

Track changes of IRC sections as changed by [P.L. 117-58](#) (11/15/21), Infrastructure Investment and Jobs Act, Sec. 80603, Information Reporting For Brokers and Digital Assets. Changes were made to IRC sections 6045, 6045A, 6724 and 6050I. H.R. 3684 was passed in the [Senate](#) on August 10, 2021 (69-30) and in the [House](#) on November 5, 2021 (228-206).

CRS, [Cryptocurrency Transfers and Data Collection](#), 8/25/21.

See additional background information at the end of this document.

§6045 Returns of brokers

- (a) General rule. Every person doing business as a broker shall, when required by the Secretary, make a return, in accordance with such regulations as the Secretary may prescribe, showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary may by forms or regulations require with respect to such business.
- (b) Statements to be furnished to customers. Every person required to make a return under subsection (a) shall furnish to each customer whose name is required to be set forth in such return a written statement showing-
 - (1) the name, address, and phone number of the information contact of the person required to make such return, and
 - (2) the information required to be shown on such return with respect to such customer.

The written statement required under the preceding sentence shall be furnished to the customer on or before February 15 of the year following the calendar year for which the return under subsection (a) was required to be made. In the case of a consolidated reporting statement (as defined in regulations) with respect to any customer, any statement which would otherwise be required to be furnished on or before January 31 of a calendar year with respect to any item reportable to the taxpayer shall instead be required to be furnished on or before February 15 of such calendar year if furnished with such consolidated reporting statement.

- (c) Definitions. For purposes of this section-

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

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

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

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

- (2) Customer. The term "customer" means any person for whom the broker has transacted any business.

(3) Barter exchange. The term "barter exchange" means any organization of members providing property or services who jointly contract to trade or barter such property or services.

(4) Person. The term "person" includes any governmental unit and any agency or instrumentality thereof.

(d) Statements required in case of certain substitute payments. If any broker-

(1) transfers securities of a customer for use in a short sale or similar transaction, and

(2) receives (on behalf of the customer) a payment in lieu of-

(A) a dividend,

(B) tax-exempt interest, or

(C) such other items as the Secretary may prescribe by regulations,

during the period such short sale or similar transaction is open, the broker shall furnish such customer a written statement (in the manner as the Secretary shall prescribe by regulations) identifying such payment as being in lieu of the dividend, tax-exempt interest, or such other item. The written statement required under the preceding sentence shall be furnished on or before February 15 of the year following the calendar year in which the payment was made. The Secretary may prescribe regulations which require the broker to make a return which includes the information contained in such written statement.

(e) Return required in the case of real estate transactions.

(1) In general. In the case of a real estate transaction, the real estate reporting person shall file a return under subsection (a) and a statement under subsection (b) with respect to such transaction.

(2) Real estate reporting person. For purposes of this subsection, the term "real estate reporting person" means any of the following persons involved in a real estate transaction in the following order:

(A) the person (including any attorney or title company) responsible for closing the transaction,

(B) the mortgage lender,

(C) the seller's broker,

(D) the buyer's broker, or

(E) such other person designated in regulations prescribed by the Secretary.

Any person treated as a real estate reporting person under the preceding sentence shall be treated as a broker for purposes of subsection (c)(1).

(3) Prohibition of separate charge for filing return. It shall be unlawful for any real estate reporting person to separately charge any customer for complying with any requirement of

paragraph (1). Nothing in this paragraph shall be construed to prohibit the real estate reporting person from taking into account its cost of complying with such requirement in establishing its charge (other than a separate charge for complying with such requirement) to any customer for performing services in the case of a real estate transaction.

(4) Additional information required. In the case of a real estate transaction involving a residence, the real estate reporting person shall include the following information on the return under subsection (a) and on the statement under subsection (b) :

(A) The portion of any real property tax which is treated as a tax imposed on the purchaser by reason of section 164(d)(1)(B).

(B) Whether or not the financing (if any) of the seller was federally-subsidized indebtedness (as defined in section 143(m)(3)).

(5) Exception for sales or exchanges of certain principal residences.

(A) In general. Paragraph (1) shall not apply to any sale or exchange of a residence for \$250,000 or less if the person referred to in paragraph (2) receives written assurance in a form acceptable to the Secretary from the seller that-

(i) such residence is the principal residence (within the meaning of section 121) of the seller,

(ii) if the Secretary requires the inclusion on the return under subsection (a) of information as to whether there is federally subsidized mortgage financing assistance with respect to the mortgage on residences, that there is no such assistance with respect to the mortgage on such residence, and

(iii) the full amount of the gain on such sale or exchange is excludable from gross income under section 121.

If such assurance includes an assurance that the seller is married, the preceding sentence shall be applied by substituting "\$500,000" for "\$250,000". The Secretary may by regulation increase the dollar amounts under this subparagraph if the Secretary determines that such an increase will not materially reduce revenues to the Treasury.

(B) Seller. For purposes of this paragraph, the term "seller" includes the person relinquishing the residence in an exchange.

(f) Return required in the case of payments to attorneys.

(1) In general. Any person engaged in a trade or business and making a payment (in the course of such trade or business) to which this subsection applies shall file a return under subsection (a) and a statement under subsection (b) with respect to such payment.

(2) Application of subsection.

(A) In general. This subsection shall apply to any payment to an attorney in connection with legal services (whether or not such services are performed for the payor).

(B) Exception. This subsection shall not apply to the portion of any payment which is required

to be reported under section 6041(a) (or would be so required but for the dollar limitation contained therein) or section 6051.

(g) Additional information required in the case of securities transactions, etc.

(1) In general. If a broker is otherwise required to make a return under subsection (a) with respect to the gross proceeds of the sale of a covered security, the broker shall include in such return the information described in paragraph (2).

(2) Additional information required.

(A) In general. The information required under paragraph (1) to be shown on a return with respect to a covered security of a customer shall include the customer's adjusted basis in such security and whether any gain or loss with respect to such security is long-term or short-term (within the meaning of section 1222).

(B) Determination of adjusted basis. For purposes of subparagraph (A)-

(i) In general. The customer's adjusted basis shall be determined-

(I) in the case of any security (other than any stock for which an average basis method is permissible under section 1012), in accordance with the first-in first-out method unless the customer notifies the broker by means of making an adequate identification of the stock sold or transferred, and

(II) in the case of any stock for which an average basis method is permissible under section 1012, in accordance with the broker's default method unless the customer notifies the broker that he elects another acceptable method under section 1012 with respect to the account in which such stock is held.

(ii) Exception for wash sales. Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined without regard to section 1091 (relating to loss from wash sales of stock or securities) unless the transactions occur in the same account with respect to identical securities.

(iii) Treatment of uncorrected de minimis errors. Except as otherwise provided by the Secretary, the customer's adjusted basis shall be determined by treating any incorrect dollar amount which is not required to be corrected by reason of section 6721(c)(3) or section 6722(c)(3) as the correct amount.

(3) Covered security. For purposes of this subsection-

(A) In general. The term "covered security" means any specified security acquired on or after the applicable date if such security-

(i) was acquired through a transaction in the account in which such security is held, or

(ii) was transferred to such account from an account in which such security was a covered security, but only if the broker received a statement under section 6045A with respect to the transfer.

(B) Specified security. The term "specified security" means-

- (i) any share of stock in a corporation,
- (ii) any note, bond, debenture, or other evidence of indebtedness,
- (iii) any commodity, or contract or derivative with respect to such commodity, if the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection, ~~and~~

(iv) any digital asset, and

- ~~(iv)~~ any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate for purposes of this subsection.

(C) Applicable date. The term "applicable date" means-

- (i) January 1, 2011, in the case of any specified security which is stock in a corporation (other than any stock described in clause (ii)),
- (ii) January 1, 2012, in the case of any stock for which an average basis method is permissible under section 1012, ~~and~~

(iii) January 1, 2023, in the case of any specified security which is a digital asset, and

- ~~(iv)~~ January 1, 2013, or such later date determined by the Secretary in the case of any other specified security.

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

(4) Treatment of S corporations. In the case of the sale of a covered security acquired by an S corporation (other than a financial institution) after December 31, 2011, such S corporation shall be treated in the same manner as a partnership for purposes of this section.

(5) Special rules for short sales. In the case of a short sale, reporting under this section shall be made for the year in which such sale is closed.

(6) Special rule for certain stock held in connection with dividend reinvestment plan. For purposes of this subsection, stock acquired before January 1, 2012, in connection with a dividend reinvestment plan shall be treated as stock described in clause (ii) of paragraph (3)(C) (unless the broker with respect to such stock elects not to have this paragraph apply with respect to such stock).

(h) Application to options on securities.

(1) Exercise of option. For purposes of this section, if a covered security is acquired or disposed of pursuant to the exercise of an option that was granted or acquired in the same account as the covered security, the amount received with respect to the grant or paid with respect to the acquisition of such option shall be treated as an adjustment to gross proceeds or as an adjustment to basis, as the case may be.

- (2) Lapse or closing transaction. In the case of the lapse (or closing transaction (as defined in section 1234(b)(2)(A))) of an option on a specified security or the exercise of a cash-settled option on a specified security, reporting under subsections (a) and (g) with respect to such option shall be made for the calendar year which includes the date of such lapse, closing transaction, or exercise.
- (3) Prospective application. Paragraphs (1) and (2) shall not apply to any option which is granted or acquired before January 1, 2013.
- (4) Definitions. For purposes of this subsection, the terms "covered security" and "specified security" shall have the meanings given such terms in subsection (g)(3).

§6045A Information required in connection with transfers of covered securities to brokers

- (a) Furnishing of information. Every applicable person which transfers to a broker (as defined in section 6045(c)(1)) ~~a security which is~~ a covered security (as defined in section 6045(g)(3)) in the hands of such applicable person shall furnish to such broker a written statement in such manner and setting forth such information as the Secretary may by regulations prescribe for purposes of enabling such broker to meet the requirements of section 6045(g).
- (b) Applicable person. For purposes of subsection (a), the term "applicable person" means-
 - (1) any broker (as defined in section 6045(c)(1)), and
 - (2) any other person as provided by the Secretary in regulations.
- (c) Time for furnishing statement. Except as otherwise provided by the Secretary, any statement required by subsection (a) shall be furnished not later than 15 days after the date of the transfer described in such subsection.
- (d) Return requirement for certain transfers of digital assets not otherwise subject to reporting. Any broker, with respect to any transfer (which is not part of a sale or exchange executed by such broker) during a calendar year of a covered security which is a digital asset from an account maintained by such broker to an account which is not maintained by, or an address not associated with, a person that such broker knows or has reason to know is also a broker, shall make a return for such calendar year, in such form as determined by the Secretary, showing the information otherwise required to be furnished with respect to transfers subject to subsection (a).

§6724 Waiver; definitions and special rules

- (a) Reasonable cause waiver. No penalty shall be imposed under this part with respect to any failure if it is shown that such failure is due to reasonable cause and not to willful neglect.
- (b) Payment of penalty. Any penalty imposed by this part shall be paid on notice and demand by the Secretary and in the same manner as tax.
- (c) Special rule for failure to meet magnetic media requirements. No penalty shall be imposed under section 6721 solely by reason of any failure to comply with the requirements of the regulations prescribed under section 6011(e)(2), except to the extent that such a failure occurs with respect to more than the applicable number (determined under section 6011(e)(5) with respect to the calendar year to which such returns relate) of information returns or with respect to a return described in section 6011(e)(4).
- (d) Definitions. For purposes of this part-
 - (1) Information return. The term "information return" means-
 - (A) any statement of the amount of payments to another person required by-
 - (i) section 6041(a) or (b) (relating to certain information at source),
 - (ii) section 6042(a)(1) (relating to payments of dividends),
 - (iii) section 6044(a)(1) (relating to payments of patronage dividends),
 - (iv) section 6049(a) (relating to payments of interest),
 - (v) section 6050A(a) (relating to reporting requirements of certain fishing boat operators),
 - (vi) section 6050N(a) (relating to payments of royalties),
 - (vii) section 6051(d) (relating to information returns with respect to income tax withheld),
 - (viii) section 6050R (relating to returns relating to certain purchases of fish), or
 - (ix) section 110(d) (relating to qualified lessee construction allowances for short-term leases),
 - (B) any return required by-
 - (i) section 6041A(a) or (b) (relating to returns of direct sellers),
 - (ii) section 6043A(a) (relating to returns relating to taxable mergers and acquisitions),
 - (iii) section 6045(a) or (d) (relating to returns of brokers),
 - (iv) section 6045B(a) (relating to returns relating to actions affecting basis of specified securities),
 - (v) section 6050H(a) (relating to mortgage interest received in trade or business from individuals),
 - (vi) section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc.),

- (vii) section 6050J(a) (relating to foreclosures and abandonments of security),
- (viii) section 6050K(a) (relating to exchanges of certain partnership interests),
- (ix) section 6050L(a) (relating to returns relating to certain dispositions of donated property),
- (x) section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities),
- (xi) section 6050Q (relating to certain long-term care benefits),
- (xii) section 6050S (relating to returns relating to payments for qualified tuition and related expenses),
- (xiii) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals),
- (xiv) section 6052(a) (relating to reporting payment of wages in the form of group [term] life insurance),
- (xv) section 6050V (relating to returns relating to applicable insurance contracts in which certain exempt organizations hold interests),
- (xvi) section 6053(c)(1) (relating to reporting with respect to certain tips),
- (xvii) subsection (b) or (e) of section 1060 (relating to reporting requirements of transferors and transferees in certain asset acquisitions),
- (xviii) section 4101(d) (relating to information reporting with respect to fuels taxes),
- (xix) subparagraph (C) of section 338(h)(10) (relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss),
- (xx) section 264(f)(5)(A)(iv) (relating to reporting with respect to certain life insurance and annuity contracts),
- (xxi) section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements),
- (xxii) section 6039(a) (relating to returns required with respect to certain options),
- (xxiii) section 6050W (relating to returns to payments made in settlement of payment card transactions),
- (xxiv) section 6055 (relating to returns relating to information regarding health insurance coverage),
- (xxv) section 6056 (relating to returns relating to certain employers required to report on health insurance coverage), ~~or~~
- (xxvi) section 6050Y (relating to returns relating to certain life insurance contract transactions), ~~and~~

(xxvii) section 6045A(d) (relating to returns for certain digital asset),

(C) any statement of the amount of payments to another person required to be made to the Secretary under-

(i) section 408(i) (relating to reports with respect to individual retirement accounts or annuities), or

(ii) section 6047(d) (relating to reports by employers, plan administrators, etc.), and

(D) any statement required to be filed with the Secretary under section 6035.

Such term also includes any form, statement, or schedule required to be filed with the Secretary under chapter 4 or with respect to any amount from which tax was required to be deducted and withheld under chapter 3 (or from which tax would be required to be so deducted and withheld but for an exemption under this title or any treaty obligation of the United States).

(2) Payee statement. The term "payee statement" means any statement required to be furnished under-

(A) section 6031(b) or (c), 6034A, or 6037(b) (relating to statements furnished by certain pass-thru entities),

(B) section 6039(b) (relating to information required in connection with certain options),

(C) section 6041(d) (relating to information at source),

(D) section 6041A(e) (relating to returns regarding payments of remuneration for services and direct sales),

(E) section 6042(c) (relating to returns regarding payments of dividends and corporate earnings and profits),

(F) subsections (b) and (d) of section 6043A (relating to returns relating to taxable mergers and acquisitions),

(G) section 6044(e) (relating to returns regarding payments of patronage dividends),

(H) section 6045(b) or (d) (relating to returns of brokers),

(I) section 6045A (relating to information required in connection with transfers of covered securities to brokers),

(J) subsections (c) and (e) of section 6045B (relating to returns relating to actions affecting basis of specified securities),

(K) section 6049(c) (relating to returns regarding payments of interest),

(L) section 6050A(b) (relating to reporting requirements of certain fishing boat operators),

(M) section 6050H(d) or (h)(2) (relating to returns relating to mortgage interest received in trade or business from individuals),

- (N) section 6050I(e) or paragraph (4) or (5) of section 6050I(g) (relating to cash received in trade or business, etc.),
- (O) section 6050J(e) (relating to returns relating to foreclosures and abandonments of security),
- (P) section 6050K(b) (relating to returns relating to exchanges of certain partnership interests),
- (Q) section 6050L(c) (relating to returns relating to certain dispositions of donated property),
- (R) section 6050N(b) (relating to returns regarding payments of royalties),
- (S) section 6050P(d) (relating to returns relating to the cancellation of indebtedness by certain financial entities),
- (T) section 6050Q(b) (relating to certain long-term care benefits),
- (U) section 6050R(c) (relating to returns relating to certain purchases of fish),
- (V) section 6051 (relating to receipts for employees),
- (W) section 6052(b) (relating to returns regarding payment of wages in the form of group-term life insurance),
- (X) section 6053(b) or (c) (relating to reports of tips),
- (Y) section 6048(b)(1)(B) (relating to foreign trust reporting requirements),
- (Z) section 408(i) (relating to reports with respect to individual retirement plans) to any person other than the Secretary with respect to the amount of payments made to such person,
- (AA) section 6047(d) (relating to reports by plan administrators) to any person other than the Secretary with respect to the amount of payments made to such person,
- (BB) section 6050S (relating to returns relating to qualified tuition and related expenses),
- (CC) section 264(f)(5)(A)(iv) relating to reporting with respect to certain life insurance and annuity contracts),
- (DD) section 6050T (relating to returns relating to credit for health insurance costs of eligible individuals),
- (EE) section 6050U (relating to charges or payments for qualified long-term care insurance contracts under combined arrangements),
- (FF) section 6050W(f) (relating to returns relating to payments made in settlement of payment card transactions),
- (GG) section 6055(c) (relating to statements relating to information regarding health insurance coverage),
- (HH) section 6056(c) (relating to statements relating to certain employers required to report

on health insurance coverage),

(II) section 6035 (other than a statement described in paragraph (1)(D)), or

(JJ) section 6226(a)(2) (relating to statements relating to alternative to payment of imputed underpayment by partnership) or under any other provision of this title which provides for the application of rules similar to such section.

(JJ) subsection (a)(2), (b)(2), or (c)(2) of section 6050Y (relating to returns relating to certain life insurance contract transactions).

[NOTE: There are drafting errors from past law changes causing two uses of (JJ).]

Such term also includes any form, statement, or schedule required to be furnished to the recipient of any amount from which tax was required to be deducted and withheld under chapter 3 or 4 (or from which tax would be required to be so deducted and withheld but for an exemption under this title or any treaty obligation of the United States).

(3) Specified information reporting requirement. The term "specified information reporting requirement" means-

(A) the notice required by section 6050K(c)(1) (relating to requirement that transferor notify partnership of exchange),

(B) any requirement contained in the regulations prescribed under section 6109 that a person-

(i) include his TIN on any return, statement, or other document (other than an information return or payee statement),

(ii) furnish his TIN to another person, or

(iii) include on any return, statement, or other document (other than an information return or payee statement) made with respect to another person the TIN of such person,

(C) any requirement under section 6109(h) that-

(i) a person include on his return the name, address, and TIN of another person, or

(ii) a person furnish his TIN to another person.

(4) Required filing date. The term "required filing date" means the date prescribed for filing an information return with the Secretary (determined with regard to any extension of time for filing).

(e) Special rule for certain partnership returns. In any partnership return under section 6031(a) is required under section 6011(e) to be filed on magnetic media or in other machine-readable form, for purposes of this part, each schedule required to be included with such return with respect to each partner shall be treated as a separate information return.

(f) Special rule for returns of educational institutions related to higher education tuition and related expenses. No penalty shall be imposed under section 6721 or 6722 solely by reason of failing to provide the TIN of an individual on a return or statement required by section

6050S(a)(1) if the eligible educational institution required to make such return contemporaneously makes a true and accurate certification under penalty of perjury (and in such form and manner as may be prescribed by the Secretary) that it has complied with standards promulgated by the Secretary for obtaining such individual's TIN.

§6050I Returns relating to cash received in trade or business, etc.

(a) Cash receipts of more than \$10,000. Any person-

- (1) who is engaged in a trade or business, and
- (2) who, in the course of such trade or business, receives more than \$10,000 in cash in 1 transaction (or 2 or more related transactions).

shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

(b) Form and manner of returns. A return is described in this subsection if such return-

- (1) is in such form as the Secretary may prescribe,
- (2) contains-
 - (A) the name, address, and TIN of the person from whom the cash was received,
 - (B) the amount of cash received,
 - (C) the date and nature of the transaction, and
 - (D) such other information as the Secretary may prescribe.

(c) Exceptions.

(1) Cash received by financial institutions. Subsection (a) shall not apply to-

- (A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or
- (B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

(2) Transactions occurring outside the United States. Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

(d) Cash includes foreign currency and certain monetary instruments. For purposes of this section, the term "cash" includes-

- (1) foreign currency, ~~and~~
- (2) to the extent provided in regulations prescribed by the Secretary, any monetary

instrument (whether or not in bearer form) with a face amount of not more than \$10,000~~7~~
and

(3) any digital asset (as defined in section 6045(g)(3)(D)).

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

(e) Statements to be furnished to persons with respect to whom information is required. Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing-

- (1) the name, address, and phone number of the information contact of the person required to make such return, and
- (2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

(f) Structuring transactions to evade reporting requirements prohibited.

(1) In general. No person shall for the purpose of evading the return requirements of this section-

- (A) cause or attempt to cause a trade or business to fail to file a return required under this section,
- (B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or
- (C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

(2) Penalties. A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

(g) Cash received by criminal court clerks.

(1) In general. Every clerk of a Federal or State criminal court who receives more than \$10,000 in cash as bail for any individual charged with a specified criminal offense shall make a return described in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

(2) Return. A return is described in this paragraph if such return-

- (A) is in such form as the Secretary may prescribe, and
- (B) contains-

- (i) the name, address, and TIN of-
 - (I) the individual charged with the specified criminal offense, and
 - (II) each person posting the bail (other than a person licensed as a bail bondsman),
 - (ii) the amount of cash received,
 - (iii) the date the cash was received, and
 - (iv) such other information as the Secretary may prescribe.
- (3) Specified criminal offense. For purposes of this subsection, the term "specified criminal offense" means-
- (A) any Federal criminal offense involving a controlled substance,
 - (B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),
 - (C) money laundering (as defined in section 1956 or 1957 of such title), and
 - (D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).
- (4) Information to federal prosecutors. Each clerk required to include on a return under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.
- (5) Information to payors of bail. Each clerk required to make a return under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such return by reason of paragraph (2)(B)(i)(II) a written statement showing-
- (A) the name and address of the clerk's office required to make the return, and
 - (B) the aggregate amount of cash described in paragraph (1) received by such clerk.

Non-Code Provisions:

(c) **EFFECTIVE DATE.**—The amendments made by this section shall apply to returns required to be filed, and statements required to be furnished, after December 31, 2023.

(d) **RULE OF CONSTRUCTION.**—Nothing in this section or the amendments made by this section shall be construed to create any inference, for any period prior to the effective date of such amendments, with respect to—

(1) whether any person is a broker under section 6045(c)(1) of the Internal Revenue Code of 1986, or

(2) whether any digital asset is property which is a specified security under section 6045(g)(3)(B) of such Code.

Effective Date: For returns required to be filed and statements required to be furnished after 12/31/23 (so apparently for 2023 forms and activity).

Observations:

- (1) Given that proposed regulations are needed and brokers need time to get basis information, the one-year lead time before reporting begins does not seem sufficient.
- (2) The Treasury/IRS Priority Guidance Plan (business plan) has listed information reporting of virtual currency under §6045 since 2019. See the details below for the plans for 2019 through 2022:

Treasury/IRS Priority Guidance Plan (Business Plan)

- 2019-2021, 2020-2021 [plans](#) include:
 - Regulations regarding information reporting on virtual currency under §6045. [2021-2022]
 - Proposed regulations regarding information reporting on virtual currency under §6045. [2020-2021]
 - Guidance regarding information reporting on virtual currency under §6045. [2019-2020]

Senate colloquies in August 2021 to clarify the broker reporting rule:

- August 9, 2021 Senator Portman
 - [Page S6095 in Congressional Record](#)
- August 3, 2021 Senator Portman
 - [Pages S5702-S5703](#) – reprint of JCT explanation of the broker reporting proposal

- JCT, [Technical Explanation of Section 8063, “Information Reporting For Brokers And Digital Assets,” Of The Infrastructure Investment And Jobs Act](#)

12/14/21 – Senators Portman and others sent [letter](#) to Treasury

- Bipartisan group
- Asked Treasury to implement revised §6045 “effectively and in accordance with congressional intent.”
- “As Senator Portman and Senator Warner articulated in a colloquy on the floor of the Senate on August 9, 2021, “[t]he purpose of this provision is not to impose new reporting requirements on people who do not meet the definition of brokers.” Further, our understanding from both the Administration and the Joint Committee on Taxation is that they shared the same interpretation of the provision as its authors: that the reporting requirements only cover brokers who enable the transfer of digital assets for consideration —and not other parties which are ancillary to the process unless they are serving in an additional capacity as brokers.”
- “It will be important that we continue to work to provide further clarity, and to help ensure that the United States remains a global leader in financial innovation and development, while ensuring that this technology does not become a vector for illicit finance, tax evasion, or other criminal activity.”

2/11/22 – Bipartisan group of senators received [response](#) from Treasury

- From Jonathan C. Davidson at Treasury
- States aware of colloquy between Senators Portman and Warner and others on meaning of digital asset changes by Infrastructure Act.
- Summarizes that colloquy and notes it is part of legislative history of IIJA.
- Notes that colloquy is consistent with Treasury view “that ancillary parties who cannot get access to information that is useful to the IRS are not intended to be captured by the reporting requirements for brokers.”
- Broker excludes persons just validating transactions via consensus mechanism, selling storage devices or writing software
- Expect proposed regs to address these points.

Example of proposed amendment that was not added to bill passed by the Senate:

[SA 2656](#) (8/9/21) would have [added](#):

(d) Rules of Construction.--

(1) Definition of broker.--Nothing in this section or the amendments made by this section shall be construed to create any inference that a person described in section 6045(c)(1)(D) of the Internal Revenue Code of 1986, as added by this section, includes any person solely engaged in the business of--

(A) validating distributed ledger transactions, without providing other functions or services, or

(B) selling hardware or software for which the sole function is to permit persons to control private keys which are used for accessing digital assets on a distributed ledger.

(2) Brokers and treatment of digital assets.--Nothing in this section or the amendments made by this section shall be construed to create any inference, for any period prior to the effective date of such amendments, with respect to--

(A) whether any person is a broker under section 6045(c)(1) of the Internal Revenue Code of 1986, or

(B) whether any digital asset is property which is a specified security under section 6045(g)(3)(B) of such Code.

Proposals to amend P.L. 117-58:

[H.R. 6006](#) (117th Congress), Keep Innovation in America Act, proposes to make clarifications to the §6045 changes, such as by changing the definition of broker of digital assets and the definition of digital assets as follows:

(D) any person who (for consideration) stands ready in the ordinary course of a trade or business to effect sales of digital assets at the direction of their customers.

(D) DIGITAL ASSET.—The term ‘digital asset’ means any digital representation of value which is recorded on a cryptographically secured distributed ledger.

An additional change if to §6050I to delay effect and have Treasury study and report on treatment of digital assets as cash for §6050I purposes

[S. 3249](#) (117th Congress), Bipartisan bill from Senators Wyden (D-OR) and Lummis (R-WY)

- Introduced when President Biden signed the bill (11/15/21)
- Senators unable to get amended before passage in Senate (see info above)

- Specifies who is not a broker – validators of distributed ledger transactions (e.g., miners), sellers of hardware and software to manage keys, developers of digital assets or corresponding protocols by persons who are not customers of the developer of such assets
- Includes: “(e) Sense Of Congress.—It is the sense of Congress that nothing in the amendments made by this section shall be construed to have any effect on the Securities Act of 1933 ([15 U.S.C. 77a et seq.](#)) or the Securities Exchange Act of 1934 ([15 U.S.C. 78a et seq.](#)).”
- 11/15/21 press release - <https://www.lummis.senate.gov/press-releases/wyden-lummis-introduce-bill-to-fix-broker-definition-for-digital-assets/>