

**TECHNICAL EXPLANATION OF SECTION 80603,
“INFORMATION REPORTING FOR BROKERS
AND DIGITAL ASSETS,” OF
THE INFRASTRUCTURE INVESTMENT AND JOBS ACT**

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of the
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INFORMATION REPORTING FOR BROKERS AND DIGITAL ASSETS

Present Law

In general

The IRS gathers independent information about income received and taxes withheld to verify self-reported income and tax liability reported on tax returns. The use of reliable and objective third-party verification of income increases the probability of tax evasion being detected and increases the cost of evasion to the taxpayer, thereby decreasing the overall level of tax evasion by taxpayers. Ample empirical evidence shows that the introduction of third-party information reporting in tax administration leads to more accurate reports of income on tax returns.

Information reporting assists taxpayers receiving such reports to prepare their income tax returns and helps the IRS determine whether such returns are correct and complete. The reporting of most relevance to the determination of individual income tax generally falls under one of two types. First, there are reports and disclosures required from taxpayers about themselves.¹ Second, there are reports required to be reported to the IRS with respect to transactions with other persons, including employers, known as third-party information reporting.² Third-party information reporting rules had predecessors in early tax statutes. The first third-party information reporting requirement in the Internal Revenue Code of 1986, as amended, regarding payments by persons engaged in a trade or business of \$600 or more in the course of the payor's trade or business, is a successor to an almost identical provision in the 1939 Code,³ as is the provision requiring reporting of dividends and corporate earnings and profits.⁴

Third-party information reporting has expanded significantly since then, addressing numerous types of payments. These include reporting with respect to advance payments of credit for health insurance costs;⁵ gross proceeds paid to an attorney;⁶ substitute payments in lieu of dividends or tax-exempt interest;⁷ and payments by a Federal executive agency for services.⁸

¹ Secs. 6031 through 6040.

² Secs. 6041 through 6060.

³ Sec. 6041(a); Treas. Reg. secs. 1.6041-1 and -2. Section 6041 is the successor to section 147(b)(2) of the 1939 Code. See Joint Committee on Taxation, *Derivations of Code Sections of the Internal Revenue Codes of 1939 and 1954* (JCS-1-92), January 21, 1992.

⁴ Sec. 6042; 1939 Code sec. 148.

⁵ Sec. 6050T.

⁶ Sec. 6045(f).

⁷ Sec. 6045(d).

⁸ Sec. 6041A(d)(3).

Congress continues to expand third-party information reporting, reflecting the importance of IRS access to reliable and objective third-party verification of payments in detecting noncompliance.

Persons required to submit such returns generally must furnish a statement that includes the information contained on such return to the person whose information was reported to the IRS. If a reporter prepares 250 returns or more, the reporter must do so electronically.⁹ The scope of reporting encompasses brokers of a variety of transactions, including securities, real estate, and barter transactions, but to date, no regulations under section 6045 have been issued to address transactions involving digital assets.

Broker reporting

Section 6045(a) requires brokers to file with the IRS annual information returns showing the gross proceeds realized by customers from various sale transactions, when required by the Secretary to do so. A return must provide such details regarding gross proceeds realized by customers from various sale transactions and other information as required by the Secretary.¹⁰ Brokers are required to furnish to every customer written statements with the same gross proceeds information that is included in the returns filed with the IRS for that customer.¹¹ These written statements are required to be furnished by February 15 of the year following the calendar year for which the return under section 6045(a) is required to be filed.

Because gross proceeds constitute income only to the extent that they exceed the seller's adjusted basis, reliable recordkeeping of original basis and necessary adjustments are required. In 2008, the reporting requirements for brokers were revised to provide that every broker that is required to file a return under section 6045(a) reporting the gross proceeds from the sale of a covered security must include in the return (1) the customer's adjusted basis in the security and (2) whether any capital gain or loss with respect to the security is long-term or short-term.¹² Specific rules for determining a customer's adjusted basis are provided.

Covered securities

A covered security is any specified security acquired on or after an applicable date if the security was (1) acquired through a transaction in the account in which the security is held or (2) transferred to that account from an account in which the security was a covered security, but only if the transferee broker received a statement under section 6045A (described below) with respect

⁹ Sec. 6011(e)(5) establishes the applicable number to be used as the threshold for regulatory requirement that a taxpayer file electronically. See generally <https://www.irs.gov/forms-pubs/e-filing-thresholds-remain-unchanged-until-further-notice>. Treasury and the IRS have proposed regulations under section 6011 that lower the threshold to 100 returns for returns required to be filed during calendar year 2022 and to 10 returns for returns required to be filed in calendar years after 2022. See 86 Fed. Reg. 39910 (July 23, 2021), available at <https://public-inspection.federalregister.gov/2021-15615.pdf>.

¹⁰ Sec. 6045(a).

¹¹ Sec. 6045(b).

¹² Sec. 6045(g).

to the transfer. Under this rule, certain securities acquired by gift or inheritance are not covered securities.

A specified security is any share of stock in a corporation (including stock of a regulated investment company); any note, bond, debenture, or other evidence of indebtedness; any commodity, or a contract or a derivative with respect to the commodity, if the Secretary determines that adjusted basis reporting is appropriate; and any other financial instrument with respect to which the Secretary determines that adjusted basis reporting is appropriate.

For stock in a corporation (other than stock for which an average basis method is permissible under section 1012), the applicable date of section 6045(g) is January 1, 2011. For any stock for which an average basis method is permissible under section 1012, the applicable date is January 1, 2012. Consequently, the applicable date for certain stock acquired through a dividend reinvestment plan and for stock in a regulated investment company is January 1, 2012. A regulated investment company is permitted to elect to treat as a covered security any stock in the company acquired before January 1, 2012. For any specified security other than stock in a corporation or stock for which an average basis method is permitted, the applicable date is January 1, 2013, or a later date determined by the Secretary. Consequently, for a note, bond, debenture, or other evidence of indebtedness, or for a commodity or a contract or derivative with respect to the commodity, or for any other financial instrument treated as a specified security, the applicable date is January 1, 2013, or a later date determined by the Secretary.

Time for providing statements to customers

February 15 of the year following the calendar year reporting period is the deadline for furnishing certain written statements to customers, including (1) statements showing gross proceeds (under section 6045(b)) or substitute payments (under section 6045(d)) and (2) statements with respect to reportable items (including, but not limited to, interest, dividends, and royalties) that are furnished with consolidated reporting statements (as defined in regulations). The term “consolidated reporting statement” refers to annual account statements that brokerage firms customarily provide to their customers and that include tax-related information.

To enable brokers to comply with these requirements, section 6045A provides for broker-to-broker reporting under which a broker or applicable person within the scope of section 6045 that transfers to a broker a security that is a covered security when held by that transferor broker must furnish to the transferee broker a written statement that allows the transferee broker to satisfy the basis and holding period reporting requirements under section 6045. Section 6045B requires the issuer of a covered security to file a return describing any organizational action (such as a stock split or a merger or acquisition) that affects the basis of the specified security, the quantitative effect on the basis of that specified security, and any other information required by the Secretary, and to provide copies of that return to holders of specified securities and nominees like brokers.

Penalties for failure to comply with information reporting requirements

A person who is required to file information returns but who fails to do so by the due date for the returns, includes on the returns incorrect information, or files incomplete returns generally is subject to a penalty of \$250 for each return with respect to which such a failure occurs, up to a maximum of \$3,000,000 in any calendar year, adjusted for inflation.¹³ Similar penalties, also with a \$3,000,000 calendar-year maximum, apply to failures to furnish correct written statements to recipients of payments for which information reporting is required.¹⁴ Brokers may be subject to such penalties for failure to file the returns required under section 6045,¹⁵ or for failure to provide statements to others as required by section 6045A.¹⁶

Cash received in trade or business

Section 6050I requires any person engaged in a trade or business to report any transaction (or two or more related transactions) in which the person receives more than \$10,000 in cash. For this purpose, cash includes foreign currency and, to the extent provided by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than \$10,000. Returns required under section 6050I parallel reports required from merchants and services providers under the Bank Secrecy Act. Failure to file such returns and failure to provide customers with copies of such returns are subject to the penalties under sections 6721 and 6722, respectively.¹⁷

Current guidance on digital assets

Most of the statutory provisions requiring third-party information reporting predate the advent of digital assets and none expressly addresses its treatment. In 2014, the IRS published its first guidance¹⁸ on digital assets in a Notice in the form of frequently asked questions. The Notice refers to “virtual currency,” defined as property that is “a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value.” The Notice further identifies a subset of virtual currency (“convertible virtual currency”) as the only digital

¹³ Sec. 6721. These amounts are adjusted annually to account for inflation. For tax year 2021, the penalty amount is \$260, up to a maximum of \$3,193,000 per year. The penalties are reduced if the failure is corrected within a specific amount of time. Sec. 6721(b). The penalties are waived if a person establishes that any failure was due to reasonable cause and not willful neglect. Sec. 6724(a).

¹⁴ Sec. 6722. These amounts are also subject to inflation adjustments under section 6722(f). The penalties are reduced if the failure is corrected within a specific amount of time. Sec. 6722(b). The penalties are waived if a person establishes that any failure was due to reasonable cause and not willful neglect. Sec. 6724(a).

¹⁵ Secs. 6724(d)(1)(B)(iii) and (2)(H).

¹⁶ Sec. 6724(d)(2)(I).

¹⁷ Sec. 6724(d)(1)(B)(vi) and (2)(N).

¹⁸ Notice 2014-21, 2014-16 I.R.B. 938 (Apr. 14, 2014).

asset within the scope of the guidance. The Notice defines convertible virtual currency as virtual currency which has an equivalent value in real currency or acts as a substitute for real currency.

The Notice stated that “a payment made using virtual currency is subject to information reporting to the same extent as any other payment made in property.” The Notice refers to the need for reporting on a Form 1099-MISC, *Miscellaneous Income*, if a payment of fixed and determinable income is made in the course of a trade or business using convertible virtual currency with a fair market value of \$600 or more. This requirement parallels the requirements under section 6041 and the regulatory guidance thereunder, which provide that payments made in property rather than money must be reported by including the fair market value of the property paid.¹⁹ As the use of digital assets has developed, the G-7 Finance ministers have committed to developing common standards and principles to guide the public policy and regulatory issues, while recognizing the potential benefits of the market.²⁰

Explanation of Provision

The provision amends section 6045(c)(1) so that the definition of broker²¹ expressly includes any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. The change clarifies present law to resolve uncertainty over whether certain market participants are brokers. The change is not intended to limit the Secretary’s authority to interpret the definition of broker.

In addition, the provision specifies that the definition of specified security includes a digital asset, which, except as provided by the Secretary, is defined as any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. A digital asset acquired through a broker on or after January 1, 2023, is a covered security subject to basis reporting under section 6045(g).

In section 6045A(a), the provision strikes the words “a security which is” which makes clear that broker-to-broker reporting applies to all transfers of covered securities within the meaning of section 6045(g)(3), including digital assets. The provision also adds new section 6045A(d), which generally applies to transfers by a broker to a person that is not a broker. Section 6045A(d) requires a broker to file a return with the IRS for a calendar year, with respect to any transfer (which is not part of a sale or exchange executed by the broker) during the calendar year of a covered security which is a digital asset from an account maintained by the broker to an account which is not maintained by, or an address not associated with, a person that the broker knows or has reason to know is also a broker. The return will be in such form as

¹⁹ Treas. Reg. sec. 1.6041-1(g); Notice 2014-21.

²⁰ Department of the Treasury press release, “G-7 Finance Ministers and Central Bank Governors’ Communique,” pars. 17 and 18, June 5, 2021, available at <https://home.treasury.gov/news/press-releases/jy0215>.

²¹ A broker is any person (other than a person who is required to report a transaction under section 6043 (dealing with corporate liquidations)), U.S. or foreign, that, in the ordinary course of a trade or business during the calendar year, stands ready to effect sales to be made by others. Treas. Reg. sec. 1.6045-1(a)(1).

determined by the Secretary, showing the information otherwise required to be furnished with respect to transfers subject to section 6045A(a).

The reporting requirement in new section 6045A(d) is limited to transfers that are not otherwise subject to reporting under section 6045 (because those transactions are already reported to the IRS, for example, in the case of a transfer that is part of a sale effectuated by a broker) or under section 6045A(a) (because those transactions are already reported to transferee brokers, for example, in the case of a direct broker-to-broker transfer of a digital asset). The return required under the provision is added to the definition of information return for purposes of section 6724 and related failure to file penalties under section 6721.

The provision expands the definition of cash solely for purposes of section 6050I to include any digital asset (as defined under amended section 6045(g)(3)). No inference is intended that digital assets are treated as cash for any other purpose.

Nothing in the provision or the amendments made by the provision is to be construed to create any inference, for any period prior to the effective date of the amendments, with respect to whether any person is a broker under section 6045(c)(1) or whether any digital asset is property which is a specified security under section 6045(g)(3)(B).

Effective Date

The provision applies to returns required to be filed, and statements required to be furnished, after December 31, 2023.