

Wyden, Crapo seek public comments on taxation of digital assets

Senate Finance Committee Chairman Ron Wyden, D-Ore., and ranking member Mike Crapo, R-Idaho, this week released an open letter to “members of the digital asset community and other interested parties” soliciting comments on how Congress can address current uncertainties around the tax treatment of digital assets.

URL: <https://www.finance.senate.gov/imo/media/doc/20230710letterrequestforcommentsigned.pdf>

“The rapid emergence of digital assets has raised novel regulatory issues, including the appropriate treatment under our federal tax law,” Wyden and Crapo wrote in the July 11 letter. “The Internal Revenue Code . . . draws distinctions between types of property, with no straightforward classification for digital assets. This uncertainty creates complex reporting issues for taxpayers, and warrants examining how the [tax code] can provide clearer guidance for taxpayers on the treatment of digital asset transactions.”

Areas of inquiry

Wyden and Crapo stated that they are seeking stakeholder responses to specific questions on a host of issues related to digital asset taxation, including:

- Marking-to-market for traders and dealers (IRC section 475);
- Trading safe harbors (IRC section 864(b)(2));
- Treatment of loans of digital assets (IRC section 1058) ;
- Wash sales (IRC section 1091);
- Constructive sales (IRC section 1259);
- Timing and source of income earned from staking and mining;
- Nonfunctional currency (IRC section 988(e));
- FATCA and FBAR reporting (IRC sections 6038D, 1471-1474, 6050I, and 31 USC section 5311 *et seq.*); and
- Valuation and substantiation (IRC section 170).

Background information on the current-law tax treatment of digital assets is available in a new report prepared for the Finance Committee by the Joint Committee on Taxation staff.

URL: https://www.finance.senate.gov/imo/media/doc/jct_report_on_digital_assets.pdf

Requirements for comment submissions

Wyden and Crapo have requested that stakeholders submit electronic copies of their comments to Finance Committee staff at responses@finance.senate.gov. Comments will be accepted through September 8, 2023.

Lummis, Gillibrand introduce comprehensive cryptocurrency proposal

Release of the Wyden-Crapo letter came just one day before Sens. Cynthia Lummis, R-Wyo., and Kirsten Gillibrand, D-N.Y., unveiled a revamped version of legislation they introduced last year that they say will “create a comprehensive regulatory framework for crypto assets.”

The Responsible Financial Innovation Act of 2023 includes both tax and nontax provisions. According to a section-by-section summary, the tax title would, among other provisions, specify that taxpayers cannot claim a deduction relating to a loss incurred in a digital asset sale, similar to wash provisions currently in place for securities; require digital asset intermediaries to mark their digital assets to market for accounting purposes at year-end; and establish that crypto asset lending agreements are not generally taxable events, similar to the current treatment of securities lending transactions. It also would clarify the definition of “broker” for the purposes of the new digital-asset reporting requirement in the Infrastructure Investment and Jobs Act (P.L. 117-58) and delay implementation of the reporting requirement until January 1, 2025. (Under the infrastructure legislation as enacted, digital assets are treated as covered securities as of January 1, 2023, and reporting requirements apply in 2024 on 2023 activity; however, the IRS announced late last year that the reporting requirements are delayed until the government publishes final regulations on their implementation. For prior coverage, see *Tax News & Views*, Vol. 24, No. 1, Jan. 6, 2023.)

URL:

http://newsletter.senate.gov/ct/62020291:Wn_zX9DTN:m:1:2622273136:6C7F71D50DF7DC7A7EBAAF518FEF0B38:r

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URL: <https://www.congress.gov/117/plaws/publ58/PLAW-117publ58.pdf>

URL: <https://www.irs.gov/pub/irs-drop/a-23-02.pdf>

URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230106_3.html

Neither Lummis nor Gillibrand sits on the Finance Committee, and Lummis explained to *Tax Notes* that the text of their proposal was not completed until July 12, after the release of the Wyden-Crapo letter.

Now that the proposal has been made public, “we’re going to share with the leaders of the Senate Finance Committee our specific bill language so they can evaluate it against their concerns,” Lummis said.

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