

June 21, 2024

VIA EMAIL TO PRA.COMMENTS@IRS.GOV

Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, D.C. 20224

Re: Digital Asset Proceeds From Broker Transactions, Comments on Proposed Form 1099-DA

Dear Mr. Garcia:

The Digital Chamber (the “Chamber”) is pleased to submit feedback on the draft Form 1099-DA (the “Draft Form”),¹ released by the Internal Revenue Service (“IRS”) on April 18, 2024, with comments solicited in the Federal Register on April 22, 2024.² That Draft Form follows the release and now-closed comment period for REG-122793-19 (IRS), *Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions* (“Proposed Regulations”).³ The Chamber recognizes the complexities and unique challenges that the evolving digital asset landscape presents, particularly in relation to federal tax law, and we hope these comments serve as a useful resource. In general, we ask that the comments below be read in conjunction with our comment regarding *Proposed Regulations Regarding Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions* as submitted on November 13, 2023.⁴

The Chamber is the world’s largest blockchain trade association. Our mission is to promote the acceptance and use of digital assets and blockchain technology, and we are supported by a diverse membership that represents the industry globally. We represent the world’s leading innovators, operators, and investors in the blockchain ecosystem, including leading edge startups, software companies, global IT consultancies, financial institutions, insurance companies, law firms, accounting firms and investment firms.

As discussed further below, reviewing the draft form underscores the overbreadth of information requested by the Draft Form and the burdens associated with tax reporting on that form. We recommend that the final Form 1099-DA request only that information necessary to facilitate reporting of digital asset transactions by taxpayers and that the other information be retained by

¹ Internal Revenue Service, Form 1099-DA, available at <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>.

² 89 Fed. Reg. 29,433 (Apr. 22, 2024).

³ Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 88 FR 59576 (proposed Aug. 29, 2023).

⁴ Letter to Roseann Cutrone, Internal Revenue Service, from Cody Carbone, Chamber of Digital Commerce (now known as the Digital Chamber) (Nov. 13, 2023), available at <https://digitalchamber.wpenginepowered.com/wp-content/uploads/2023/11/Digital-Chamber-Response-Prop.-Broker-Regs.-11.13.2023.pdf>.

the digital asset broker in the event it is needed in the examination context. We also recommend that instructions to reporting brokers, the existence of which is implied by the Draft Form, be released for public review before finalizing the Draft Form. Finally, we recommend that the final Form 1099-DA incorporate a space to indicate whether a relevant asset has a different tax rate associated with it, apart from the standard short- and long-term rates associated with the disposition of property.

OVERBREADTH AND BURDEN OF REPORTING

As a general matter, the Draft Form illustrates the administrative burdens presented by the Proposed Regulations. The Draft Form's additional reporting fields go well beyond what is currently required for administering Forms 1099-B. The Department of the Treasury ("Treasury") and the IRS should strive to balance any increased reporting burdens against the marginal utility of the additional information for both taxpayers and basic tax-reporting purposes. It is important to consider that the burden to digital-asset brokers to create or update their information collection and reporting systems. These systems changes are costly and time-consuming, particularly for start-up companies and for brokers who are already required to file Forms 1099-B for traditional securities. Every additional box requires additional tracking and coding and therefore should have a specific justification for its tax-reporting purpose. Where the substance of a tokenized asset is that of a security, rather than a purely digital asset such as a cryptocurrency, Treasury and the IRS should continue to require brokers to report transactions of such assets on a Form 1099-B only.

Additionally, the Draft Form requested information beyond what is necessary for general tax reporting purposes, such as assisting taxpayers with Forms 1040 and helping the IRS identify basic compliance risks associated with those submitted Forms 1040. Additional information, which is needed only for enforcement action, is outside the scope of a broker's responsibility when administering to tax reporting under Section 6045.⁵ The information we believe is unnecessary for general tax reporting purposes includes box 11a's "Sale transaction ID," box 11b's "Digital asset address," box 10b's request for why the relevant asset is a noncovered security, time stamping in boxes 1d and 1e, the request for explanation of no recipient taxpayer identification number ("TIN"), and the request for the type of broker involved in the transaction. Indeed, we do not understand the value to the IRS for enforcement purposes in receiving an explanation for not having a recipient TIN listed or of listing the type of broker involved in the transaction.

Beyond these administrative burdens, we are also concerned with the request for sale transactions IDs and digital asset addresses, as such requested information raises serious privacy concerns for taxpayers. These privacy concerns were discussed at length in our comment letter, but due to the significance of the concerns, we would like to reiterate it here. This information should only be of concern to the IRS where the taxpayer is suspected of committing a crime or other malfeasance, and it can be collected by the IRS in an examination or criminal investigation context.

⁵ Unless otherwise indicated, references to a "section" are to a section of the Internal Revenue Code of 1986, as amended (the "Code") and all "Treas. Reg. §" references are to the Treasury regulations promulgated thereunder.

INSTRUCTIONS FOR BROKERS

The Draft Form includes proposed instructions for taxpayers but does not include instructions for brokers even though certain cells in the Draft Form imply that broker instructions are necessary for a broker to properly complete a Form 1099-DA. For example, the Draft Form's box 1a requires a code of the digital asset at issue in the transaction, and box 1b asks for the name of that digital asset if box 1a is coded "999999."⁶ A similar pattern exists for boxes 8 and 9, as box 9 states, "If 8 coded OTH, name and/or explanation of non-cash proceeds."⁷ These cell descriptions imply the existence of a list of codes for digital assets to be filled into box 1a and a list of non-cash proceeds to be filled into box 8, such listings likely to be found in forthcoming broker instructions. We recommend that the IRS release such broker instructions for public review before finalizing the Draft Form.

VARYING TAX TREATMENT OF ASSETS

The IRS should amend the Draft Form to include ways for brokers to indicate if the relevant asset is subject to differing tax treatment by virtue of the asset itself. For example, to the extent non-fungible tokens ("NFT") might be regarded as collectibles under the Code,⁸ thus subjecting them to a top long-term capital gains rate of 28 percent rather than 20 percent, the final Form 1099-DA should allow for brokers to make the necessary indication of that status. Similarly, to the extent the relevant digital asset represents an interest in a Qualified Opportunity Fund⁹ thus subjecting the digital asset to beneficial capital-gains treatment, the final Form 1099-DA should allow for that indication as well (assuming that reporting on such assets is not completed with Form 1099-B). Without these possible designations, IRS processing of these forms could lead to both false-positive and false-negative audit flags when it comes to administering to these specific assets.

We appreciate your consideration of these comments and welcome the opportunity to discuss them further with you and your staff. If you have any questions or would like to discuss further, please feel free to contact Cody Carbone, Chief Policy at Cody@digitalchamber.org.

Sincerely,

Cody Carbone

Cody Carbone
Chief Policy Officer

⁶ Internal Revenue Service, Form 1099-DA, available at <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>.

⁷ *Id.*

⁸ See 26 U.S.C. §. 408(m) (2024); see also, Notice 2023-27, 2023-15 I.R.B. 634.

⁹ See 26 U.S.C. § 1400Z-1 (2024) *et seq.*