



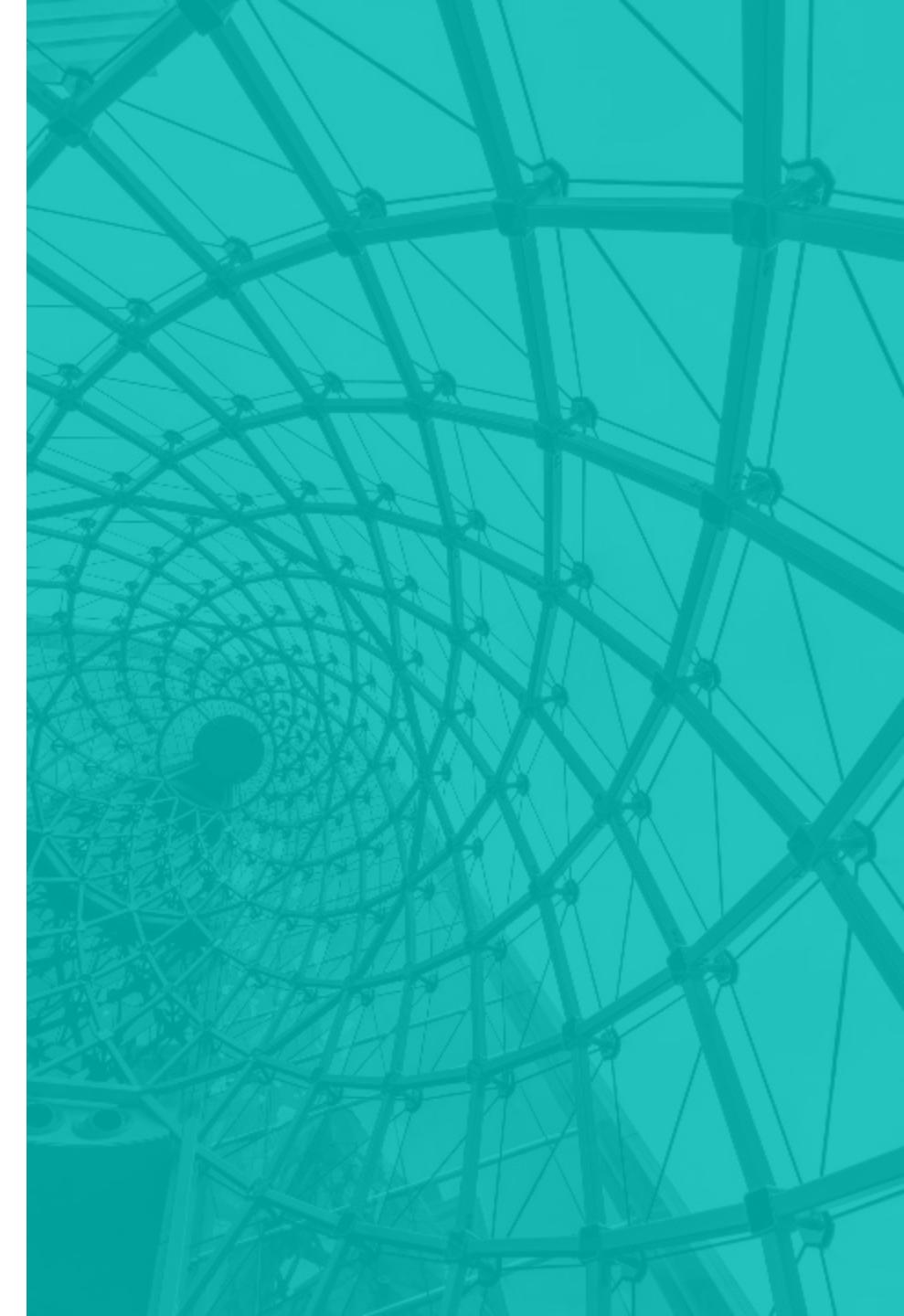
Do We Have a Partnership?

Digital Asset Activities, Staking, and Entity Classification in Practice

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Let's define partnership

Key points

- Under the Code, the term “partnership” includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate.
- Caselaw tests on whether a tax partnership exists look to the intent of the partners to jointly operate a business and split the profits, as well as other indicia of partner-like behavior.
- See *Culbertson v. Comm'r*, 337 U.S. 733 (1949); *Comm'r v. Tower*, 327 U.S. 280 (1946); *Luna v. Comm'r*, 42 T.C. 1067 (1964).

Discussion

- Common issues on set-up
- Why documentation matters



Partnership Basics

What actually creates a partnership

- Two or more persons
- Carrying on a trade or business
- With intent to share profits (explicit or implied)

Key takeaway

- You do not need a formal agreement—or intent—to create a partnership



“We Didn’t Think We Had a Partnership...”

Let’s discuss the following fact patterns

- Founders pooling tokens to bootstrap a protocol
- Validators coordinating rewards and slashing risk
- Advisors receiving token-based upside tied to performance
- Revenue splits vs profit & loss splits
- DAO-style governance without legal wrappers, particularly if tokenholders share economics

Issue spotting

- Is there **joint control**?
- Is there **shared upside and downside**?
- Are activities **ongoing** vs isolated transactions?



Once You *Do* Have a Partnership: Tax Consequences

Immediate implications

- Entity classification and filing obligations
- Allocation of income, loss, and credits
- Withholding exposure (domestic + foreign)
- State filing footprint expands instantly

Common issues

- In-Kind contributions / distributions
 - Investment Partnership classifications; BIG issues
- Capital account maintenance when assets are digital



Staking Income: Partnership Issues

Threshold questions

- Is staking income:
 - Active or passive?

Why this matters

- Self-employment tax
- Passive activity limitations
- Foreign partner consequences
- UBTI exposure for exempt partners

Liquid Staking / Do we have a partnership? (Jamison/Matthew)

- Validators, Delegating, partnership construct
- Examples: ETH + Compute power

PANEL QUESTION:



Staking remains one of the most unsettled areas tax-wise. Is Congress aligned on whether staking rewards are income upon receipt, upon sale, or something else entirely?



Withholding & Cross-Border Implications

Key classifications to analyze

- ECI vs FDAP
- Validator vs. delegator
- U.S. partnership with foreign partners
- U.S. sourcing / 892 (Jamison) testing
- UBTI Determination

Risk areas

- Failure to withhold on effectively connected staking income
- Mischaracterization leading to Forms 8804/8805 issues
- State sourcing of validator activity

Planning Ideas / How to mitigate:

- Offshore Feeder structures
- Blockers

Audit trend

- Examiners focusing on *function*, not labels



Contributing Tokens to a Partnership

Common scenario

- Low-basis tokens contributed to:
 - Investment partnerships
 - Operating entities
 - DAO-adjacent structures

Key risks

- Disguised sale exposure
- Built-in gain shifting
- Immediate gain recognition in unexpected cases

Practice note

- “Non-taxable contribution” assumptions are often wrong with digital assets



SAFE / SAFT Structures: Partnership Adjacent?

Why this comes up

- Token pre-launch fundraising
- Hybrid debt / equity economics
- Rights that look like profit participation

Questions to flag

- Is there implicit co-venture economics?
- Are holders exposed to operational upside?
- Does this cross into partnership territory?

(Flagged as “fact-dependent—watch closely” rather than definitive.)



DAOs, Re-Structuring, and Retroactive Problems

Key issues

- Was it ever a partnership before incorporation?
- Retroactive filings and exposure
- Entity migration ≠ risk elimination

Common misconception

“We incorporated, so the risk went away.”



Partnership Audits

BBA Audit Regime

- Economic reality over legal form
- Inconsistent reporting across partners – balance sheet discrepancies
- Missing withholding and information returns

Advice to practitioners

- Document intent early
- Align operating reality with tax positions
- Do not wait for scale to fix structure



Practical Takeaways

For practitioners

- Partnership analysis should happen **before** income recognition
- Facts matter – no two crypto assets are exactly the same, and have to be analyzed on their own merits
- Withholding is the fastest way exposure shows up

For founders

- Informal arrangements create formal tax consequences
- Fixing it later is almost always more expensive



Possible Legislation

- How will current administration bring more digital asset activity back to the U.S.?
- Any insights / proposed initiatives?
- From your vantage point advising senator Lummis – what problem is Congress aiming to solve with digital-asset legislation?
- Over the next 12-24 mo's – what should we be paying the closest attention to?



Questions?

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