

Internal Revenue Service Advisory Council (IRSAC)
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Annette Nellen, Chair

June 21, 2024

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Submitted via email to: pra.comments@irs.gov

Also submitted to IRS.gov/FormsComments Re: NTF1099-DA

**Large Business &
International Subgroup:**

Katrina Welch, Chair
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**Re: Comments on Draft Form 1099-DA, Digital Asset Proceeds
From Broker Transactions**

Dear Mr. Garcia,

The Internal Revenue Service Advisory Council (IRSAC) is pleased to provide comments in response to the *Proposed Collection; Comment Request for Digital Asset Proceeds From Broker Transactions*¹ posted in the Federal Register on April 22, 2024, with respect to the draft version of *2025 Form 1099-DA Digital Asset Proceeds from Broker Transactions*.²

The IRSAC serves as an advisory body to the Commissioner of the Internal Revenue Service (IRS) and agency leadership. This group consists of 32 volunteer members appointed by the IRS and represents a broad cross-section of interests and areas of expertise in various aspects of tax compliance and administration. The IRSAC provides an organized forum for discussion of tax administration issues between IRS officials and representatives of the public. The IRSAC reviews existing tax policy and administrative issues and makes recommendations in an annual written report to achieve efficient and effective tax administration.

**Tax Exempt/Government
Entities Subgroup:**

Brian Yacker, Chair
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The IRSAC members work within five broad subject matter groups. These subgroups are Information Reporting, Large Business & International, Small Business/Self-Employed, Tax-Exempt/Government Entities, and Taxpayer Services (formerly named Wage & Investment).

**Taxpayer Services
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Alison Flores, Chair
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Our comments on the draft Form 1099-DA address the following matters:

¹ 89 FR 29433 (April 22, 2024), Proposed Collection; Comment Request for Digital Asset Proceeds from Broker Transactions; <https://www.federalregister.gov/documents/2024/04/22/2024-08528/proposed-collection-comment-request-for-digital-asset-proceeds-from-broker-transactions>.

² 2025 Draft Form 1099-DA (April 18, 2024); <https://www.irs.gov/pub/irs-dft/f1099da--dft.pdf>.

- Form instructions are needed to provide relevant and comprehensive feedback.
- Boxes related to wash sales and disallowed loss should be removed from Form 1099-DA.
- Form 1099-DA should follow the existing statutory requirements relating to missing tax identification numbers (TINs).
- Filers should be able to mask digital asset addresses and TINs on recipient copies of Form 1099-DA.
- Form 1099-DA should be redesigned, balancing the information taxpayers need to complete tax return information with the information the IRS needs for enforcing compliance.
- Include Form 1099-DA in the Combined Federal State Filing (CF/SF) program.
- Transactions should be reported in the broker's operating time zone, rather than in Coordinated Universal Time (UTC).

Details of our comments follow.

Form instructions are needed to provide relevant and comprehensive feedback.

There are over 31 different information returns, each with multiple boxes that require specific information in order for taxpayers and the IRS to properly consume the details and ultimately to ensure proper tax compliance. The IRS publishes unique and detailed instructions for each information return for both the Recipient and the Filer of the form.

However, the draft version of Form 1099-DA did not include the accompanying Filer instructions for the form. Without detailed instructions, filers will make assumptions about what certain box titles mean or what information is required, and ultimately the industry comments received by the IRS may not be relevant.

There are a variety of data points required to be included on the draft Form 1099-DA that were not contemplated in the proposed regulations³ including the requirement to include an explanation of a missing recipient TIN, to indicate a Broker Type, to provide a reason why a lot is Covered or Uncovered, and to report a Code for digital assets. Without detailed form instructions, it is difficult to ascertain whether these data points are necessary for the proper performance or functions of the IRS. Further, it should be noted that implementing programming changes to capture and report these and other data elements could not begin until the industry has detailed technical specifications. As such, the industry would need at least 18 months from the date of the final regulations, in order to implement the various transactional level details prescribed on this draft form (and in the proposed regulations).

To ensure the industry and the IRS are afforded the opportunity to evaluate and comment on the holistic impacts of the new form and processes, the IRSAC recommends that the

³ Proposed Regulations: Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, Aug. 29, 2023;
<https://www.federalregister.gov/documents/2023/08/29/2023-17565/gross-proceeds-and-basis-reporting-by-brokers-and-determination-of-amount-realized-and-basis-for>.

IRS release a draft version of the Form 1099-DA Filer Instructions along with another draft version of the Form 1099-DA, and request industry comments. In addition, to the extent other forms or instructions will be updated in conjunction with the new Form 1099-DA, IRSAC requests that those forms and instructions be provided in draft form contemporaneously so that industry can review all the changes together.

Boxes related to Wash Sales and Disallowed Loss should be removed from Form 1099-DA.

The proposed regulations issued on August 29, 2023, contained a coordination rule at Prop. Treas. Reg. § 1.6045-1(c)(8)(i) applicable to transactions involving the sale of a digital asset that also constitutes a sale of a security as so defined (other than options that constitute contracts covered by Section 1256(b)). Under this proposed coordination rule, brokers must report the sale of an asset that qualifies both as such a security and as a digital asset only as a sale of a digital asset and not as a sale of a security.

If an asset must be reported as a digital asset and not as a sale of a security, then only reporting rules applicable to digital assets should apply to assets reported on Form 1099-DA. Treas. Reg. § 1.1091-1 only applies to losses from wash sales of stock or securities. It does not apply to digital assets. Wash sale reporting rules would not apply to any assets reported under the coordination rule until such time Congress passes wash sale legislation for digital assets. If the IRS wants brokers to report disallowed losses on tokenized securities, it should revoke the coordination rule and require reporting for the sale of these assets on Form 1099-B.

Form 1099-DA should follow the existing statutory requirements relating to missing tax identification numbers (TINs).

The draft version of Form 1099-DA contains a box for the filer to populate with reason(s) when the form is reporting a missing TIN for the recipient. However, the existing statute and Treasury regulations provide for different requirements when a payee fails to provide their TIN in the manner required for the payment.

Specifically, Section 6109(a)(1) requires any person required to make a return, statement, or other document to include in the document such identifying number as may be prescribed for securing proper identification of the person.⁴ Section 3406(a)(1)(A) requires a person to deduct and withhold 24% from the gross payment when the payee fails to furnish their TIN in the manner required for the payment.⁵ Separately, when a filer submits an information return with a missing TIN, the filer is subject to a penalty according to Section 6721,⁶ and must follow the reasonable cause requirements outlined in Section 6724⁷ to qualify for a waiver of the penalty. To comply with Sections 6109 and

⁴ Section 6109, Identifying Numbers.

⁵ Section 3406, Backup withholding.

⁶ Section 6721, Failure to file correct information returns.

⁷ Section 6724, Waiver, definitions and special rules.

3406, filers have implemented policies and procedures to collect TINs from payees in the manner required for the payment and to backup withhold when a TIN is not provided.

In addition to being outside of the existing process required by statute, the proposed process to collect a written reason for a missing TIN from a payee is inefficient and ineffective. Among reasons that will be true, the broad scope of the Proposed Regulations will produce Form 1099-DA reporting for non-U.S. payees, most of whom will not have a U.S. TIN.

The IRSAC recommends that rather than introducing a ‘one-off’ process for this new information return, that the IRS follow the existing statutory and procedural requirements that require brokers to backup withhold when a recipient does not provide their TIN in the manner required.

Filers should be able to mask digital asset addresses and TINs on recipient copies of Form 1099-DA

Private information is required to be reported on Form 1099-DA including TINs, and Lines 11b and 12b reference the *Digital Asset address* which presumably is the wallet address that sent or received the reportable transaction.

TINs are routinely masked on the recipient copy of other information returns to help protect the data privacy when the statement is sent to the recipient in the mail or electronically. The IRSAC recommends that the IRS include the ability for filers to mask TINs on Form 1099-DA in order to help protect this private information.

In response to the August 29, 2023 proposed regulations, many commenters expressed detailed concerns explaining why the wallet address information should not be included on the form. However, if the IRS intends to require this information to be reported, the IRSAC recommends that the instructions ensure that filers can mask the wallet information appearing on the recipient copy of the form.

Form 1099-DA should be redesigned, balancing the information taxpayers need to complete tax return information with the information the IRS needs for enforcing compliance.

Information returns are used by both taxpayers and the IRS to ensure income tax compliance. The taxpayer uses the details provided on information returns to complete the various IRS forms and schedules and the IRS uses the information to ensure compliance in reporting income and deductions in the income tax process. Section 6001 provides that information reporting should contain information that “the Secretary deems sufficient to show whether or not such person is liable for tax under this title.”⁸ Some fields shown on the draft Form 1099-DA do not support that statutory mission but appear to be requested for aggregated data analysis. Many fields on the form do not support determining tax liability of the taxpayer while adding burden to the payer to gather, manage and report that content.

⁸ Section 6001, Notice or regulations requiring records, statements, and special returns.

The layout of the draft Form 1099-DA is difficult to read. There is too much blank space in the upper left section of the form and the design makes it so the taxpayer has to start reading from the upper right which is not intuitive.

There are myriad data points required to be reported on the form that the taxpayer may not understand, nor would they need for preparing their income taxes. For example, the taxpayer does not need to know what type of broker was involved in the transaction or if the transfer of the assets was recorded on a distributed ledger for the purpose of accurately preparing their income tax return information.

The box labels for *1c Number of Units*, *11c Number of Units*, and *12c Number of units transferred* appear to be duplicates of one another. The wording should be less clunky and more precise and consistent.

To avoid taxpayer confusion and related taxpayer service issues, the IRSAC recommends that the IRS redesign the Form 1099-DA, balancing the information taxpayers need to properly complete their income tax return information along with the information the IRS needs for enforcing compliance.

Separately, because a filer must issue multiple Forms 1099-DA for every transaction, a recipient could possibly receive hundreds, thousands or even hundreds of thousands of Forms 1099-DA. Recipients will receive separate Forms 1099-DA for each transaction that is made up of the following lots:

- covered lots with short term gains/losses
- covered lots with long term gains/losses
- uncovered lots with long term gains/losses purchased prior to 2023
- uncovered lots with short term gains/losses that were transferred in (a separate form will be required for each transfer from a separate digital asset wallet)
- uncovered lots with long term gains/losses that were transferred in (a separate form will be required for each transfer from a separate digital asset wallet)

The current design of the draft Form 1099-DA will make it incredibly difficult for a taxpayer receiving such voluminous amounts of tax information to transfer that information to their income tax return. To aid taxpayers, the IRSAC recommends that the IRS:

- 1) Consider aggregated reporting of digital asset transactions, where practical. Providing the taxpayer with digestible tax information should be a priority to encourage compliance. For example, if all of a taxpayers' transactions are short-term, traded in the same asset, and are all Covered, the filer should be able to aggregate and issue one Form 1099-DA for proceeds. Consolidated reporting is a common practice among other information return reporting including Form 1099-R for example where consolidated reporting is permitted in some cases, and distinct only when needed.

- 2) Expand the option for filers to issue a substitute version of Form 1099-DA to recipients. Specifically, the details described in Part 4 of the Publication 1179 General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns should be expanded to include Form 1099-DA.

Include Form 1099-DA in the Combined Federal State Filing (CF/SF) Program

Filers of information returns rely on the CF/SF program to satisfy some of their state information reporting obligations. Filers include state tax income and withholding amounts in the Publication 1220 formatted data submitted to the IRS annually, and the IRS shares that information with the participating states in the program.⁹

To ensure that participating states can receive the Form 1099-DA information to enforce state income tax compliance, and also to minimize the burden on the industry of having to file the forms directly with each state, the IRS should add Form 1099-DA to the CF/SF program.

Additionally, last year IRSAC recommended¹⁰ that the IRS expand the CF/SF program to include a process to provide the states with corrected information returns *even when the only changes made on the return were to the state boxes on the form*. IRSAC again recommends that the IRS make these changes to the CF/SF program to help streamline providing information to the states.

Transactions should be reported in the broker's operating time zone, rather than in Coordinated Universal Time (UTC).

The draft form contains boxes that require the payer to report the date and time that the asset was acquired and sold, and the instructions tell the recipient that these values will be reported in UTC.

U.S. taxpayers (and brokers) are not accustomed to accounting and reporting income in UTC time, and it is not required for other information returns reporting property and/or security transactions. U.S. recipients of information returns are accustomed to information being reported in North American time zones. U.S. recipients of the Form 1099-DA will likely be confused which can lead to increased customer service issues for the payer to manage.

Further, by requiring reporting in UTC time, payers may be forced to report transactions in a different tax year from when the transactions took place according to the books and records of the payer. This will also cause taxpayers to have to reconcile trades on their Form 8949, Sales and Other Dispositions of Capital Assets, adding further complexity to the income tax process. Rather than introducing another nuance into the process, the

⁹ Topic No. 804, FIRE system test files and Combined Federal/State Filing (CF/SF) program; <https://www.irs.gov/taxtopics/tc804>.

¹⁰ 2023 IRSAC Public Report, Information Reporting Issue Two (page 32); <https://www.irs.gov/pub/irs-pdf/p5316.pdf>.

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IRSAC recommends that brokers should report transactions in their operating time zone, which is consistent with other information reporting requirements.

We appreciate your consideration of these comments and IRSAC members are available to discuss any of them further. You can reach us via the IRS Office of National Public Liaison at publicliaison@irs.gov.



Annette Nellen
2024 IRSAC Chair

cc:

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