Crypto Council for Innovation

BLOCKCHAIN ASSOCIATION

Via Email Submission (REV.GCO@Illinois.gov)

October 30, 2026

David Harris
Director
Illinois Department of Revenue
101 West Jefferson Street
Springfield, Illinois 62702

Re: Notice of Draft Proposal Implementing the Digital Asset Tax Act [35 ILCS 195]

Dear Director Harris:

The Crypto Council for Innovation ("CCI") and the Blockchain Association ("BA") appreciate the opportunity to comment on the Illinois Department of Revenue's (the "Department") draft proposed rule ("Proposed Rule" or "Proposal") regarding implementation of the Digital Asset Tax Act (the "Act").

I. Overview & Background

CCI is a global alliance of industry leaders within the digital assets industry committed to promoting the advantages of digital assets while showcasing their potential for market transformation. CCI's members represent various businesses and organizations from across the digital asset ecosystem, including exchanges, custodians, payment providers, investors, and traditional financial institutions. CCI's members share a common objective: advocating for the responsible global regulation of digital assets to unlock economic opportunities, enhance quality of life, promote financial inclusivity, safeguard national security, and counter illicit activities. CCI firmly believes that realizing these objectives necessitates well-informed, evidence-driven policies achieved through collaborative participation with regulators and policymakers.

BA is a leading nonprofit membership organization dedicated to promoting a pro-innovation policy environment for the digital asset industry. BA 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. BA represents more than 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.

Although CCI and BA maintain that the Digital Asset Tax Act is unlawful under the U.S. Constitution, U.S. federal law, and the Illinois Constitution, CCI and BA recognize that the Department has a duty to implement the law, and we appreciate the Department's efforts to administer a deeply vague and unworkable statute.[1] Despite those efforts, material ambiguities and fatal operational problems remain and in some circumstances are exacerbated by the Proposal. To the extent, however, the Act goes into effect and the Proposal advances, we respectfully submit recommendations in an attempt to improve the workability of the Proposal. These recommendations are detailed in Section II and include:

- Delaying the effective date until an Illinois appellate court has ruled on the legality of the tax, and adopting a good-faith compliance safe harbor with a cure period of at least 12 months after final rules are adopted;
- Affirming that tokenized securities and tokenized commodities are out of scope and excluding payment stablecoins from the scope of covered digital assets;
- Confirming that decentralized protocols, smart contracts, and decentralized exchanges ("DEXs"), and the interfaces through which users access them, are not brokers, and that no person becomes a broker by writing, deploying, or auditing code, holding governance tokens, participating in governance, supplying liquidity, or charging a protocol fee or an interface fee;
- Improving the definition of digital asset business activity, including by avoiding the taxation of internal ledger entries, the bridging or wrapping of digital assets, or rewards and incentives credited to customers without charge, and by avoiding the double taxation of bundled transactions and transfers between brokers and their service providers;
- Revising the definition of customer and explaining when a digital asset business activity is completed, particularly in the context of custody;
- Implementing exemptive relief under Section 3-35(b) of the Act for transactions where the tax cannot be separately stated, and prescribing the form and manner of the tax receipt required by Section 3-35(c);

[1] CCI and BA are currently challenging the Act in state court. *See* Plaintiffs' Compl. and Memo of Law in Support of Plaintiffs' Motion for Preliminary Injunction, *Blockchain Ass'n & Crypto Council for Innovation v. Harris*, No. 2026 MR 000312 (Ill. Cir. Ct. Sangamon Cnty. filed Aug. 21, 2026). Nothing in this letter should be construed as conceding that the Act is lawful, can be lawfully implemented, or that guidance from the Illinois Department of Revenue would cure any of the Act's legal deficiencies. CCI and BA submit this letter in the spirit of engaging constructively with the Department on the most effective way to implement the Act in the event it is upheld.

- Further explaining the sourcing rules, including how brokers should resolve conflicting location indicators;
- Aligning registration, filing, and recordkeeping requirements with the collection obligations, and confirming that "gross receipts" means the consideration the broker itself receives for providing digital asset business activity;
- Replacing the requirement that brokers maintain customers' private keys with a requirement to maintain public keys and conforming customer-record requirements to the information brokers collect in the ordinary course; and
- Revising certain of the Proposal's examples to avoid creating more ambiguity regarding the application of the Proposal.

II. CCI and BA Offer Targeted Recommendations

a. Effective Date

Proposed Rule Section 497.115(a) provides that the tax is imposed "[b]eginning January 1, 2027." While CCI and BA recognize this date is consistent with the effective date included in the Digital Asset Tax Act, we urge the Department to provide that the Act shall not be effective or enforced until an Illinois appellate court has ruled on the legality of the tax. At the very least, the Department should clarify that the effective date can be no earlier than July 1, 2027, consistent with the agreed injunction entered against the Illinois Attorney General and the Department's Director in the state-court litigation.[2] CCI and BA members have already expended significant resources building out systems in an effort to comply, but considerably more investments of time and resources will be needed. Delaying the effective date until the Department and taxpayers have legal clarity, in compliance with the court's injunction, would spare taxpayers compliance costs that may prove unnecessary, and would spare the Department the burden of administering, and potentially refunding a tax that the Illinois Attorney General and the Department agreed would be enjoined until at least July 1, 2027, and that a court may later hold unlawful.

Furthermore, digital asset brokers will need additional time to try to implement compliance frameworks once the final rules are adopted. Notably, the Proposal reiterates the standard that a willful violation of Department rules constitutes a Class 3 felony. This leaves open the possibility that Illinois will take the position that the Act imposes strict liability for statutory violations. A strict liability standard would penalize brokers expending resources and endeavoring in good faith to comply with the tax. CCI and BA urge the Department to

[2] Agreed Order (Ill. Cir. Ct. Sangamon Cnty. Oct. 7, 2026), *Blockchain Ass'n & Crypto Council for Innovation v. Harris*, No. 2026 MR 000312 & *Chamber of Digital Com. & Ill. Blockchain Ass'n v. Harris*, No. 2026 MR 000271.

confirm that the Act does not impose strict liability for statutory violations and does not impose liability on companies that attempt to comply in good faith. At minimum, the Department should recognize a good-faith compliance safe harbor with an appropriate cure period. Specifically, during the implementation period, CCI and BA urge the Department to waive penalties for good-faith compliance for at least 12 months after final rules are adopted.

b. Scope of Covered Digital Assets

Proposed Rule Section 497.101 provides that "digital asset" has the meaning set forth in the Digital Assets and Consumer Protection Act ("DACPA").[3] There, a digital asset is defined as a "digital representation of value that is used as a medium of exchange, unit of account, or store of value, and that is not fiat currency, whether or not denominated in fiat currency."[4] Among other exclusions, a digital asset does not include: "other digital representations of value that have substantial value, utility, or significance beyond the asset's mere existence as a digital asset, including digital equivalents of tangible and intangible goods such as: (A) works of art, musical compositions, literary works, and similar intellectual property; (B) collectibles and merchandise; and (C) licenses, tickets, and similar rights to attend events or participate in activities."[5]

Recommendations

CCI and BA appreciate the Department's attempt to further explain which digital assets are in scope, including by providing that digital assets are "blockchain-based" and explicitly excluding "tokenized securities and tokenized commodities."[6] We also suggest that tokens that are payment stablecoins under the Guiding and Establishing National Innovation for U.S. Stablecoins ("GENIUS") Act should be excluded from the scope of the Act. This would be consistent with DACPA's exclusion for digital representations of value that have substantial value, utility, or significance beyond the asset's mere existence, as stablecoins derive their value from the U.S. dollars and U.S. dollar denominated GENIUS-compliant assets backing them.[7] Further, payment stablecoins are intended for use in commerce and supported under the GENIUS Act. Adding another tax to payment stablecoin transactions

[3] Proposed Rule § 497.101 (incorporating by reference Section 1-5 of DACPA, 205 ILCS 731/1-5).
[4] 205 ILCS 731/1-5.
[5] 205 ILCS 731/1-5(a)(3).
[6] Proposed Rule § 497.105.
[7] 205 ILCS 731/1-5(a)(3). Guiding and Establishing National Innovation for U.S. Stablecoins (GENIUS) Act, Pub. L. No. 119-27, § 4(a)(1)(A), 12 U.S.C. § 5903(a) (2025).

runs counter to the purpose of a payment stablecoin and stifles interstate commerce. CCI and BA urge the Department to include these provisions in the final rule.

c. Decentralized Finance

Proposed Rule Section 497.115(e)(1)(B) would define digital asset brokers to include "decentralized finance exchanges that collect protocol fees or other fees imposed and collected for the exchange itself."[8] Relatedly, Proposed Rule Section 497.105(f) provides that transactions over DeFi platforms are taxable when made for valuable consideration, which includes "[f]ees charged for the operation and maintenance of de-fi or DEX platforms, like protocol fees."

Recommendations

CCI and BA strongly urge the Department to confirm that decentralized protocols, smart contracts, and DEXs are not digital asset brokers, regardless of whether a protocol fee is assessed. As written, the proposed treatment is inconsistent with the Proposal itself, the Act, federal law, and DACPA. It would also impose unworkable compliance obligations intended for financial institutions on technology.

Under the Proposal's definition of "exchange," "transfer," and "store," the Department's definitions contemplate a relationship between an intermediary and a customer by requiring that the activity be performed "on behalf of a customer." The definition of decentralized finance under the Proposal, however, explains that DeFi "transactions are peer-to-peer, with no intermediary bank or exchange, and operate through smart contract functions."[9] A decentralized protocol that, by definition, has no intermediary cannot simultaneously be the intermediary responsible for collecting and remitting the tax, particularly when transactions are executed based on pre-established code, rather than on behalf of a customer.

Subjecting DEXs to the Act's tax collection requirements is also inconsistent with DACPA. Under DACPA, "digital asset business activity" is defined to explicitly exclude both "peer-to-peer exchanges or transfers of digital assets" and "decentralized exchanges

[8] Proposed Rule § 497.115(e)(1)(B).
[9] Proposed Rule § 497.101 (Defining decentralized finance as follows: "'Decentralized finance' and their associated platforms, also known as 'de-fi' or 'DEX' platforms, means the offering of financial instruments like digital assets through smart contracts on a blockchain. They differ from centralized exchanges in that transactions are peer-to-peer, with no intermediary bank or exchange, and operate through smart contract functions.").

facilitating peer-to-peer exchanges or transfers solely through use of a computer program or a transaction protocol that is intended to automatically execute, control, or document events and actions."[10]

Moreover, the Act defines "digital asset broker" by reference to Section 6045(c)(1)(D) of the Internal Revenue Code and the regulations prescribed thereunder. In 2025, however, Congress passed, with broad bipartisan support, a Congressional Review Act resolution to nullify the U.S. Department of the Treasury's regulation that would have treated certain DeFi participants as brokers under Section 6045. This CRA was subsequently signed into law, and Treasury removed the DeFi broker rule from the Code of Federal Regulations. Treating DEXs as brokers under the Proposal would therefore depart from the federal law the Illinois General Assembly incorporated into the Act and would reach entities that the U.S. Congress has expressly declined to treat as brokers.

The Proposal would also be unworkable in several key respects. A protocol consisting of autonomous smart contracts cannot register with the Department, identify whether a user is located in Illinois, calculate and separately state the tax, collect and remit the tax, file monthly returns, or maintain books and records. In addition, the proposal would require brokers to keep "[a]ccount information sufficient to show the movement of digital assets including private keys." This would require DEXs that collect fees and all other brokers to maintain a record of customer private keys. DEXs do not retain this information. Many protocols are immutable and cannot be modified to perform these functions. The Act makes failure to register, file, or keep records a Class 3 felony. Therefore, treating protocols as brokers would create unavoidable liability and present significant enforcement challenges for the State.

The Department also cannot enlarge the Act's definition by regulation. The Act adopts the federal definition of a broker together with the federal regulations under Section 6045(c)(1)(D), and a person that is not a broker under that federal definition is not a digital asset broker under the Act. The Proposal nonetheless adds DEXs in two provisions. First, after restating Section 6045(c)(1)(D), Proposed Rule Section 497.101 adds that "[a] person who is engaged in the business of providing digital asset business activity to customers in this State will be considered a digital asset broker," a sentence that drops the federal definition and regulations that the Act expressly incorporates. Second, Proposed Rule Section 497.115(e)(1)(B) lists among digital asset brokers "decentralized finance exchanges that collect protocol fees," a category that no federal rule has included. Under Illinois law,

[10] DACPA § 1-5 (defining digital asset business activity).

administrative regulations "can neither expand nor limit the statute they enforce," so a regulation that treats DEXs as digital asset brokers, when the Act's definition of "digital asset broker" does not include DEXs, is a substantive policy divergence from the statute, and is invalid.[11]

The Proposal also does not identify who would bear a broker's obligations if a DEX were to be improperly designated as a broker. A DEX consists of smart contracts deployed on a public blockchain that execute automatically according to their code. That autonomous code cannot be considered to be a "person" under Proposed Rule Section 497.101. If the Department nonetheless treats a DEX as a broker, this invites the inference that some person must fulfill a broker's obligations, whether the developers who wrote the code, the persons who deployed it, or the holders of the protocol's governance tokens.

Further, the Proposal's treatment of DeFi platforms is ambiguous and indeterminate. Under the Proposal, DeFi platforms "are not subject to the tax of this Section, unless those transactions are done for valuable consideration."[12] Yet what valuable consideration means in this context is not clear. The Proposal provides that "Fees such as swap fees that are directed solely to liquidity providers and network fees for miners and validators are not considered valuable consideration," yet "[f]ees charged for the operation and maintenance of de-fi or DEX platforms, like protocol fees, are considered valuable consideration."[13] In practice, this is a distinction without a difference, as networks, miners, and validators themselves enable the operation of DeFi platforms—meaning the Proposal provides no determinate or logically consistent criterion by which those subject to the Act may reasonably assess their legal obligations. The defect lies in the Proposal's inclusion of protocol fees, not in its exclusions: the exclusions for fees directed to liquidity providers and for network fees are correct and should be retained and broadened.

CCI and BA urge the Department to confirm that no person is treated as a digital asset broker, or bears a broker's obligations, by virtue of having written, deployed, or audited protocol code; holding governance tokens; or participating in protocol governance, whether individually or collectively through a decentralized autonomous organization.

Requested change. CCI and BA request the Department:

[11] *See, e.g.*, Kean v. Wal-Mart Stores, Inc., 235 Ill. 2d 351, 372 (2009) ("Administrative regulations can neither expand nor limit the statute they enforce").
[12] Proposed Rule § 497.105(f).
[13] *Id.*

(a) restate the Act's definition of "digital asset broker" in Section 497.101 without the added second sentence;

(b) delete Section 497.115(e)(1)(B);

(c) replace Section 497.115(e)(2)(A) with the following:

> (A) decentralized finance protocols, and any person solely by reason of developing, deploying, publishing, maintaining, or governing a decentralized finance protocol, supplying liquidity to it, or providing a website, application, wallet, or other interface through which users interact with it from wallets they control, regardless of whether a fee is charged in connection with the protocol or interface;

and (d) replace Section 497.105(f) with the following:

> (f) Transactions that a person conducts through a decentralized finance protocol from a wallet the person controls are not digital asset business activity and are not subject to the tax, regardless of any fee charged in connection with the transaction.

Principal Business Activity Exclusion

CCI and BA appreciate that the definition of "exchange" does not include buying, selling, or trading digital assets for a person's own account in a principal capacity.[14] It is unclear, however, whether a person who buys, sells, or trades a digital asset for their own account would be able to satisfy this exclusion. We respectfully urge the Department to state clearly that a user who pays a protocol fee on a DEX trade qualifies both for the Act's exclusion and for the Proposal's exclusion for trading "from a person's own account in a principal capacity, i.e., peer-to-peer transactions without the use of intermediaries and with no valuable consideration."

Fees

As noted above, under the Proposal, transactions that occur over decentralized finance platforms are not subject to the digital asset tax, unless those transactions are done for valuable consideration. Fees charged for the operation and maintenance of DeFi or DEX

[14] *See* Proposed Rule § 497.101 (noting "exchange" does not include buying, selling, or trading digital assets for a person's own account in a principal capacity).

platforms, like *protocol fees*, are considered valuable consideration and their payment for digital asset business activity would subject the transaction to the tax. Fees such as *swap fees* that are directed solely to liquidity providers and *network fees* for miners and validators, however, are not considered valuable consideration.

Despite the significance of whether a protocol fee is charged, the Proposal does not define the term "protocol fees." As explained above, a decentralized protocol should not be treated as a broker regardless of the type of fee that may be collected by the protocol. The Proposal's treatment of protocol fees also rests on a flawed assumption: that a protocol fee is a payment to an exchange for a service performed on behalf of the customer. This is not an accurate representation of the function of protocol fees. A protocol fee is generally set by a protocol's smart contracts, either integrated before deployment or activated or adjusted through the protocol's decentralized governance process. They are applied automatically to every transaction in the pools where the transaction is enabled, without regard to the identity of the user. In many protocols, the protocol fee is not an additional charge to the user but a portion of the swap fee that would otherwise go to liquidity providers. Protocol fees may be burned, distributed to persons who perform no service for the user, or claimed by third parties who are not digital asset brokers. In none of these cases does any person receive the fee in exchange for exchanging, transferring, or storing a digital asset on the user's behalf. Section 497.115(d) itself excludes from valuable consideration fees that are "not imposed and/or captured solely for digital asset brokers."

Accordingly, to the extent the Proposed Rule advances in its current form, the Department should define "protocol fee" and expressly exclude protocol fees from "valuable consideration." The Department should also define "interface fee" and distinguish it from a protocol fee. Neither a protocol fee nor an interface fee is valuable consideration, and the charging, payment, or collection of either should not alone cause any person to be a digital asset broker. A protocol fee is automatically calculated and directed through the protocol's software and cannot be unilaterally altered by any person. Under some protocols, the protocol fee is paid to no one at all: it accumulates in a smart contract to which no person is entitled, and a third party may withdraw it only by destroying a preset quantity of digital assets. A protocol fee is therefore not "charged by digital asset brokers," it is "not imposed and/or captured solely for digital asset brokers," and it does not pay for the "operation and maintenance" of any platform.

Requested change. We request that the Department add the following definitions to Section 497.101 and the following sentence to Section 497.115(d) and (e)(2):

> "Protocol" means the smart contracts deployed to a blockchain through which transactions are executed. "Protocol fee" means any amount assessed on a transaction under a protocol's smart contracts and directed to a liquidity pool, a smart contract, a treasury, token holders, or an address from which the amount cannot be recovered, including any amount that may be withdrawn only by destroying digital assets. "Interface" means a website, application, wallet, or other software through which a user composes a transaction that the user authorizes from a wallet the user controls. "Interface fee" means a fee charged in connection with the use of an interface.
>
> Neither a protocol fee nor an interface fee is valuable consideration, and the charging, payment, or collection of either cannot alone cause a person to be a digital asset broker.

In this vein, the Department should also confirm that a front-end interface provider is not a digital asset broker, whether or not it charges an interface fee. An interface is software that allows users to submit transactions from their own self-custody wallets directly to a protocol. The Act incorporates the federal definition of "broker," which reaches only entities that "effectuate[] transactions "for consideration." 26 U.S.C. § 6045(c)(1)(D). Interface providers do not themselves effectuate transfers but instead merely enable users to engage with smart contracts to make transfers of assets in their custody without using third-party intermediaries. Users effectuate the transfers using their private keys; the interface provider does not. Moreover, interface providers generally do not act as agents or principals of users who transact in digital assets, or take custody or have access to a user's private keys or digital assets. At most, they may make it easier for users to effectuate their own DeFi transactions. But that does not mean the interface providers "effectuate" those transactions. Nor does an interface provider exchange, transfer, or store digital assets "on behalf of a customer." If an interface charges a fee, it is for access to the software, not consideration for digital asset business activity. Treating interfaces as digital asset brokers would also be at odds with the plain language of DACPA, which excludes from "digital asset business activity" "the development, publication, constitution, administration, maintenance, and dissemination of software in and of itself." The Proposal's definition of "digital asset business activity" should include the same exclusion.

Relatedly, the Department should revise its definition of "network fees." Currently, the Proposal provides that "network fees" are referred to as "gas fees" or "transaction fees" and

means "fees paid *directly* to the blockchain network for processing a transaction."[15] It also provides that network fees are "directly paid to the miner or validator of the specific transaction." This is not always accurate. Some blockchains burn a portion of network fees, and blockchains differ in how fees are distributed. CCI and BA urge the Department to strike the word "directly" and state that network fees include all fees required by the blockchain protocol to process a transaction.

d. Scope of Digital Asset Business Activity

In general, the Proposal describes digital asset business activity as "any single occurrence of exchanging, transferring, or storing a digital asset as part of a business or on behalf of a customer who has entered into an agreement with a business for the provision of those services. A single occurrence of exchange, transfer, or storage of a digital asset arises when the asset moves as denoted by an entry on a blockchain or internal ledger."[16]

Recommendations

Internal Ledger Entries

Proposed Rule Section 497.115(c) provides that the activity "must be denoted by an entry on a blockchain network to be a taxable event," and Proposed Rule Section 497.110(c)(1) and Example 4 of Section 497.110(c)(2) also confirm that bookkeeping entries without any movement on a blockchain are not taxable. As drafted, however, a different portion of the Proposed Rule—Section 497.110(a)—suggests that transfers between accounts on a broker's "internal ledger" could be taxable, contradicting Proposed Rule Section 497.115(c). CCI and BA recommend that the Department strike the reference to "internal ledger" in Section 497.110(a) to confirm that only movements recorded on a blockchain are taxable.

Relatedly, Example 2 of Proposed Rule Section 497.110(c)(2), which addresses a transfer between two accounts of the same customer at the same exchange, should—at the very least—expressly state that the mere internal book entry update by the centralized exchange is not a basis to impose the tax.

[15] Proposed Rule § 497.101 (emphasis added).
[16] Proposed Rule § 497.110.

More broadly, as discussed further in relation to the taxation of transfers to a self-hosted wallet, transfers between a user's own accounts should not be taxed, regardless of whether the transfers were recorded on a blockchain or an internal ledger. Imposing a tax in such circumstances would be tantamount to taxing internal transfers between a user's own bank accounts or ATM withdrawals—neither of which is taxed with respect to fiat currency. Thus, not only would such taxes applied to digital assets be discriminatory, they also would set a pernicious policy precedent supporting the taxation of an individual's own assets without any capital gain, income, consumption, or beneficial ownership change.

Exchange of Digital Asset

Proposed Rule Section 497.110(b)(1)(E) lists "[b]ridging, or the exchange of digital assets from one blockchain network to another" as an example of a taxable exchange. CCI and BA strongly recommend that the Department strike this example. Bridging generally moves the same economic asset, held by the same owner, from one network to another. It does not involve buying, selling, trading, or converting one asset for another in any meaningful economic sense, and treating it as an "exchange" would appear to sweep in the wrapping of digital assets as well. Like a person withdrawing money from their own bank account, this activity does not change who owns what, and should not be treated as a taxable event.

Requested change. CCI and BA request that the Department delete Section 497.110(b)(1)(E) and add the following as Section 497.110(c)(3):

> (3) A transfer does not include (A) the movement by a digital asset broker of a customer's digital asset to a wallet controlled by that customer, (B) the movement by a digital asset broker of a customer's digital asset from one account to another managed by such broker, where the customer retains beneficial ownership of such asset, or (C) the movement of a customer's digital asset from one blockchain network to another.

Similarly, Example 1 of Proposed Rule Section 497.110(c)(2) would tax a customer's withdrawal of digital assets from a custodial account to that customer's own self-hosted wallet. This type of treatment is equivalent to taxing a person moving money from one of their bank accounts to another, or an ATM withdrawal, and should not be understood to involve valuable consideration. As such, it appears inconsistent with Proposed Rule Section 497.110(b)(2), which provides that an exchange does not include trading "from a person's own account in a principal capacity, i.e., peer-to-peer transactions without the use of intermediaries and with no valuable consideration." Specifically, the taxation of transfers to

self-custodial wallets disincentivizes users' control over their own assets—a policy outcome that penalizes individual financial autonomy and, in many cases, discourages users from embracing heightened security for their assets. This policy outcome is hard to square with a tax related to digital asset brokerage, as self-custody of digital assets supports the peer-to-peer transfers that the Proposal ostensibly would not tax.[17] Moreover, for the reasons discussed in connection with the taxation of a user's internal account transfers above, it imposes discriminatory tax treatment and sets a dangerous policy precedent.

Double Taxation of Transactions

The definition of sale in the Proposal provides that "If the digital asset business activity is sold as a bundle of separate services, each service shall constitute an individual sale for the purposes of the Act."[18] Taxable digital asset business activity covers, in relevant part, "any single occurrence of exchanging, transferring, or storing a digital asset."[19] The Proposal fails to eliminate the possibility of imposing multiple taxes on a single transaction where it involves a bundle of services.

Notably, the Proposal provides that where those bundled services include storage incidental to the transfer or exchange of a digital asset, only one taxable event occurs.[20] Nonetheless, this provision could create the negative inference that unlike storage, exchanges and transfers that are incidental to one another could subject a transaction to double taxation: a tax on both the exchange and the transfer, even where part of a single transaction. The Proposal should state that, as with storage, all incidental services should be treated as part of a single transaction and not result in double taxation. Therefore, CCI and BA urge the Department to state that an exchange and transfer made under the same customer instruction are taxed only once.

At a minimum, since Proposed Rule Section 497.110(a) treats each entry on a blockchain as a "single occurrence," the final rule should state that all entries executed to fulfill one customer instruction, such as one token swap that is routed through multiple liquidity pools or the separate steps of sending tokens over a bridge between two blockchains, constitute a single taxable event.

The Proposal provides that Illinois retailers accepting digital asset payments are not themselves considered digital asset brokers.[21] It goes on to indicate, however, that a

[17] Proposed Rule § 497.110(b)(2).
[18] Proposed Rule § 497.101.
[19] *Id.*
[20] Proposed Rule § 497.110(d)(2).
[21] Proposed Rule § 497.115(e)(3).

transaction between a retailer and a customer would, under the Proposal, involve two "transactions": (1) the transfer from the customer to the retailer, and (2) the transaction between the retailer and their payment processor. The Proposal should state that retail transactions need not involve two transactions where peer-to-peer transfers are used.

In addition, the Proposal should not enable double taxation of retail transactions. For even if the retailer itself is not considered a broker, the assertion of two transactions could suggest two taxable events (e.g., where a broker is used in the purchase and transfer, the transferring and the processing, or both). Multiple taxation of retail transactions—up to double taxation of a digital asset transaction plus applicable sales tax—creates an untenable tax policy outcome for Illinois businesses that wish to accept digital assets as payments, placing them at a severe disadvantage vis-a-vis businesses in other states.

Storage

CCI and BA appreciate the Department's attempt to address when the tax applies to the storage of covered digital assets, but offer several recommendations to explain when storage constitutes a taxable event.

Under Proposed Rule Section 497.110(d)(1), "storage of digital assets is comprised of the managed custody of digital assets, for consideration, by a third-party digital asset broker for a customer."[22] The Department should take a consistent approach when applying "for consideration" as a standard. While the term "for consideration" is included under the explanation of storage, it is not included in the parallel sections explaining "exchanges" and "transfers" of covered digital assets.

Proposed Rule Section 497.110(d)(3) also is contradictory and raises significant administrative concerns. On the one hand, it provides that storage should only be taxed once, stating that storage "is taxable one time regardless of the duration of the storage" and that "[a]dditional payments for storage do not create a taxable event . . . unless further movement of the asset occurs." On the other hand, the provision then states that the "tax imposed on storage of digital assets will only apply again if subsequent consideration is paid for the continued storage of the digital asset." Example (A) of Section 497.110(d)(4) adds that in the case of a transfer into storage followed by a storage subscription, there is "one taxable event for the initial transfer, and a one-time taxable event for the next payment of consideration specifically covering storage." One interpretation is that the provision is seeking to address taxation of storage where the storage was first incidental to another transaction and then requires ongoing payment. This interpretation, however, itself

[22] Proposed Rule § 497.110(d)(1).

conflicts with the idea that storage is not taxed when bundled with a transfer or exchange.[23] Whereas Proposed Rule Section 497.110(d)(2) provides that storage incidental to transfer or exchange creates "only one taxable event," Proposed Rule Section 497.110(d)(3) suggests that it actually creates a deferred second taxable event.

Administratively, the Proposal would require brokers to track, on an asset-by-asset basis, whether a storage fee has already been paid with respect to each unit of a digital asset in a customer's account. For example, assume a customer holds 100 units of a digital asset in custody and pays a monthly custody fee. The customer pays the tax on those 100 units with the first custody fee. The following month, the customer purchases 25 additional units. The broker would need to collect the tax on the purchase and then again with the next custody fee, but only on the 25 new units. If, in the third month, the customer sells 75 units and buys ten, the broker cannot simply rely on changes in the customer's balance; it would need to determine which units have and have not borne the storage tax. Tracking at this level of granularity would be extraordinarily burdensome for taxpayers, as well as for the Department assessing compliance, and prone to error.

To improve the workability of the storage tax, CCI and BA urge the Department to:

- **Honor the incidental storage exclusion**. The final rule should maintain Proposed Rule Section 497.110(d)(2)'s concept that storage bundled with transfers or exchanges creates one taxable event, meaning storage is not taxed in such circumstances.
- **State the number of taxable storage events.** At the very least, the final rule should state unequivocally that storage gives rise to no more than one taxable event per deposit of a digital asset into storage, regardless of the number or frequency of subsequent storage payments. To accomplish this, the last sentence of Proposed Rule Section 497.110(d)(3) should be deleted. In short, *ongoing* custody should not be taxable absent subsequent movement on a blockchain.
- **Permit brokers to assess tax at the time of funding.** The final rule should permit brokers to elect to assess any storage-related tax at the time an asset is moved into storage, rather than at the time the next storage fee is charged, which would materially reduce the burden of asset-level tracking.
- **Address assets already in custody.** The final rule should confirm, and provide an example illustrating, that digital assets held in custody as of the effective date are not subject to tax absent a subsequent movement on the blockchain.

[23] Proposed Rule § 497.110(d)(2).

Staking, Unstaking, and Rewards

The Proposed Rule defines "staking" in Proposed Rule Section 497.101 and confirms in Proposed Rule Section 497.115(d) that "fees directed towards blockchain mining, staking, and validation activities" are not included in valuable consideration. This is the appropriate tax treatment of validation activities. This reflects the reality that individuals engaging in mining and staking are critical to the operation of decentralized blockchain networks rather than services purchased from a digital asset broker. CCI and BA urge the Department to recognize that the act of staking, unstaking, and the crediting of protocol rewards to a customer's custodial account are not taxable events. After a customer stakes their digital assets, they periodically receive protocol rewards credited directly to their custodial account in exchange for helping to secure the network. Such rewards are issued by the blockchain protocol itself, so crediting them does not constitute a transfer of digital assets "on behalf of a customer" for valuable consideration. Similarly, when a customer unstakes their assets from a blockchain network, they receive their assets back in their custodial account without any change in ownership based upon their own request. The Department should expressly confirm that staking, unstaking, and the receipt of validation rewards do not constitute digital asset business activity.

Similar reasoning applies to rewards, promotional credits, and other incentives that a broker or its affiliate credits to a customer without charge. The customer pays no valuable consideration, and the broker distributes its own assets on its own initiative rather than on behalf of the customer. The Department should confirm that crediting such rewards is not digital asset business activity, while any subsequent exchange, transfer, or storage of those assets remain subject to the generally applicable rules.

e. Tax Imposed

Proposed Rule Section 497.115 provides that a transaction must: (1) involve an Illinois customer; (2) include that customer's receipt of digital asset business activity; (3) be in exchange for valuable consideration; and (4) be conducted by a "digital asset broker."[24] Among other requirements, Proposed Rule Section 497.115 (b)-(i) defines key terms and the rate at which the tax will be imposed.

[24] Proposed Rule § 497.115 (Tax Imposed).

Recommendations

Improving the Definition of Customer

Proposed Rule Section 497.115(b) provides that "customer" includes persons who arrange for digital asset business activity through intermediaries that are not themselves brokers, "including financial planners, wealth management services, and banking institutions." Together with Section 497.125(b) and Example 2 of Section 497.125(d), this could require a broker that provides services to an intermediary, for example, as a sub-custodian, to look through the intermediary to identify the intermediary's underlying customers and determine whether any are located in Illinois. Further, it could be construed to capture transfers between businesses that serve the same end customer, such as transfers between a customer-facing broker and its custodian, execution venue, or other service provider, resulting in the same customer activity being taxed more than once.

CCI and BA recommend that the Department permit a broker to treat its direct account holder as the customer for purposes of the tax, or, alternatively, to rely on a certification from the intermediary regarding the location of its underlying customers, without any independent duty to look through the intermediary. Brokers in these arrangements frequently do not have, and cannot readily obtain, information about the intermediary's underlying customers. Requiring look-through information for every intermediary relationship would impose a substantial compliance and administrative burden and could require the disclosure of customer information that intermediaries are otherwise obligated to protect.

CCI and BA note that there is some inconsistent use of defined terms. In Proposed Rule Section 497.115(d), the Proposal notes that valuable consideration does not include "*gas fees*, *network fees*, *and other fees* directed towards blockchain mining, staking, and validation activities."[25] To ensure consistency, the final rule should simply state "network fees."

Payment Processors

Proposed Rule Section 497.115(e)(3) confirms that retailers accepting digital assets as payment are not digital asset brokers. As discussed above, however, read together with Examples 3 and 4 of Proposed Rule Section 497.110(b)(3), the Proposal suggests that a single retail purchase could be taxed twice: once when the customer's exchange transfers digital assets to the retailer, and again when the retailer's payment processor converts those

[25] Proposed Rule § 497.115(d)(emphasis added).

assets into fiat currency. The Proposal also does not explain how the tax applies where a payment processor charges a fee to process a payment from the customer to the retailer. In addition to stating, as discussed above, that a retail payment transaction gives rise to no more than one taxable event, the Department should explain, including through illustrative examples where appropriate, how the presence of payment processors impacts the application of the tax.

Valuation

The Proposal provides that the tax shall be imposed at the rate of 0.2% of the value of the digital asset being exchanged, transferred, or stored, and the value of the digital asset must be determined at the time the digital asset business activity is completed.[26] CCI and BA urge the Department to explain when a digital asset business activity is completed, particularly in the context of custody. In particular, the Department should state for administrability purposes that a digital asset business activity is completed at the time of collection of the fee, and the amount of the tax is based on the value of the digital asset in that moment.

f. Collection of Tax

Section 3-35(b) of the Act provides that, "if it is not possible to state the tax separately, the Department may, by rule, exempt the purchase from this requirement if customers are notified by language on the invoice or other written notification that the tax is included in the purchase price." The Proposal, however, does not implement this authority. CCI and BA recommend that Section 3-35(b) include transactions in which the tax is collected in kind or the transaction is executed in a manner that does not permit a separate line item.

In addition, Section 3-35(c) of the Act requires brokers to provide customers a "receipt" for the tax "in the manner and form prescribed by the Department," but Proposed Rule Section 497.120(c) does not prescribe a manner or form. CCI and BA therefore strongly urge the Department to provide further guidance on the manner and form of a "receipt" for the tax paid if demanded by the customer. This will help ensure taxpayers and brokers are able to effectively comply with the Act's requirements.

[26] Proposed Rule § 497.115(f); *See* Proposal § 497.101 ("'Value' means the amount, in U.S. dollars, that a digital asset is determined to hold by the digital asset broker at the time of the relevant transaction. The value of the digital asset must be determined at the time the digital asset business activity is completed. If a value cannot be provided by the digital asset broker's own exchange spot price, benchmark rates established by a regulated market data provider may be used to determine the value of an asset subject to the tax. The tax makes no exceptions for volatility and other externalities that can cause fluctuations in a digital asset's value").

g. Sourcing

Proposed Rule Section 497.125(a) creates a rebuttable presumption that a customer is located in Illinois if any one of several indicators, including an Illinois address, an Illinois IP address, or data showing a place of primary use in Illinois, is "on record with or available to" the broker. The Proposal does not explain how brokers should resolve conflicting indicators—for example, a customer with an Indiana home address who accesses an account from an Illinois IP address.

Additionally, the Proposal does not address situations in which a broker's reliance on federal documentation to determine a customer's location under Proposed Rule Section 497.125(c) provides unclear or inaccurate information about the customer's location. Example 1 demonstrates how a broker could identify a customer's location through IRS Form W-9. Customers of an entity may be organized in one state, headquartered in another, and transact from a third. In each of these cases, the documentation the Proposal directs brokers to rely on may give no definitive indication of a customer's true location. Different brokers or other intermediaries could reach different conclusions about the same customer.

Recommendations

CCI and BA recommend that a broker should be able to rely on a single, reliable indicator of record, such as the residential or legal address the broker collects as part of its customer identification process, to determine a customer's location. The Department should also provide an ordering rule for resolving conflicting indicators that gives priority to the customer's address of record. Relatedly, the Department should construe "available to" a broker narrowly to mean information the broker actually collects and maintains in the ordinary course of business. For example, the Department should define "available to" as "on record with."

The same ordering rule should apply when federal documentation is incomplete or inconsistent with other indications of a customer's residence. A residential or legal address collected through the broker's customer identification process should take precedence over a mailing address reported on a Form W-9 or other federal documentation that the Proposal stipulates a broker may rely on. These addresses should be conclusive for purposes of Proposed Rule Section 497.125 and should override any presumption of the

customer's location arising from an IP address, mailing address, place of primary use, or other indicator under Proposed Rule Section 497.125(a).

Furthermore, CCI and BA urge the Department to establish a safe harbor for brokers that must determine a customer's location for sourcing purposes. A broker that sources a customer to the relevant address in good faith should not be liable for uncollected tax, interest, or penalties if that address later proves inaccurate. Without this safe harbor, brokers would face undue liability for errors in documentation over which they have no control. Because Proposed Rule Section 497.120(a) makes a broker liable for the tax whether or not it was collected, this risk is substantial.

h. Registration, Collection, and Remittance Obligations

The Proposal, like the Act, does not clearly identify which persons must register with the Department, which must collect and remit the tax, and which must keep customer records. Because Proposed Rule Section 497.160(b) makes failure to file a return, failure to keep books and records, or violation of any provision of the Act a Class 3 felony, with no express requirement of willfulness, this ambiguity could carry severe criminal-enforcement consequences if Illinois takes the position that the Act imposes strict liability.

Recommendations

CCI and BA encourage the Department to align registration, filing, and recordkeeping requirements with the collection obligation in Proposed Rule Section 497.120(a), which applies to a "digital asset broker maintaining a place of business in this State." In the Proposal, registration obligations under Proposed Rule Section 497.130(a) apply to any person engaged "in business as a digital asset broker in this State," monthly returns under Proposed Rule Section 497.140(a) apply to "each digital asset broker," and recordkeeping under Proposed Rule Section 497.155(a) applies to "[e]very digital asset broker required to file a return under the Act." The Department should confirm that a broker that does not maintain a place of business in Illinois as defined in Proposed Rule Section 497.101 has no obligation to register, file returns, or keep records under the Act.

Additionally, under Proposed Rule Section 497.01 a broker headquartered outside Illinois maintains a place of business in the State if its "gross receipts from digital asset business activity sales to Illinois customers are $100,000 or more." The Department should confirm that "gross receipts" means the consideration the broker itself receives for providing digital asset business activity, consistent with the definitions of "sale" and "purchase price." This

would avoid a reading that could construe "gross receipts" to include the value or volume of the digital assets exchanged, transferred, or stored. Network fees, fees paid to liquidity providers, fees that are burned, and fees received by unrelated third parties should also be excluded from "gross receipts." The Department should also specify the period over which the threshold is measured, such as the preceding calendar year.

i. Books and Records.

Proposed Rule Section 497.155(a)(3) would require brokers to maintain "[a]ccount information sufficient to show the movement of digital assets including private keys."

Recommendations

CCI and BA strongly recommend that the final rule revise Section 497.155(a)(3) to refer to "public keys" instead of "private keys." A private key is the credential that authorizes the movement of digital assets; it is not a record of that movement. Requiring brokers to maintain records of customers' private keys would create concentrated repositories of highly sensitive credentials that would be attractive targets for theft and would undermine core security practices that protect customer assets. Many custodians use hardware security modules or multi-party computation precisely so that no complete private key is ever assembled or retrievable. Non-custodial service providers and DEXs, moreover, never have access to users' private keys at all. The requirement also conflicts with the federal key-management standard, which provides that "[i]n general, private signature keys shall not be archived,"[27] and with DACPA, which requires registered digital asset businesses to protect "the confidentiality, integrity, and availability of any nonpublic information or digital asset."[28]

Further, Proposed Rule Section 497.155(a)(4) would require brokers to maintain a customer's physical address, the IP address used in each purchase, and a signed IRS Form W-9. This conflicts with Proposed Rule Section 497.125, which treats IP addresses as relevant only if the broker has that information. CCI and BA recommend that the Department revise Proposed Rule Section 497.155(a)(4) to require brokers to maintain only the information they otherwise collect in the ordinary course and rely on to determine a customer's location.

[27] Nat'l Inst. of Standards & Tech., Special Publication 800-57 Part 1, Rev. 5, Recommendation for Key Management: Part 1: General § 8.1.5.1 (May 2020).
[28] 205 ILCS 731/10-10(e), (f)(2).

j. Examples

As a general matter, CCI and BA appreciate that the Department has provided examples to offer taxpayers and the public greater clarity regarding its views on implementation. We offer the following recommendations to improve those in the Proposal.

- **Frame each example through the four-part test.** Each example should state whether each element of Proposed Rule Section 497.115(a) is met: (1) an Illinois customer; (2) the customer's receipt of digital asset business activity; (3) valuable consideration; and (4) a digital asset broker. For example, Example 5 of Proposed Rule Section 497.110(c)(2) currently suggests that the transaction would be taxable if valuable consideration were paid, even though no digital asset broker is acting on behalf of a customer.
- **Reflect the place-of-business requirement.** Each example involving a broker should make clear that the collection obligation applies only to a "digital asset broker maintaining a place of business in this State."
- **Use defined terms consistently.** For instance, Example 1 of Proposed Rule Section 497.110(b)(3) refers to "a transaction, or exchange, fee," even though only "exchange fee" is defined and "transaction fee" could be confused with a network fee.
- **Revising Example 2 (§ 497.110(c)(2)).** Example 2 describes John transferring 100 MoonCoins from his personal Coin Exchange wallet to his business Coin Exchange wallet and concludes that the transfer is taxable because "there is a denotation on the blockchain." Unlike Example 4, however, the facts do not state whether the transfer was actually recorded on the blockchain. Transfers between accounts on a centralized exchange are frequently recorded only on the exchange's internal ledger. The Department should revise the facts to state expressly that the transfer is recorded on the blockchain. It should also confirm that the tax applies only where that is the case, consistent with the definition of "transfer" in Proposed Rule § 497.110(c)(1) and the result in Example 4.
- **Revising Example 6 (§ 497.110(c)(2)).** Example 6 concludes that Coin Exchange's transfers between its hot and cold wallets "could be taxable" if the criteria of § 497.115(a) are met. It is unclear when these facts could ever satisfy those criteria. A broker rebalancing its own wallets is generally not charging itself valuable consideration. The example would also require the broker to act as both the "customer" and the "digital asset broker" for the same transaction. CCI and BA recommend that the Department either delete Example 6 or revise it to state that internal treasury or rebalancing transfers by a broker are not subject to the tax. If

the Department retains the example, it should identify a scenario in which all four elements of § 497.115(a) could be met.

III. Conclusion

CCI and BA appreciate the opportunity to comment on the Proposal. Although we believe the Act is unlawful, unconstitutional, and that no rulemaking can cure its defects, to the extent the Act remains in effect, we urge the Department to provide an adequate compliance runway, adopt the revisions outlined above to improve administrability, reduce unnecessary compliance burdens, and protect the security and privacy of Illinois customers. We welcome the opportunity to discuss these comments further and to serve as resources to the Department.

Respectfully submitted,



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