

# Getting Ready for Digital Asset Reporting Including Actions Many Must Take Before 2025

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## Learning Objectives

- Explain the purpose, operation and key compliance aspects of the broker reporting regulations for digital assets.
- Explain the safe harbor of Rev. Proc. 2024-28 that requires many taxpayers to take action by 1/1/25.

# Why Congress Expanded Broker Definition and “Specified Security” to Digital Assets

- Infrastructure Investment and Jobs Act (P.L. 117-58; 11/15/21)
- “we have very broad agreement, probably unanimous agreement, that centralized digital asset exchanges, when they behave as brokers, should be required to report transactions of their customers just like ordinary brokers do”
  - 8/9/21 Congr. Record - <https://www.govinfo.gov/content/pkg/CREC-2021-08-09/pdf/CREC-2021-08-09.pdf>
- Concern about underreporting of cryptocurrency transactions.

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## “Digital Asset” & Broker Reporting and More Added to IRC

- Congress added term “digital asset” to §6045 and §6050I via provisions included in Infrastructure Investment and Jobs Act (P.L. 117-58 (11/15/21)) (IIJA)
- Modified §§6045, 6045A, 6724 (penalties) & 6050I
- Per IIJA – Changes effective for returns required to be filed and statements required to be furnished after 12/31/23 (thus, for 2023 forms and activity due early 2024)
  - IRS delayed effective date.
- Track changes for Code sections modified by IIJA + background info:
  - <http://21stcenturytaxation.blogspot.com/2021/11/digital-asset-reporting-in-hr-3684.html>

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## Modification at §6045(C) & (G)(3)(D) by IJA



(c) Definitions. For purposes of this section-

(1) Broker. The term "broker" includes-

- (A) a dealer,
- (B) a barter exchange, ~~and~~
- (C) any ~~other~~ person who (for ~~a~~ consideration) regularly acts as a middleman with respect to property or services, ~~and~~-

(D) any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.

A person shall not be treated as a broker with respect to activities consisting of managing a farm on behalf of another person.

(D) Digital asset. Except as otherwise provided by the Secretary, the term "digital asset" means any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

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## IRS Modified Effective Dates of IJA

- Broker reporting under §6045 and §6045A:
  - [IR-2022-227](#) & [Ann. 223-093](#) (12/23/22) – IRS postponed effective date for broker reporting under §6045 and §6045A until after final regs issued (they were issued 2024).
  - Waiting for prop. regs. under §6045A.
- Merchant reporting under §6050I (Form 8300):
  - [Announcement 2024-4](#) provides transitional guidance under §6050I with respect to reporting transactions involving receipt of digital assets and clarifies that digital assets are not required to be included in Form 8300 filing until Treasury and IRS publish regs under §6050I.
    - [IR-2024-12](#) (1/16/24).

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# Guidance on Broker Reporting of Digital Assets Under §6045

- 8/29/23 – Prop. Regs issued under §6045, also includes Prop. Regs under §1001 and §1012.
  - Over 44,000 comments rec'd from public.
- 4/18/24 – draft 1099-DA released
- 6/28/24 – advance release of final broker reporting regulations and regs under §1001 and §1012, Notices 2024-56 and 2024-57, Rev. Proc. 2024-28
- 7/9/24 – release of final regs in Federal Register
  - <https://www.govinfo.gov/content/pkg/FR-2024-07-09/pdf/2024-14004.pdf>
  - Corrections 8/16/24 - <https://www.govinfo.gov/content/pkg/FR-2024-08-16/pdf/2024-17946.pdf>
- 8/8/24 – release of updated draft 1099-DA
- 9/30/24 – release of draft filer instructions for 1099-DA (updates original draft of 9/9/24)
  - <https://www.irs.gov/pub/irs-dft/i1099da--dft.pdf>

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## Relevant Dates for Broker Reporting

- January 2026 – brokers issue 1099-DA for 2025 transactions
  - Notice 2024-56 transition relief [more later]
- January 2027 – broker reporting to include basis starting with 2026 transactions (if required)
  - If required, reporting of gain or loss and basis info for sales on or after 1/1/26 for DA acquired and held by that broker in customer's account on or after 1/1/25.
    - Reg. 1.6045-1(d)(2)(i)(D) Acquisition information for sales of certain digital assets [56562]
    - Also see draft 1099-DA filer instructions reminder that “covered security” for Form 1099-DA is a DA acquired after 2025 for cash, stored-value cards, different digital assets or certain property or services. DA must have been acquired in account for which broker provided custodial services and was held in that account until the broker effects the disposition.
    - See later slide on whether brokers are ready to accept instructions from customers starting 1/1/25 on which digital assets were sold (Reg. 1.1012-1(j)). Note though that Reg. 1.6045-1(d)(2)(ii) does not require brokers to accept specific identification instructions from customers or accept basis info from customers. Broker can offer just one method of making specific identification and it will count as standing order from customer. [56563].
- Backup withholding not effective until 2026.
- Real estate reporting persons treated as DA brokers to report when DA used to acquire real estate in transactions that close on or after 1/1/26.
  - Include FMV of digital assets on Form 1099-S.

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## Final Regs on Broker Reporting – TD 10000 (7/9/24)

### Regs address:

[page in Fed Reg of 7/9/24 where each reg begins]:

- §1.1001–7 Computation of gain or loss for digital assets. [56543]
- §1.1012–1 Basis of property [56545]
  - (h) Determination of basis of digital assets
  - (i) [Reserved]
  - (j) Sale, disposition, or transfer of digital assets.
- §1.6045-0 Table of contents [56548]
- §1.6045-1 Returns of information of brokers and barter exchanges [56550]
  - -1(a) to -1(r) [listing on next slide]

<https://www.govinfo.gov/content/pkg/FR-2024-07-09/pdf/2024-14004.pdf>

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## Final Regs on Broker Reporting – TD 10000 (7/9/24) - Regs Address - Continued:

- §1.6045–1 Returns of information of brokers and barter exchanges.
  - (a) Definitions. [56550]
  - (b) Examples (23 examples of the definitions). [56554]
  - (c) Reporting by brokers. [56556] [more on next slide]
  - (d) Information required. [56561]
    - (d)(2)(i)(B) – Required information for digital asset transactions [56562]
  - (e) Reporting of barter exchanges. [56572]
  - (f) Information required. [existing reg]
  - (g) Exempt foreign persons. [56573]
  - (h) Identify of customer.
  - (i) [Reserved]
  - (j) Time and place for filing; cross- references to penalty and magnetic media filing requirements. [56578]
  - (k) Requirement and time for furnishing statement; cross-reference to penalty.
  - (l) Use of magnetic media or electronic form.
  - (m) Additional rules for option transactions. [56578]
  - (n) Reporting for debt instrument transactions. [56578]
  - (o) [Reserved] [existing reg]
  - (p) Electronic filing. [existing reg]
  - (q) Applicability dates. [56578]
  - (r) Cross-references. [56578]

**Note:** TD 10000 adds to regs that existed before digital asset changes.

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## Final Regs on Broker Reporting – TD 10000 (7/9/24) – Reg 1.6045-1(C) Details

§1.6045–1 Returns of information of brokers and barter exchanges.

- (c) Reporting by brokers. [56556]
  - 1) Requirement of reporting [nothing new]
  - 2) Sales required to be reported [nothing new]
  - 3) Exceptions
  - 4) Examples
  - 5) Form of reporting for regulated futures contracts
  - 6) Reporting periods and filing groups [nothing new]
  - 7) Exception for certain sales of agricultural commodities and commodity certificates [nothing new]
  - 8) Special coordination rules for reporting digital assets that are dual classification assets

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## Final Regs on Broker Reporting – TD 10000 (7/9/24) - Regs Cover - Continued:

- §1.6045–4 Information reporting on real estate transactions [56578]
- §1.6045A–1 Statements of information required in connection with transfers of securities [56580]
- §1.6045B–1 Returns relating to actions affecting basis of securities [56580]
- §1.6050W–1 Information reporting for payments made in settlement of payment card and third party network transactions [56581]
- §31.3406–0 Outline of the backup withholding regulations [56582]
- §31.3406(b)(3)–2. Reportable barter exchanges and gross proceeds of sales of securities, commodities, or digital assets by brokers [56582]
- §31.3406(g)–1 Exception for payments to certain payees and certain other payments. [56582]
- §31.3406(g)–2 Exception for reportable payment for which withholding is otherwise required [56583]
- §301.6721–1 Failure to file correct information returns [56583]
- §301.6722–1 Failure to furnish correct payee statements [56583]

**Note:** that TD 10000 is mostly additions to existing regs (ones predating final digital asset broker reporting regs).

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## IR-2024-178 (6/28/24) – Announces Release of Final Regs and Related Guidance with Links

- Regs under §6045 as modified for digital asset reporting by “brokers” by Infrastructure Investment and Jobs Act of 2021.
  - Also, regs on amount realized (§1001) and basis (§1012); updated from Prop. Regs.
  - 104 pages in Federal Register of 7/9/24.
  - Replaces proposed regs issued 8/29/23
    - <https://www.govinfo.gov/content/pkg/FR-2023-08-29/pdf/2023-17565.pdf>
- Links to final regs (advance release) + 2 notices + Rev. Proc. 2024-28 + Fact Sheet with summary are all noted in IR-2024-178.
  - <https://www.irs.gov/newsroom/treasury-irs-issue-final-regulations-requiring-broker-reporting-of-sales-and-exchanges-of-digital-assets-that-are-subject-to-tax-under-current-law-additional-guidance-to-provide-penalty-relief-address>
- More on following slides ...

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## Notice 2024-56 (6/28/24)

- Transition relief from §6721 & §6722 penalties for information reporting of digital assets by brokers under §6045 for 2025 reporting due in 2026.
- Broker must have made “good faith efforts to file accurate and timely Forms 1099-DA and furnish accurate and timely payee statements”
  - And must file form by later of date IRS first contacts broker about exam or 1 year after original due date for filing the forms.
- See notice for backup withholding relief details.
  - <https://www.irs.gov/pub/irs-drop/n-24-56.pdf>
- **Observation:** If client with DA transactions via a broker in 2025 doesn’t get all expected Forms 1099-DA in January 2026, note that might get them later!
  - Clients need own reliable records for many reasons.

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# Notice 2024-57 (6/28/24) – Areas Needing Further Study by IRS and Treasury

- Provides that brokers are not required to report certain identified digital asset transactions under §6045 until further notice, so no penalty under §6721 & §6722.
  - “Identified transactions” require add’l study to determine proper reporting so no reporting required until more guidance issued (notice has brief description of each):
    - Wrapping and unwrapping transactions
    - Liquidity provider transactions
    - Staking transactions
    - Transactions described by digital asset market participants as lending of digital assets (type 1 transactions)
    - Transactions described by digital asset market participants as short sales of digital assets (type 2 transactions)
    - Notional principal contract transactions.
- <https://www.irs.gov/pub/irs-drop/n-24-57.pdf>

## Select Draft Form 1099-DA Observations

Letter codes (A, B, D, E, X) to help recipient. Example: B is short-term transaction where basis is reported to IRS. See page 6 of draft filer instructions.

Required if taxpayer has multiple accounts with broker. Brokers encouraged to put account # on all forms.

Only for tokenized securities (§1.6045-1(c)(8)(i)(D)(1))

**DRAFT**  
September 9, 2024

**Digital Asset Proceeds From Broker Transactions**  
Form 1099-DA  
OMB No. 1545-XXXX  
2025

**Copy B For Recipient**

This is important tax information and is being furnished to the IRS. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

1 FILER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone no. Applicable checkbox on Form 8949 OMB No. 1545-XXXX  
2025 Form 1099-DA

1a Code for digital asset

1b Name of digital asset

FILER'S TIN RECIPIENT'S TIN

RECIPIENT'S name

1c Number of units

Street address (including apt. no.)

1d Date acquired 1e Date sold or disposed

City or town, state or province, country, and ZIP or foreign postal code

1f Proceeds \$ 1g Cost or other basis \$

1h Accrued market discount \$ 1i Wash sales loss disallowed \$

2 Check if basis reported to IRS 3a Reported to IRS: Gross proceeds Net proceeds

3b Check if proceeds from: Reserved for future use QOF 4 Federal income tax withheld \$

5 Check if loss is not allowed based on amount in 1f 6 Gain or loss: Short-term Ordinary Long-term 7 Check if 1f is only cash 8 Check if broker relied on customer-provided acquisition information

9 Check if digital asset is a noncovered security 10 Digital asset is a noncovered security because: Broker did not provide custodial services for it Broker provided custodial services and it was transferred in to broker Broker provided custodial services and it was acquired prior to 2026 11a Check if gross proceeds reported in 1f is an aggregate amount for: Qualifying stablecoins Specified NFTs

11b If 11a checked, number of transactions 11c For aggregate reporting of specified NFTs, aggregate gross proceeds reported in 1f that are attributable to first sales by creator or minter 12a Number of units transferred in 12b If transferred in, provide transfer-in date 13

14 State name 15 State identification no. 16 State tax withheld \$ \$

Form 1099-DA (Keep for your records) www.irs.gov/Form1099DA Department of the Treasury - Internal Revenue Service



# Select Draft Form 1099-DA Observations

9-digit alphanumeric characters ID issued by Digital Token Identification Foundation. It not registered, enter 999999999. <http://dtif.org> (need to register to access) **Query:** Will IRS just put the list on web?

Full name of the digital asset reported. If used DTIF code in box 1a, use same name in 1b.

Only potentially applicable to sales of tokenized securities.

Form 1099-DA (Keep for your records) www.irs.gov/Form1099DA Department of the Treasury - Internal Revenue Service

# IRS Summary of What Boxes Filer Completes

- a. must complete
- b. complete if applicable
- c. may voluntarily complete for 2025
- d. if digital assets sold because of option exercise
- e. if digital asset(s) sold, exchanged, or otherwise disposed of were transferred to a broker providing custodial services

Remember – still in draft form!

Form 1099-DA (Keep for your records) www.irs.gov/Form1099DA Department of the Treasury - Internal Revenue Service

## Basis per Final Regulations – Basis Tracking

- First – review of virtual currency FAQs 39 to 41 issued in 2019 and followed by may taxpayers and software programs for tracking digital asset transactions
- Second – safe harbor to move from universal approach allowed (or not disallowed) by the FAQs to the wallet-by-wallet / account-by-account basis identification required by final digital asset regs under §1001 and § 1012.

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## FAQs 39 – 41 on Basis Issued Oct 2019

**Q39. I own multiple units of one kind of virtual currency, some of which were acquired at different times and have different basis amounts. If I sell, exchange, or otherwise dispose of some units of that virtual currency, can I choose which units are deemed sold, exchanged, or otherwise disposed of?**

A39. Yes. You may choose which units of virtual currency are deemed to be sold, exchanged, or otherwise disposed of if you can specifically identify which unit or units of virtual currency are involved in the transaction and substantiate your basis in those units.

## FAQs 39 – 41 on Basis

### **Q40. How do I identify a specific unit of virtual currency?**

A40. You may identify a specific unit of virtual currency either by documenting the specific unit's unique digital identifier such as a private key, public key, and address, or by records showing the transaction information for all units of a specific virtual currency, such as Bitcoin, held in a single account, wallet, or address. This information must show (1) the date and time each unit was acquired, (2) your basis and the fair market value of each unit at the time it was acquired, (3) the date and time each unit was sold, exchanged, or otherwise disposed of, and (4) the fair market value of each unit when sold, exchanged, or disposed of, and the amount of money or the value of property received for each unit.

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## FAQs 39 – 41 on Basis

### **Q41. How do I account for a sale, exchange, or other disposition of units of virtual currency if I do not specifically identify the units?**

A41. If you do not identify specific units of virtual currency, the units are deemed to have been sold, exchanged, or otherwise disposed of in chronological order beginning with the earliest unit of the virtual currency you purchased or acquired; that is, on a first in, first out (FIFO) basis.

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## Regs on Basis of Digital Assets - §1.1012-1(h) and (j)

- (h) – Determination of basis under various ways to acquire DA
- (j)(1) & (2) - apply to digital assets not held in custody of a broker, such as digital assets held in an un-hosted wallet.
- (j)(3) - applies to digital assets held in the custody of a broker.

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## Regs on Basis of Digital Assets - §1.1012-1(h) and (j) (i) Is Reserved

### Basis Observations:

- Identification of DA disposed of must be made in advance of transfer for basis reporting purposes.
- Identification must tie to DA in the same wallet.
- Specific identification approach is not considered a method of accounting.
  - Reg § 1.1012-1(j)(4) “Method for specifically identifying units of a digital asset. A method of specifically identifying the units of a digital asset sold, disposed of, or transferred under this paragraph (j), for example, by the earliest acquired, the latest acquired, or the highest basis, is not a method of accounting. Therefore, a change in the method of specifically identifying the digital asset sold, disposed of, or transferred, for example, from the earliest acquired to the latest acquired, is not a change in method of accounting to which sections 446 and 481 of the Code apply.”
- If no specific identification, default to FIFO to determine basis.

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## Reg. §1.1012–1(j)(1) and (2)

- (j)(2) [un-hosted wallet] - Track within each single wallet or account. If specific identification\* not made, then FIFO applies (but date units transferred into taxpayer’s wallet or account are disregarded for this purpose).
  - \* “made if, no later than the date and time of the sale, disposition, or transfer, the taxpayer identifies on its books and records the particular units to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or the purchase price for the unit, that is sufficient to identify the units sold, disposed of, or transferred. A specific identification can be made only if adequate records are maintained for the unit of a specific digital asset not held in the custody of a broker to establish that a unit sold, disposed of, or transferred is removed from the wallet.”
- **Query:** How? Track with your software? Send email to yourself to state what you decided? Something else?

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## Reg. §1.1012–1(j)(3)

- (j)(3) [digital assets in custody of broker] – no later than time of transfer/disposition, taxpayer must provide broker with adequate identification\* of which units disposed of, basis and holding period, otherwise, FIFO applied to track.

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## Reg. §1.1012-1(j)(3)

- \* "an adequate identification occurs if, no later than the date and time of the sale, disposition, or transfer, the taxpayer specifies to the broker having custody of the digital assets the particular units of the digital asset to be sold, disposed of, or transferred by reference to any identifier, such as purchase date and time or purchase price, that the broker designates as sufficiently specific to identify the units sold, disposed of, or transferred. Taxpayer responsible for maintaining records to substantiate the identification. A standing order or instruction for the specific identification of digital assets is treated as an adequate identification made at the time of sale, disposition, or transfer. In addition, a taxpayer's election to use average basis for a covered security for which average basis reporting is permitted and that is also a digital asset is also an adequate identification. In the case of a broker offering only one method of making a specific identification, such method is treated as a standing order or instruction."
- **Queries:** How? What will brokers require? Will tracking software help clients with this? How do you know if the tracking software matches what broker was told by client? Will brokers be able to do this starting 1/1/25 – accept instructions from customers in applying specific identification per final Reg. 1.1012-1(j) regs? And note that per Reg. 1.6045-1(d)(2)(ii)(B)(2), broker not required to accept customer basis info or instructions, such as if broker only offers one method of making a specific identification.

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## Safe Harbor of Rev. Proc. 2024-28 for Taxpayers Using “Universal” Approach to Basis Tracking Before 2025

*26 CFR 1.1012: GUIDANCE FOR TAXPAYERS TO ALLOCATE BASIS IN DIGITAL ASSETS TO WALLETS OR ACCOUNTS AS OF JANUARY 1, 2025  
(Also: Part I, §§ 1012, 6045, 1.1012-1, 1.6045-1)*

### Rev. Proc. 2024-28

#### SECTION 1. PURPOSE

This revenue procedure provides a safe harbor under § 1012(c)(1) of the Internal Revenue Code (Code)<sup>1</sup> on which taxpayers may rely to allocate unused basis of digital assets to digital assets held within each wallet or account of the taxpayer as of January 1, 2025.

#### SECTION 2. BACKGROUND

On October 9, 2019, the Internal Revenue Service (IRS) posted Virtual Currency FAQs (“FAQs”) on <https://www.irs.gov><sup>2</sup> explaining how existing tax principles

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## Rev. Proc. 2024-28 (6/28/24)

- Rev. Proc. 2024-28, subject to certain requirements, generally permits taxpayers to rely on any reasonable allocation of units of unused basis to a wallet or account that holds same number of remaining digital asset units based on taxpayer's records of such unused basis and remaining units.
- Allocation must be a reasonable per section 5.02 of the Rev. Proc. and **must be made as of 1/1/25**. However, taxpayer may identify method of allocation and may comply with the requirements in section 4.02 at a later date to the extent permitted by section 5.02(4) or 5.02(5) of the Revenue Procedure.
- Issue: FAQs 39 – 41 on virtual currency allowed (or at least did not prohibit) a universal approach for applying deemed specific identification approach for determining gain and loss.
- Proposed and final regs require for both hosted and un-hosted wallets and accounts that deemed specific identification is applied per wallet or account.
- Issue: How to reconcile going forward?
- IRS applies safe harbor approach in Rev. Proc. 2024-28.

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## Rev. Proc. 2024-28

- Safe harbor only applies to taxpayer (T) who holds digital asset units and has units of unused basis as of 1/1/25, and such digital assets are capital assets now and when acquired.
- Eligibility for the safe harbor:
  - T must be able to identify and maintain records sufficient to show total number of remaining digital asset units in each of the wallets or accounts held by T.
  - T must be able to identify and maintain records sufficient to show number of units of unused basis, the original cost basis of each such unit of unused basis, and acquisition date of the digital asset unit to which the unused basis was originally attached.
  - T must treat any allocation under this revenue procedure as irrevocable for all purposes of §1012.
- <https://www.irs.gov/pub/irs-drop/rp-24-28.pdf>

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## Rev. Proc. 2024-28

- Safe Harbor: T may make any reasonable allocation as of 1/1/25 of units of unused basis to a wallet or account that holds same number of remaining digital asset units.
- Reasonable allocation: Several requirements set out including T must identify remaining digital asset units and maintain records to show units of unused basis.
- If making a “global allocation” must describe it in T’s records before 1/1/25.
- Example 1 of 5: B holds 10 units of DE in B’s un-hosted wallet XYZ; acquired for \$1 per unit on 7/1/19.
  - B also holds 20 units of DE acquired 9/1/20 for \$5/unit in un-hosted wallet GHI.
  - 12/1/24 – B sells all of these 30 units.
  - None of the units are “remaining digital asset units” because not held at 1/1/25.
  - B may not make allocations described in Rev. Proc. 2024-28 to these units.

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## Rev. Proc. 2024-28

- Example 2:
  - Same as Example 1 except B sells only 6 units from B’s XYZ wallet on 12/1/24 and B keeps records showing that B specifically identified and attached original basis of 6 units from the 20 units in B’s GHI wallet as the 6 sold.
  - At 1/1/25, B has 24 remaining digital asset units and 24 units of unused basis.
  - At 1/1/25, B has basis of:
    - 10 units of \$1/unit (total basis \$10)
    - 14 units of \$5/unit (total basis of \$70)
  - B may use safe harbor to make reasonable allocation of B’s 24 units of unused basis to pool of remaining digital assets in both wallets if maintains sufficient records to show what is done.
  - So. allocates \$80 to 24 units and keeps records on this.

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# Example 2 Diagram



- 12/1/24 B sells 6 from XYZ wallet but uses basis from GHI wallet (basis disposed of is \$30 [6 x \$5]).
- Leaves 4 DE in XYZ but basis of \$10.

Leaves 20 DE in GHI and basis of \$70 (14 x \$5) because treated 6 sold from XYZ as really from GHI.

**B has 24 DE with aggregate basis of \$80**

# Example 3 on specific allocation from Rev. Proc. 2024-28

- Continuing from Example 2
- B sells 2 units from his XYZ wallet on 3/1/25
- At 1/1/25, allocated basis as follows:
  - 4 units in XYZ wallet:
    - 2 units at \$1 basis and 7/1/19 acquisition date
    - 2 units at \$5 basis and 9/1/20 acquisition date
  - 20 units in GHI wallet:
    - 8 units at \$1 basis and 7/1/19 acquisition date
    - 12 units at \$5 basis and 9/1/20 acquisition date
- 3/1/25 – prior to sale of 2 units from XYZ, B specifically identifies in his books and records that it is of:
  - 1 unit with \$1 basis (7/1/19 acquisition date)
  - 1 unit with \$5 basis (9/1/20 acquisition date)



Represents 4 units actually in XYZ and 20 in GHI wallets  
 Represents \$1/unit basis for 10 units  
 Represents \$5/unit basis for 14 units  
 For total basis of \$80

Will taxpayer’s tracking software help with these calculations?

## Example 4 on global allocation from Rev. Proc. 2024-28

- Same facts as Example 3 except B doesn't use specific unit allocation approach.
- Before 1/1/25, B describes ordering rule in B's books and records to identify and order the units of unused basis
- Will treat highest basis currency as sold first and if multiple units with highest basis, second ordering is per earliest acquisition dates. Also directs that these ordered units of unused basis be allocated first to remaining digital asset units in XYZ wallet and then to remaining digital asset units in GHI wallet.
  - B has records sufficient to show B's 24 remaining digital asset units and the 24 units of unused basis as of 1/1/25. Has these records before 4/15/26 which is due date for B's 2025 return.
  - B completes allocations of units of unused basis to remaining digital assets after 3/1/25 and before 4/15/26 "such that B's books and records record the specific characteristics of the units of unused basis allocated to each pool of digital assets in B's wallets or accounts on a wallet-by-wallet or account-by-account basis." [NOTE: B must have set the rules before 1/1/25]
  - Rather than selling 2 units from XYZ wallet on 3/1/25, B sells 2 units from GHI wallet. Prior to sale, B specifically identifies in B's books that one of the units sold was from 1 unit of unused basis of \$1/unit and other from 1 unit of unused basis of \$5/unit.

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## Example 4 from Rev. Proc. 2024-28

- B's global allocation results in:
  - 4 of 14 units of unused basis with highest basis (with \$5 per unit basis) allocated to pool of remaining digital asset units in XYZ wallet and 10 units of unused basis (with \$1 per unit basis) allocated to remaining digital assets held in GHI wallet.
  - "B's global allocation as described in section 5.02(2)(b) is reasonable within meaning of section 5.02 for the following reasons:"
    - B identified and maintained records sufficient to show:
      - number of remaining units in both wallets
      - Number of units of unused basis, amount of each such unit, and acquisition date of digital asset unit to which unused basis was originally attached
    - "B's global allocation applies a rule that identifies and orders the units of unused basis by reference first to the highest basis units and second to the units with earliest acquisition dates. These characteristics are sufficient to distinguish each of the units from the other units of unused basis. B's global allocation then allocates the ordered units of unused basis to a pool of remaining digital asset units in each of B's XYZ and GHI Wallets on a prescribed basis. B's global allocation does not permit B to exercise discretion on or after January 1, 2025, with respect to how the units of unused basis are allocated to B's remaining digital assets or to its XYZ and GHI Wallets.
    - B described the global allocation method in B's books and records before January 1, 2025.
    - B did not allocate any previously identified and used basis to the remaining digital asset units."

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## Example 4 from Rev. Proc. 2024-28

- “Under section 5.02(5)(c), a global allocation must be completed before a taxpayer is permitted to make a specific identification of units sold on or after January 1, 2025, other than by reference to a standing order or instruction. B did not complete its global allocation prior to March 1, 2025 [date when 2 units sold from GHI wallet]. Additionally, B’s identification of the units sold on March 1, 2025, was based on the amount (and acquisition date) of specific units of unused basis before the global allocation was complete, and the identification was not a standing instruction. Therefore, B’s specific identification of the units sold on March 1, 2025, will not be treated as sufficient to identify the units sold within the meaning of §1.1012-1(j)(2) of 2024 final regs. Instead, under §1.1012-1(j)(1) of 2024 final regs, B must treat the units with the earliest acquisition dates within B’s GHI Wallet as sold. Accordingly, the 2 units that B must treat as sold are the 2 units with unused basis in the amount of \$1 per unit with acquisition dates of July 1, 2019.” [wallet by wallet approach of final §1012 regs; FIFO]

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## Example 5 from Rev. Proc. 2024-28

- Same facts as Example 4, but rather than sell 2 units on 3/1/25, B gifts them to a family member (C).
- Same treatment: 2 units transferred on 3/1/25 are 2 units with unused basis of \$1/unit with acquisition date of 7/1/19.

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## Reminders and Cautions on Rev. Proc. 2024-28

- Ask client
  - When did you first acquire bitcoin or other virtual currency?
    - How did you acquire, do you still have it?
  - Do you have record of ALL of your virtual currency, including any you acquired many years ago that have low basis and you have not been trading them?
  - What is your software tracking program tracking for you?
- Be sure all wallets and accounts identified before making any allocations of unused basis.
  - Client might have old/dormant accounts such as those with very low basis bitcoin. But if used universal approach for any account with bitcoin, all of the bitcoin accounts need to be in the allocation.
    - But can allocate that old basis to the old account.
    - Specific allocation might lead to more assurance of this result, but global allocation with rule to assign lowest basis to oldest bitcoin can also offer more time to identify all of the old bitcoin.

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## Reminders and Cautions on Rev. Proc. 2024-28

- Need to document that allocation done on time with some type of a permanent record.
  - Tracking software company might offer a solution.
  - Client should email it to themselves and you and KEEP the email showing date and contents.
  - Good idea to also show did not forget any wallet or account.

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## Rev. Proc. 2024-28 – Queries...

- What is this a safe harbor from? (what is basis if don't use safe harbor and used universal basis tracking of FAQs and have “unused basis” at 12/31/24)?
- If use safe harbor, does it provide relief for pre-2025 years?
  - Arguably yes because if IRS redoes taxpayer basis, can affect prior years. Isn't point of Rev. Proc. to provide “safety” and comfort to taxpayers?
- What documentation of allocating unused basis is needed?
  - If not specific, IRS examiner might ask for something other than what t/p has.
- Is broker required to take customer's new basis allocations for DA held in broker account? Not clear.

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## AICPA Digital Assets Tax Task Force Comment Letter to IRS on Rev. Proc. 2024-28 (10/14/24)

- I. Increase Awareness of Rev. Proc. 2024-28
  - II. Clarify Rev. Proc. 2024-28
  - III. Amplify Rev. Proc. 2024-28
  - IV. Expand the Safe Harbor to Any Taxpayer Needing to Update Basis for Broker Records
  - V. Provide Clarity Regarding the Documentation Sufficient to Satisfy Safe Harbor Requirements
  - VI. Provide Additional Guidance on the Impact of Rev. Proc. 2024-28 on Brokers
  - VII. Address Protection for Transactions Before Effective Date of Rev. Proc. 2024-28
- <https://www.aicpa-cima.com/resources/download/guidance-for-taxpayers-to-allocate-basis-in-digital-assets-to-wallets-or>

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# More on broker reporting regs for digital assets at the January 24, 2025 Blockchain Tax Conference!

Delta Hotel in Santa Clara

Registration is open:

<https://www.sjsu.edu/taxinstitute/conference-details/agenda.php>

## Agenda and Speakers

Time	Topic	Presenters
8:30 – 8:40	Welcome Purpose of this conference	Annette Nellen, San Jose State University
8:40 – 9:20	Overview of Blockchain Technology and why it matters for Tax	Seoyoung Kim, Santa Clara University  Noah Buxton, The Network Firm
9:20 – 11:05	Putting the Final 6045 Regulations and Form 1099-DA into Practice  What are brokers and software support companies doing to help produce 2025 Forms 1099-DA and what should recipients do now to prepare for dealing with lots of these forms?  <ul style="list-style-type: none"> <li>Who and what is in scope?</li> <li>What are brokers and software support companies doing to help produce 2025 Forms 1099-DA?</li> <li>What should recipients do now to prepare for dealing with lots of these forms?</li> <li>What are the biggest challenges and risks to effective implementation of these rules?</li> </ul>	Erin Fennimore, Taxbit [invited]  Shehan Chandrasekera, Head of Tax Strategy - Cointracker  Lawrence Zlatkin, Head of Tax - Coinbase [invited]  IRS –Seth Wilks, Executive Director – IRS Digital Assets Initiative  Sean McElroy, Associate – Fenwick & West  Yu-Ting Wang, Practitioner-Owner – Yu-Ting Wang, P.C.

# Agenda and Speakers - continued

11:05 to 11:50 Legislative Update – Tax and Non-Tax

Chris Land, General Counsel - Senator Lummis Office

1:00 to 2:00

What's New with Staking and Mining?

- Review terminology and technology
- Types of staking and mining and similar activities
- Latest trends in blockchain consensus and reward mechanisms
- State of the law on taxation of staking and mining income

Noah Buxton, The Network Firm  
David Forst, Partner – Fenwick & West

2:00 to 3:15

What is Not in the Final §6045 Regulations?

- Noncustodial accounts and DeFi
- Wrapping and staking
- §6050I regulations
- CARF
- Relevance of Loper Bright decision
- Time for Q&A

Moderator -Taylor Reid, Baker & McKenzie

Christopher Wrobel, Special Counsel to the Associate Chief Counsel (Income Tax & Accounting), IRS Office of Chief Counsel

Erika Nijenhuis, Senior Counsel Office of Tax Policy - U.S. Treasury

3:30 to 4:45

What Happens When You're Paid in Crypto?

- Tech involved
- Contracts for employment
- Payroll, income and info reporting
- Legal issues
- Practical realities

Erik Weinapple, Tax Senior Manager – Moss Adams

Sinead M. Kelly, Partner – Baker & McKenzie LLP

Ken O’Friel, CEO and Co-Founder - Toku

Matt Dimon, Associate – Fenwick & West

4:45 – 5:20

Ask an Expert

Q&A and open forum on various tax issues, due diligence considerations in helping address crypto tax matters, and more

All panelists



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