BLOCKCHAIN ASSOCIATION

September 8, 2023

VIA EMAIL (responses@finance.senate.gov)

Senator Ron Wyden, Chairman
Senator Mike Crapo, Ranking Member
United States Senate
Committee on Finance
Washington, DC 20510-6200

Re: July 11, 2023 Request for Information

Dear Senators Wyden and Crapo:

Blockchain Association (the "Association") submits this letter in response to the request for information by the United States Senate Committee on Finance (the "Committee"), as set forth in your letter of July 11, 2023 to Members of the Digital Asset Community and Other Interested Parties (the "Letter").

The Association is the leading nonprofit membership organization dedicated to promoting a pro-innovation policy environment for the digital asset economy. The Association endeavors to achieve regulatory clarity and to educate policymakers, regulators, courts, and the public about how blockchain technology can pave the way for a more secure, competitive, and consumer-friendly digital marketplace. The Association represents over 100 member companies reflecting the wide range of the dynamic blockchain industry, including software developers, infrastructure providers, exchanges, custodians, investors, and others supporting the public blockchain ecosystem.

The Letter seeks information about the application of the Internal Revenue Code to certain issues concerning digital assets and references a June 2023 report issued by the Joint Committee on Taxation entitled Selected Issues Regarding the Taxation of Digital Assets (the "Report").

As an initial matter, the Association commends the Committee for its thoughtful approach to these issues and for soliciting input from industry experts and interested parties. The Association believes that the positions it takes in this response will promote the public interest by encouraging the responsible and economically fair evolution of blockchain technology and decentralized finance innovations while increasing tax-related compliance. The Association appreciates the Committee's commitment to open communication in the past and welcomes continued conversation on these issues.

I. Introduction.

The Association believes it is important to keep in mind several overarching principles when evaluating these issues. In any future action by the Committee, the Association vigorously stresses that government policy should not unduly inhibit the development of new and innovative technologies and industries. The Association implores the Committee to avoid legislation that will create or exacerbate unwarranted obstacles to economic and technological innovation. After all, "the power to tax involves the power to destroy."[1]

Innovation in blockchain technology is growing rapidly and its benefits will help create a more efficient and equitable economy. One prominent study projects the global blockchain technology market[2] to grow at a compound annual rate of 59.9% between 2022 and 2030.[3] Other notable papers recognize that blockchain technology is "driv[ing] economic development by enabling market-creating innovations"[4] and identify blockchain technology as a primary driving force dictating market efficiencies, security and cybersecurity, and innovation through 2030.[5]

When developing legislation, the Association urges Congress to carefully consider ways to ensure the future applicability of tax provisions for the digital asset industry. While legislation can provide a measure of certainty to actors concerned with compliance, in this case, it risks creating an inflexible and outdated framework. In an industry that is so rapidly changing, legislation that responds to today's products and activities might be completely inapplicable or inappropriate in the future, given the rapid pace of research and development in the industry.

Instead, the Association believes that the Committee should focus on developing intentional, measured legislation concerning specific issues of taxation as they relate to digital assets. At this point, there exists a severe lack of clarity as to how various provisions of the tax code apply to digital assets. The Association believes the Committee has a unique opportunity to help clarify these issues, which will ultimately increase tax compliance. However, the Association urges the Committee to take care not to enact legislation that provides less-favorable tax treatment for digital assets as compared to other assets and rather, focus on developing legislation that would level the playing field for digital assets compared to other assets.

II. Congress Must Create Symmetry Between the Tax Treatment of Digital and Non-Digital Assets.

Digital assets have attributes and functionalities that differ from those of traditional financial assets. While the Association urges Congress to recognize the unique characteristics of digital assets, it also recognizes that digital assets are, at times, capital assets and should receive the same treatment under the tax code.[6]

[1] *McCulloch v. Maryland*, 17 U.S. 316, 431 (1819).

[2] The market, as measured in this study, includes technology platforms, solutions services, ecosystem services, platform and application services, and advisory and consulting services.

[3] *Global Blockchain Technology Market Forecast, 2023-2030*, Fortune Business Insights (May 2023), www.fortunebusinessinsights.com/industry-reports/blockchain-market-100072.

[4] Clayton M. Christensen, et. al., *The Third Answer: How Market-Creating Innovation Drives Economic Growth and Development*, 12 Innovations: Tech., Governance, Globalization 10 (Dec. 2018), .

[5] Daniel Levis, Francesco Fontana, & Elisa Ughetto, *A look into the future of blockchain technology*, 16 PloS One 1 (Nov. 2021). Interestingly, this study cites the "capability of central governments to spur innovation with lean and flexible regulations" as "a key driver" in the ability of that country's industry to exploit "new opportunit[ies]" and build a "competitive edge"

[6] To say that a digital asset may be a capital asset is not to say that it is a security.

A number of the questions raised in the Letter identify situations that the Association believes warrant symmetry between the tax treatment of digital assets and non-digital assets. Specifically, Congress' treatment of digital assets with respect to mark-to-market (Section 475); trading safe harbor (Section 864(b)(2)); treatment of certain loans of digital assets (Section 1058); wash sales (Section 1091); constructive sales (Section 1259); valuation and substantiation of charitable contributions (Section 170) and should be designed to achieve such symmetry.

a. *Defining Digital Assets*

The definition of "digital asset" should not be one-size-fits-all, but tailored for the context of the applicable legislation to ensure legislation is not overly broad. Specifically, we urge the Committee to recognize that digital assets include a variety of asset types (i.e., fungible tokens, non-fungible tokens, stablecoins, among others) all of which require their own consideration depending on the context of the legislation.

b. *Achieve Symmetry with a Comprehensive Tax Package*

Before discussing those Code sections that the Association believes Congress should amend for the reasons stated below, the Association believes it to be worthwhile to mention that, in some situations, current law is drafted with enough flexibility to appropriately provide symmetrical treatment for digital assets as compared with their non-digital counterparts. For example, Section 83(a) states the general rule that where a taxpayer receives property (which should include digital assets) as compensation for services, but the property is not immediately transferable or is subject to a risk of forfeiture, the taxpayer does not report the value of the property as income until such time as the taxpayer can transfer the property or the risk of forfeiture no longer exists. Section 83(b), however, allows the taxpayer to elect to report the income in the year of receipt. The Association believes that Section 83(a) and (b), as written, allow taxpayers and those who employ them sufficient flexibility to enter into compensation arrangements that work well in the digital asset space.

Other Code sections, however, as presently written, do not provide appropriate symmetry between digital and non-digital assets. The Association urges Congress to amend the following sections to specifically define when and how those sections apply to transactions involving digital assets. These amendments should be part of a broad, comprehensive tax package addressing digital assets rather than achieved through a series of piecemeal additions.[7] The Association encourages Congress to legislate the application of these sections to digital assets by adding sections (or subsections) to the law specifically noting that the tax treatment is applicable to taxpayers who transact digital assets. This may include, for example, allowing dealers to mark-to-market or permitting nonrecognition treatment when transferring digital assets as part of a loan.

The Association specifically discourages Congress from enacting overarching, umbrella-type legislation, such as a sweeping provision stating that certain Code sections apply to digital

[7] For an example of the negative consequences that can result when Congress adopts isolated digital asset provisions as a "pay for" or a "one-off," see the Infrastructure Investment and Jobs Act, Pub. L. No. 117-158, § 80603, 135 STAT. 429(2021) (hereinafter, "IIJA"), discussed *infra* at 5, which included, among other things, a vague and ill-conceived definition of the term "broker" in the context of digital assets.

assets, or worse, a provision attempting to bring digital assets within the definition of "securities."[8] The Association suggests that this approach would create a significant risk of unintended consequences and attempted applications beyond Congress' intent.

1. Mark-to-Market (§ 475)

Dealers in securities must, and traders in securities or dealers or traders in commodities may, use mark-to-market accounting. The Association encourages Congress to extend this accounting treatment to digital assets for which the fair market value can be determined on an exchange or an industry-recognized index. There is very little likelihood of dispute or ambiguity if dealers or traders apply a mark-to-market accounting method to these actively traded digital assets.

Such legislation would ease compliance costs for high-frequency digital asset traders and place them "on par" with participants in other trading markets. Without the ability to mark-to-market, traders of digital assets face a significantly higher administrative and compliance cost than their securities or commodities-trader/dealer counterparts, placing them at a competitive disadvantage. Moreover, the change would reduce the compliance burden to taxpayers without compromising tax revenue, administration, or reporting.

2. Trading Safe Harbor (§ 864(b)(2))

The Association encourages Congress to consider a new safe harbor under Section 864 for foreign persons trading in digital assets. The safe harbor for digital assets should mirror and have the same effect as the safe harbors for securities and commodities already in place. Creation of this safe harbor will provide a more level playing field for United States-based financial management businesses to compete with their international counterparts. Creation of the safe harbor will also provide more certainty to market participants. The Association notes that, effective January 1, 2023, the United Kingdom's Commissioners for His Royal Majesty's Revenue and Customs added digital assets to the list of transactions that UK-based investment managers may conduct on behalf of a non-UK fund vehicle without subjecting the non-UK fund vehicle to UK tax. A similar safe harbor in U.S. law would allow domestic firms to remain competitive in the global market.

3. Treatment of Certain Loans of Digital Assets (§ 1058)

The Association recommends an amendment to Section 1058 that would provide nonrecognition treatment for gains or losses upon the transfer of digital assets in connection with

[8] Although we recognize the distinction between the definition of "security" under the tax code and the definition of "security" under the U.S. securities laws, failing to distinguish between the two may risk unintended consequences. Broadly characterizing digital assets as securities, without distinction, would have serious economic consequences and would capture transactions clearly outside the intended scope, including where such digital assets are used for payment, functional, or utility purposes. Ignoring these distinctions would subject digital assets to ill-fitting disclosure requirements and net-capital requirements, and would prevent startups and creators from entering the market. This approach could also have a drastic impact on users, by limiting non-investment use of digital assets in a manner that prevents U.S. customers from accessing the benefits stemming from the digital asset economy and blockchain technology.

qualifying loan transactions. Such an amendment would provide certainty to the market that the lending of digital assets, in and of itself, is not a recognizable event.

By amending Section 1058, Congress will create certainty with respect to the practice of loaning digital assets. This certainty is economically beneficial. For example, it supports the use of digital assets in loan transactions, which provides an alternative source of capital. Additionally, it creates certainty with respect to hedging activities involving digital assets.

The Association suggests that Congress's amendment to Section 1058 include a specific section providing that no gain or loss should be recognized on the transfer of a digital asset pursuant to a loan agreement that meets the following requirements:

- The agreement provides for the return of a digital asset that provides the same rights and obligations as the loaned asset;

- The agreement provides for the payment to the transferor of any income or distributions on the digital asset (e.g., forks or airdrops); and

- The agreement does not reduce the risk of loss or opportunity for gain of the transferor.

In addition, Congress should take this opportunity to clarify that, at least insofar as loans of digital assets are concerned, fixed-term loans entered into in the normal course of a lending business or the ordinary management of an investment portfolio should be treated as a non-recognition transaction. The Association notes that the Internal Revenue Service (the "IRS") issued a proposed regulation in the early 1980s that requires loans to be callable in five business days in order to receive non-recognition treatment.[9] For certain segments of the digital asset community, for instance, which borrow digital assets to lock them up as collateral as part of a storage contract, this requirement would eliminate the ability to obtain non-recognition treatment, with no good reason for that result. We note that, in its Green Book, the Administration proposed allowing fixed-term loans to qualify for non-recognition treatment.[10]

4. <u>Wash Sales (§ 1091) and Constructive Sales (§ 1259); Exemption for Digital Assets Used as a Medium of Exchange</u>

The Association supports a Congressional amendment to Sections 1091 and 1259 to apply these sections to digital assets. As stated above, *see supra* at 3 and n. 7, the Association vigorously maintains that such amendments should not be enacted as a "pay for" or as a one-off piece of legislation but instead should be addressed as part of a broader and comprehensive tax package for digital assets.

Whether or not it does so, Congress should enact a general exemption from Section 1001 reporting for transactions in which users are transacting in digital assets as a medium of exchange in their daily lives. Such legislation should exempt certain transactions conducted through digital assets (e.g., high-volume, minimal-value transactions, such as the taxpayer who buys her daily

[9] *See* Prop. Treas. Reg. § 1.1058-1 (b) (3), 48 Fed. Reg. 33912 (July 26, 1983).
[10] U.S. Dep't of Treas., *General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals* at 195-196 (Mar. 2023).

coffee using Bitcoin)[11] from tax reporting obligations.[12] Unless Congress recognizes that digital assets are also a medium of exchange, those who use digital assets in that manner may not be able to practically meet the administrative burden associated with complying with their tax-reporting obligations, including the wash sale rules.

5. Valuation and Substantiation (§ 170)

The Report noted that, in a January 10, 2023 memorandum, the IRS Office of Chief Counsel took the position that a taxpayer who donated digital assets to a charitable organization with a fair market value, at the time of the donation, of $10,000 was not entitled to a charitable deduction because the taxpayer did not obtain a qualified appraisal, as required by Code Section 170(f)(11)(C).[13] While the Code allows deduction without an appraisal for "readily valued property," that term includes only cash, a publicly traded security, and certain other specified assets. *See* I.R.C. sec. 170(f)(11)(A)(ii). Digital assets generally do not fall within any of these terms.[14] Accordingly, the Code, as presently written, greatly disfavors owners of digital assets who want to donate such assets to a charity and obtain a charitable deduction on their tax returns.

Many digital assets are regularly traded on exchanges, and information as to the price of those trades is easily accessible to the public.[15] Other digital assets, while not necessarily regularly traded on an exchange, may nevertheless have the ability to be valued easily, without the need for a qualified appraisal.

The Association believes that Congress should remedy this situation. By way of example, Congress could amend Section 170(f)(11)(A)(ii) to add to those charitable donations not requiring an appraisal of digital assets that are regularly traded on exchanges or easily valued and such other digital assets as the Secretary by regulation may specify.

6. Other Transactions that Merit Consideration

Besides the Code sections specifically referenced in the Letter, the Association recommends that the Committee consider whether other Code sections should be amended in order to bring symmetry between the tax treatment of digital and non-digital assets. Specifically,

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[11] The Association believes this objective could be achieved through a variety of options, such as: (a) applying the rules only to transactions on exchanges or to other investors; (b) excluding transactions for goods or services; or (c) excluding transactions under a certain dollar threshold.

[12] Such legislation would necessarily apply to avoid bringing those daily life transactions within the scope of the wash sale and constructive transaction rules.

[13] Joint Comm. on Taxation, *Selected Issues Regarding the Taxation of Digital Assets* (June 2023), at 17-18.

[14] The Association notes, however, that under present law, the term "readily valued property" does include "property described in . . . Section 1221(a)(1)." *See* I.R.C. § 170 (generally, a taxpayer's stock in trade, other property properly included in inventory, and property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business). In the hands of some taxpayers, digital assets fall within Section 1221(a)(1); thus, under present law, some taxpayers in some situations can make a deductible charitable donation of digital assets without obtaining a qualified appraisal. For the reasons set forth herein, the Association strongly encourages Congress to enact legislation that would significantly expand the circumstances under which digital asset owners could donate such assets to charity and obtain a charitable deduction without the need for a qualified appraisal.

[15] *See*, *e.g.*, Messari, https://messari.io/assets (last visited Sept. 7, 2023) (a commonly-used website that contains pricing information for thousands of digital assets).

the Association believes that certain transactions involving digital assets merit tax-free treatment in order to reflect that the taxpayer engaging in the transaction has not realized a gain or loss, or other change in economic circumstances, and should therefore not bear a consequential tax burden. For example, a company in the digital asset space should be able to acquire another company in the space by using digital assets, such as tokens, without having been deemed to have sold the tokens in a taxable event. Such an approach would put digital asset companies on par with non-digital asset companies, as the latter group can engage in a stock-for-stock acquisition without incurring tax.[16]

Other types of digital asset transactions also merit tax-free treatment. One example involves the acquisition of what are called "wrapped" tokens. In this type of transaction, a taxpayer uses a cryptocurrency, such as Bitcoin, to purchase another token (typically an ERC-20 token on the Ethereum blockchain) which has been newly-minted specifically for this transaction, the value of which bears a 1 to 1 ratio with the value of Bitcoin.[17] When a taxpayer wraps a token the taxpayer technically has exchanged one token for another, but the fundamental asset held by the taxpayer both before and after the transaction has not changed, so the wrapping transaction should not be taxable. Similar transactions that should not result in tax include staking a token and receiving another token in exchange, *see infra* at 9, 10, and moving a digital asset from one blockchain to another blockchain.

III. Clarity is Needed Regarding the Timing and Source of Income Earned from Staking and Mining.

As detailed in the Report, most digital assets rely on a consensus mechanism in order to validate proposed transactions before they are added to the blockchain associated with that particular digital asset. For example, Ethereum relies on a consensus mechanism known as Proof-of-Stake (PoS), which is one way of validating proposed transactions on a digital asset's blockchain whereby those validating transactions on the blockchain "stake" the blockchain's native token (e.g., Ether) and are randomly selected to confirm and add new transactions to the chain. Another consensus mechanism, which Bitcoin relies on, is known as Proof-of-Work (PoW), which utilizes a process known as mining, whereby those validating transactions on the blockchain receive rewards of the blockchain's native asset (e.g., Bitcoin) for successfully validating transactions via mathematical algorithms.

The blockchain industry has long sought guidance and clarity with respect to recognition (or nonrecognition) of rewards received from staking or mining, including the timing, source, and character of such potential income. The IRS purported to provide some guidance back in 2014 with respect to mining, but that guidance was sparse, and the IRS has had little to nothing to say about it since. As far as staking is concerned, the IRS provided no guidance until this past July. However, both the staking and mining-related IRS guidance documents fail to provide the clarity miners and stakers seek with respect to tax compliance issues.

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[16] I.R.C. §§ 361, 368, 1032.

[17] Speaking very generally, the existence of a wrapped token allows owners of cryptocurrency such as Bitcoin, which does not easily lend itself to use in certain decentralized applications, to utilize the value of their holdings to acquire tokens that can be so used.

a. *Timing with Respect to Mining and Staking*

IRS Notice 2014-21 directs a taxpayer who receives digital assets as a result of mining to recognize income as of the date of receipt at the fair market value of the digital assets received on that date.[18] The Association believes, however, that this directive fails to recognize the many forms that digital asset mining can take. For example, clarity is needed to show that taxation should occur on a pass-through basis when mining is conducted through a "mining pool," and the operator of a mining pool should not be taxed when it first accumulates to the pool. Mining pools lower barriers to entry for miners to participate in securing a proof-of-work network, and taxation should be borne by the ultimate recipients of such payouts (the mining pool participant).

Since the development of the PoS consensus mechanism, uncertainty has plagued taxpayers as to whether rewards from staking activity should be recognized when the taxpayer receives the reward or when the taxpayer disposes of the reward. Staking rewards should be treated as property created by the taxpayer and therefore should be taxed upon sale rather than receipt. As a general rule, a taxpayer who creates property does not realize income at the time of the property's creation but at the time the property is sold.[19]

In *Jarrett v. United States*, 2023 WL 5319745 (6th Cir. Aug. 18, 2023), a taxpayer participated in digital asset staking, received digital assets in 2019, and did not sell or exchange any of those assets during that year. On his 2019 tax return, he reported as income the fair market value of the digital assets received, even though he did not believe that to be the proper time of taxation. He paid his taxes in full and then filed a claim for refund with the IRS. The IRS did not act on his claim for six months, so he sued for refund in federal district court. About seven months later, the Government issued him a check for the full amount of the refund he claimed he was owed, plus interest. The Government then filed a motion to dismiss the case as moot. The district court granted the motion, the taxpayer appealed, and the Sixth Circuit affirmed. At no time did the district court or the Court of Appeals address the underlying question as to whether the taxpayer was required to recognize income in 2019. Accordingly, whether to report staking income during the year of receipt or the year of sale of the digital assets received very much remains an open question as to which resolution is needed.

Less than one month before the court decided *Jarrett*, the IRS published Revenue Ruling 2023-14, which purported to answer the question by stating that the taxpayer should recognize income at the time the taxpayer gains dominion and control over the asset, despite implying the opposite conclusion when it issued a refund to the plaintiff in *Jarrett*.[20] The Ruling, however, suffers from a number of flaws and should not hold the weight of law.

The ruling cites as authority *Commissioner v. Glenshaw Glass Co*, 348 U.S. 426 (1955), but this case is inapposite as applied to taxing reward income from digital asset staking. Rather, *Glenshaw Glass* considered whether a taxpayer has taxable income upon receipt of exemplary damages from a lawsuit (i.e., damages that do not compensate the taxpayer for any loss but are

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[18] I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

[19] *See*, *e.g.*, Treas. Reg. § 1.61-4 (a farmer who raises livestock reports income from the livestock in the tax year during which the livestock is sold); Treas. Reg. § 1.61-3(a) (suggesting that a manufacturer or mineral miner does not realize income when the goods are produced or the minerals are extracted but at such time as the goods or minerals are sold).

[20] Rev. Rul. 2023-14, 2023-33 I.R.B. 484.

awarded to punish the wrongdoer, such as punitive damages or the trebled portion of antitrust damages). There, the Court held the receipt of exemplary damages to be taxable income because the taxpayers had "complete dominion" over the payment, which was "completely realized."[21]

Contrary to the payments at issue in *Glenshaw Glass*, a realization event with respect to a staking reward is far from clear. Revenue Ruling 2023-14 fails to recognize this distinction. In concluding that a staking reward represents income to the taxpayer when the taxpayer receives the reward and is able to "sell, exchange, or otherwise dispose" of it, the Revenue Ruling relies entirely upon the taxpayer's "dominion and control" over the digital assets.[22] The Revenue Ruling completely fails to analyze whether the taxpayer who could, but does not, "sell, exchange, or otherwise dispose" of the digital asset has at that point had an event of realization. (As discussed below, longstanding authority suggests that the taxpayer in this situation has not yet had an event of realization.)

Similar to the issues with Notice 2014-21, Revenue Ruling 2023-14 relies on an overly simplistic description of staking that fails to recognize the many forms that staking can take. The Revenue Ruling, for instance, does not tell us, in the hypothetical presented, whether the taxpayer's staking reward consists of transfers of existing digital assets from other holders or whether the reward consists of newly minted digital assets. The tax treatment under the first scenario could be vastly different from the tax treatment under the second scenario. Additionally, the Revenue Ruling does not contemplate liquid staking or delegated staking.[23] As such, if the objective of Revenue Ruling 2023-14 is to provide clarity, it falls short especially in light of the variety of staking forms that exist and that are not addressed.

Congress should not allow Revenue Ruling 2023-14 to stand as the last word on the subject. The Revenue Ruling's insufficient consideration of the many forms that staking activities can take and the conclusions it draws as a result have created uncertainty in the industry. Staking is fundamentally vital to securing a PoS blockchain and does so in the most energy-efficient manner. The Association is concerned that Revenue Ruling 2023-14 does not adequately recognize the scope of staking activities and, thus, its guidance is not squarely applicable to many current staking activities. The lack of clarity in terms of the tax consequences will likely create a growing disincentive for participants to engage in staking. This disincentive is the opposite of what the industry needs – the more staking activity, the more secure the blockchain networks.

Accordingly, notwithstanding the position taken in Notice 2014-21 with respect to mining, and the issuance of Revenue Ruling 2023-14 with respect to staking, taxpayers require and deserve better guidance as to their obligations to report income from mining and staking. Congress should, after studying and hearing from knowledgeable and interested participants in the industry, adopt legislation as to the timing issues relating to digital asset mining and staking that takes into

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[21] *Glenshaw Glass*, 348 U.S. at 431.

[22] *See* Rev. Rul. 2023-14 at 484, 485.

[23] For example, in "liquid staking," a taxpayer stakes a position of Token A and receives a receipt token in Token B that accumulates staking rewards reflected in its value. Token B is generally redeemable with Token A on a one-to-one basis. The taxpayer does not exchange Token A for Token B, but rather Token B is a liquid representation of the staked position in Token A. The minting or redemption of Token B should not be considered a taxable event because it does not involve a material change in position; Token B merely serves as an IOU to that of Token A.

account real-world situations, leaves flexibility for a developing industry, and provides certainty to taxpayers.

b. Source and Character of Income with Respect to Staking and Mining

At the present time, taxpayers have been given little to no guidance as to what the rules are for determining the source and character of income received as a result of digital asset mining and staking. The Association, as it does above in connection with the question of timing, likewise urges Congress to adopt legislation providing such guidance, but only after Congress studies the issue and receives input from interested and knowledgeable parties.

IV. De Minimis Gains and Losses Should be Excluded from Tax Accounting.

As stated previously in this response, the Association cannot stress enough how important it is to recognize that, despite the fact that digital assets can be purchased to realize a future gain, digital assets have many other functionalities, including as a medium of exchange.

For the user who treats digital assets as a medium of exchange, the potential tax consequences and associated administrative burdens are significantly different than, for example, one who holds a digital asset with the expectation of realizing a gain in value. When used in the course of daily life, a taxpayer might easily engage in hundreds of transactions a week, creating a logistical nightmare of high-volume and (mostly) low-value transactions. The costs of compliance are significant and the resources (time and money hiring lawyers and/or accountants) required to address an IRS audit are immense.

The Association suggests that Congress might task the Treasury to research and propose a de minimis threshold under which gains or losses on digital asset transactions may be excluded from tax reporting. The Association suggests that it, along with other industry experts, be involved in that process. Alternatively, Congress could enact legislation similar to the various versions of the Virtual Currency Tax Fairness Act, most recently introduced in the second session of the 117th Congress in the Senate by Senator Toomey (S. 4608) and in the House by Representative DelBene (H.R. 6582).

V. Congress Must Delineate Tax Exempt Treatment for Digital Assets.

The Association believes that Congress should clarify how digital assets are treated for purposes of tax-exempt activities. For example, the Association recommends considering an amendment to the tax code that specifically allows a digital asset to be held as an investment asset for retirement, which will provide certainty with respect to taxpayer IRAs and 401(k) accounts. Congress may also wish to consider whether a nonprofit organization engaged in staking activities must recognize a reward as unrelated business income.

VI. Congress Should Decline to Enact the Digital Asset Mining Excise Tax Proposal.

The Association opposes a proposal contained within the Biden Administration's 2024 "Green Book" that would impose a digital asset mining energy excise tax.[24] This proposal would

[24] U.S. Dep't of Treas., *General Explanations of the Administration's Fiscal Year 2024 Revenue Proposals*, Department of the Treasury, March 9, 2023, at 71 (Mar. 2023).

subject the digital asset industry to harsher tax treatment than its peers. If enacted into law, the proposal would unduly inhibit the growth and development of the digital asset industry.[25]

VII. Congress Should Pass the Keep Innovation in America Act.

The Association encourages Congress to adopt the Keep Innovation in America Act ("KIIAA"), a bipartisan bill introduced in the House of Representatives, because the KIIAA thoughtfully reverses certain provisions of the Infrastructure Investment and Jobs Act ("IIJA"), adopted in 2021, that create unreasonable and unnecessary barriers to the development of the digital asset industry. The IIJA intended to require those who act as brokers in transactions involving the sale of digital assets to report information about the transaction to the IRS.[26] Unfortunately, the IIJA defined the word "broker," as applicable to digital currency transactions, in a vague, illogical, and overbroad manner that could encompass participants in the digital asset ecosystem who are not at all brokers and who do not possess, and cannot obtain, the requisite reporting information about a particular digital asset transaction. Additionally, Treasury's interpretation of the "broker" definition in the recent proposed rulemaking expands the scope of this definition even further. According to Treasury's proposal, "broker" includes persons who not only provide a "service effectuating transfers of digital assets on behalf of another person," in line with the IIJA, but also persons who provide a service that *facilitates* effecting transfers of digital assets.[27] The KIIAA aims to fix this flaw by amending the definition of "broker" to include only those who truly play that role in a digital asset transaction.

In addition, the IIJA also imposed a requirement upon brokers in digital asset transactions to file a return with the IRS whenever a digital asset was transferred from an account controlled by the broker to an account not controlled by any broker.[28] The KIIAA would clarify that the broker need only report on the return customer information voluntarily provided by the customer and held by the broker for a legitimate business purpose. This amendment simplifies the reporting requirement imposed upon brokers and reduces the risk of the disclosure of sensitive personal information.

In addition to the broker provisions discussed above, the IIJA requires persons engaged in a trade or business that receive more than $10,000 in cash to report the transaction to the IRS,

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[25] Additionally, the Association notes that while there may have been good reason for government intervention at one point in time, the industry has since shifted to become more energy efficient without regulation. Most notably, the blockchain industry has moved toward utilizing PoS mechanisms, and away from PoW systems, thereby using significantly less energy. For example, Ethereum's PoS system consumes 99.95% less energy than its prior PoW system. *See* Carl Beekhuizen, *Ethereum's energy usage will soon decrease by ~99.95%,* Ethereum Foundation Blog, https://blog.ethereum.org/2021/05/18/country-power-no-more (May 18, 2021). Moreover, with regard to PoW systems, many mining organizations use renewable energy. In 2020, a University of Cambridge survey found that 76% of miners use renewable energies as part of their energy mix and that the share of renewables in mining total energy consumption is 39%. *See* Appolline Bladin, et. al., *3rd Global Cryptoasset Benchmarking Study*, Cambridge Centre for Alternative Finance at 26 (Sept. 24, 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3700822.

[26] *See* IIJA at § 80603(a)(3) (enacting 26 U.S.C. § 6045(c)(1)(D)).

[27] Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions, 88 Fed. Reg. 59576 (Aug. 9, 2023) (to be codified at 26 C.F.R. pt. 1, 31, & 301).

[28] *See* IIJA § 80603(b)(2) (enacting 26 U.S.C. § 6045A(d)).

where "cash" is inappropriately defined to include "digital assets."[29] This provision of the IIJA raises serious privacy concerns given that reporting a wallet address would expose a user's entire transaction history (even those transactions under the $10,000 threshold). The KIIAA would remove "digital assets" from this definition, thereby enhancing the privacy of customers who will no longer have to pass along sensitive personal information to compliant businesses. The KIIAA also includes a section requiring the Secretary of the Treasury, in consultation with the Financial Crimes Enforcement Network, representatives of the digital asset industry, organizations involved in individual privacy and civil liberties, and organizations involved in advocacy, research, or developing standards for digital asset use, to study and report to Congress on the effect of including digital assets within the definition of "cash" for purposes of certain reporting requirements.

VIII. Conclusion.

We greatly appreciate the Committee's engagement on this matter. It is clear that the Committee recognizes the importance of the growing digital asset economy in the U.S. and the ways in which blockchain technology can transform global commerce. Should the Committee wish to discuss any of the issues raised in this letter or any other issue related to digital assets or the application of tax laws to any use of blockchain technology, the Association remains willing and eager to participate. Thank you for your consideration.

Respectfully submitted,

Marisa T. Coppel
Senior Counsel

Sarah A. Milby
Senior Policy Director

[29] *See* IIJA § 80603(b)(3) (enacting 26 U.S.C. § 6050I(d)(3)).