction lists “Kiosk Operator,” “Digital Asset Payment Process,” “Hosted Wallet Provider,” “Unhosted Wallet Provider,” and “Other.”<sup>9</sup> Should this listing change with the promulgation of final reporting regulations, we recommend that any revised list of brokers mirror any way in which different types of brokers might be treated differently under final regulations. For example, the draft regulations state that, until the promulgation of final regulations pursuant to 26 U.S.C. Sec. 6045A involving transfer statements, cost-basis reporting will apply only “to digital assets that are acquired in a customer’s account by a broker providing hosted wallet services.”<sup>10</sup> Should similar accommodations be made to other entities, we recommend those entities be given a specific checkbox so that any given failure to report something otherwise accommodated for in final regulations will not trigger in the future a false-positive error on IRS intake systems.

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<sup>9</sup> *Id.*

<sup>10</sup> Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 88 FR 59595 (proposed Aug. 29, 2023).

We appreciate the IRS's consideration of this important issue and would welcome the opportunity to discuss our comments on any of the issues discussed above. Should you have any questions regarding these comments, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'John Schoenecker', with a large, stylized initial 'J' and 'S'.

John Schoenecker  
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