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Andres Garcia
Internal Revenue Service (IRS)
Treasury Room 6526
1111 Constitution Avenue NW,
Washington, DC 20224

pra.comments@irs.gov

Submitted Electronically and Via Mail

Re: NTF1099-DA

**IRS Form 1099-DA, "Digital Asset Proceeds From Broker Transactions"
Gross Proceeds and Basis Reporting by Brokers for Digital Asset
Transactions; 89 Fed. Reg. 78 St 29433; FR Doc. 2024-08528 (April 22, 2024),
Notice and Request for Comments (the "Notice")**

Dear Mr. Garcia,

Coinbase Global, Inc. and its affiliates ("Coinbase") welcome the opportunity to submit a response to the recently published draft Form 1099-DA Digital Asset Proceeds From Broker Transactions (the "Form 1099-DA"). Coinbase operates one of the largest and most trusted platforms for customers to buy, sell, and manage digital assets. We are dedicated to working openly and constructively with tax authorities and regulators in the United States and globally to promote compliance with applicable regulatory and tax laws.

Coinbase previously submitted two comment letters¹ in response to the proposed regulations (the "Proposed Regulations") on gross proceeds and basis reporting for digital asset transactions, as prescribed by changes made to Section 6045 of the Code

¹ See, Coinbase Global Inc., Broker Reporting Comment Letter ("Comment Letter 1"), IRS-2023-0041-0199, posted October 12, 2023 (available at <https://www.regulations.gov/comment/IRS-2023-0041-0199>) and Coinbase Global Inc., Comment Letter ("Comment Letter 2"), IRS-2023-0041-42332, posted November 12, 2023 (available at <https://www.regulations.gov/comment/IRS-2023-0041-42332>).



in the Infrastructure Investment and Jobs Act of 2021 (the "IIJA").² In those letters, we expressed our serious concerns about the nature and scope of the Proposed Regulations, as well as our detailed observations, technical comments, and recommendations on the proposals. Coinbase reiterates our existing recommendations and burden analysis related to the Form 1099-DA.

Executive Summary

We make the following observations in our commentary on the Form 1099-DA and the accompanying Notice:

1. Form 1099-DA should not be finalized until after the final digital asset broker reporting regulations are issued and a new draft form is made available for review and commentary.
2. Draft form instructions for brokers are needed to provide relevant and comprehensive feedback to the Form 1099-DA.
3. Form 1099-DA requires data elements from brokers that do not serve a meaningful purpose for compliance by brokers.
4. Digital Asset Brokers will require eighteen months after the final Form 1099-DA and instructions are issued to implement reporting.
5. Digital asset brokers should be allowed by default to deliver recipient copies of Form 1099-DA via electronic delivery without positive consent from the taxpayer.
6. Brokers should be allowed to include Form 1099-DA in a composite statement to the recipient.
7. Wash sales currently do not apply to the sale of digital assets, and any boxes related to reporting them should be removed from Form 1099-DA.
8. The economic burden estimates are inadequate and do not reflect an amount close to the true cost of tax compliance with Form 1099-DA tax reporting.

Comments

- 1. Form 1099-DA should not be finalized until after the final digital asset broker reporting regulations are issued and a new draft form is made available for review and commentary.**

The cover page to Draft Form 1099-DA notes that it is "[an] early draft release that reflects the notice of proposed rulemaking that appeared in the Federal Register on August 29, 2023." and that "this early draft release may change based on decisions made in response to comments received in response to that notice of proposed

² All "section" or "§" references are to the U.S. Internal Revenue Code of 1986 (the "Code"), as amended, and all "Treas. Reg. §" references are to the Treasury regulations promulgated thereunder. References to the "IRS" are to the U.S. Internal Revenue Service.



rulemaking.” Digital Asset brokers cannot provide commentary on a form they know may change based on final regulations. As noted later in this letter, there are data elements that were included in the draft form that came as a surprise to the industry based on the Proposed Regulations. The final regulations may deviate significantly from the Proposed Regulations, and the digital asset industry can’t be expected to anticipate changes to the form as a result of unknown future changes to the Proposed Regulations. To ensure meaningful and legally sufficient opportunity for public comment, we recommend that a new draft Form 1099-DA be released after the regulations are finalized, and that an additional 60-day comment period be granted at that time.

2. Draft form instructions for brokers are needed to provide relevant and comprehensive feedback to the Form 1099-DA.

Coinbase is unable to provide meaningful commentary on Form 1099-DA without accompanying detailed instructions for the issuer. Viewers of the draft form are left to interpret the meaning of many data points digital asset brokers are being asked to provide. The requirements in Form 1099-DA could be more or less burdensome than a broker’s interpretation of the form itself. We recommend that when the draft instructions are made available, both the draft instructions and the 1099-DA form be released concurrently and a new comment period be allocated to review the draft form and instructions simultaneously.

3. Form 1099-DA requires data elements from brokers that do not serve a meaningful purpose for compliance by brokers.

Form 1099-DA should take into consideration all industry-wide comments submitted regarding the Proposed Regulations.

The draft form goes beyond the parameters of the Proposed Regulations and corresponding commentary by requesting information not initially prescribed in the Proposed Regulations, which themselves exceed the scope and authority of the IJA, and by requiring extra data points to be captured and translated onto the form for reporting purposes. This includes the following examples:

- Broker type involved in the transaction
 - No other tax information return requires this explanation. This does not appear to have practical utility for taxpayer compliance or IRS enforcement. The added checkbox on the draft form to indicate whether the broker is a kiosk operator, a digital asset payment processor, a hosted wallet provider, an unhosted wallet provider, or “other” exceeds the level of detail collected on a broker for traditional broker reporting on a Form



1099-B. Also, it is unclear how a broker serving multiple roles would need to categorize this information. It could become necessary to track the type of broker on a per transaction basis, which would add substantial cost, complexity and burden, all in service of a requirement that lacks support in the implementing regulations and authorizing statute. We recommend removing this requirement from the form.

- Explanation for Missing Taxpayer Identification Number (“TIN”)
 - No other tax information return requires this explanation. Information reporting systems are not built to track the reason for a missing TIN. The IRS penalizes brokers and taxpayers for missing TINs and requires backup withholding when TINs are missing. Providing this free-form explanation will not increase taxpayer compliance with reporting the sale of digital assets on their Form 1040. Modifying systems to capture the reason for a missing TIN will be costly and may require a correction process if the taxpayer does not agree with the reason that has been assigned. We recommend removing this requirement from the form.

- Form 1099-DA Uniquely and Arbitrarily Requires Brokers to Report Reason that a Digital Asset is a Noncovered Security Under Section 6045
 - Form 1099-B and draft Form 1099-DA both require brokers to check a box indicating whether a lot is covered or noncovered under section 6045. But, the draft Form 1099-DA goes further by requiring brokers to check a box indicating the reason it is noncovered.³ Traditional cost basis systems are programmed to tag lots as covered and noncovered, but they do not track the reason why. The draft form only contemplates three reasons lots may be noncovered: they were purchased before 2023, the broker did not provide hosted wallet services, or it was transferred to the broker before disposition. But, other reasons may, and often do, exist. A lot may be noncovered because of the absence of an issuer statement, or for other unknown reasons. Adding this data point is nontrivial and will meaningfully increase the cost of compliance for digital asset brokers. We recommend removing this requirement from the form.

4. Digital Asset Brokers will require eighteen months after the final Form 1099-DA and instructions are issued to implement reporting.

Large digital asset brokers would need a minimum of 18 months after the finalization of the regulations and release of the final Form 1099-DA and instructions to build systems

³ Coinbase reiterates its position stated in Comment Letter 2 that not all digital asset transactions are transactions reportable on Form 1099-DA under Section 6045. Comment Letter 2 at 18] Further, for the avoidance of doubt, many digital asset transactions that are reportable on Form 1099-DA by operation of Section 6045((g)(3)(B)(iv) are not securities transactions outside the context of Section 6045’s reporting obligations.



capable of accurately reporting gross proceeds and cost basis reporting. As discussed in Comment Letter 2, even a platform like Coinbase that has invested significant resources in tax compliance would need a substantial amount of time to develop the necessary resources to comply with final regulations and the new Form 1099-DA. This timeframe is required due to the novelty and magnitude of the undertaking and because, as discussed above, there may be new data elements introduced that the industry had not anticipated which would require significant code changes, testing and procedural changes in order to comply.

5. Brokers should be allowed to include the Form 1099-DA in a composite statement to the recipient.

Beyond the expansion of reportable data points, there also is a concern with the increased volume of forms required to be issued to a single taxpayer. Each recipient copy of the 1099-DA with instructions equates to two printed pages. Composite tax forms, like those currently issued for Form 1099-B, streamline reporting by combining various transactions, making reporting capital gains and losses from investments easier for taxpayers by grouping transactions like they would be reported on Form 8949. This simplifies tax filing for investors by reducing the need to aggregate multiple forms. We recommend allowing Form 1099-DA to be included in a composite recipient statement. The specifications for the composite Form 1099-DA should be outlined in IRS Publication 1179 General Rules and Specifications for Substitute Forms 1096, 1098, 1099, 5498, and Certain Other Information Returns.

6. Digital Asset brokers should be allowed to default delivery of recipient copies of 1099-DA to electronic delivery without positive consent from the taxpayer.

The Proposed Regulations on the reporting of digital asset sales do not address how a recipient statement must be delivered to the recipient. Without draft Form 1099-DA form instructions, the delivery mechanism for the Form 1099-DA is unknown. Brokers are left to assume that the current section 6045 regulations, which require brokers to mail recipient statements to the last known address of the broker, will apply to the Form 1099-DA. Public Law 107-147 authorized issuers of Form 1099s to follow the "normal" procedures as laid out in Publication 1179, Section 4.6 for electronic delivery of recipient statements when the broker first obtains consent. Requiring digital asset brokers to develop an affirmative consent system for opting into electronic Form 1099s is inconsistent with their business models, where all transactions are conducted electronically, and unmanageable given the large number (over eight billion forms by the IRS's estimates) of Form 1099-DAs that are expected. Digital asset brokers do not send



physical mail to their clients. They communicate with their clients through electronic means.

Coinbase recommends that brokers who facilitate trades of digital assets through electronic means, such as a smartphone, tablet, computer, or similar technology, be permitted to furnish written statements to a recipient electronically without requiring the recipient to first consent to receive such statements electronically. Taxpayers have demonstrated they have the means to access statements electronically because they conduct all their transactions electronically. Publication 1179 also should be updated to reflect that consent is unnecessary for the Form 1099-DA. The current burden estimates do not factor in the high cost and environmental impact of printing and mailing up to eight billion Forms 1099-DA.

7. Wash sales do not apply to the sale of digital assets, and any boxes related to reporting them should be removed from the 1099-DA.

The Proposed Regulations contain a coordination rule, Treas. Reg. § 1.6045-1(c)(8)(i), applicable to transactions involving the sale of a digital asset that also constitutes a sale of a security as so defined (other than options that constitute contracts covered by section 1256(b)). Under this proposed coordination rule, brokers must report the sale of an asset that qualifies both as a security and as a digital asset only as a sale of a digital asset and not as a sale of security.

If the sale of an asset must be reported as a digital asset and not as a sale of a security, then only reporting rules applicable to digital assets should apply to assets reported on Form 1099-DA. Treas. Reg. § 1.1091-1 only applies to losses from wash sales of stock or securities. The Treasury Department's Fiscal Year 2024 and 2025 Green Books acknowledge that the wash sale rule does not apply to digital assets and includes proposals to amend the existing rule to include digital assets, thus confirming that the wash rule does not apply to digital asset transactions. Wash sale reporting rules should not apply to any assets reported under the coordination rule until Congress passes wash sale legislation for digital assets. The IRS should adopt Coinbase's sixth recommendation in its Comment Letter 2 to continue to report securities or commodities that are tokenized (*i.e.*, take the form of digital assets) under the existing section 6045 regulations for securities and commodities after the effective date of the regulations. Disallowed losses would be appropriately reported on IRS Form 1099-B, Proceeds from Broker and Barter Exchange Transactions.



8. The burden estimates are inadequate to reflect the significant cost of tax compliance with the new tax reporting.

The Notice includes an estimated number of respondents who will submit a Form 1099-DA at 5,050 and estimated number of responses per respondent at 2,833. The IRS then estimates the time per response at nine minutes and concludes that the estimated total annual burden hours is 2,146,250 hours. Because these figures appear to be based on the numbers and methodology described in the Proposed Regulations, we reiterate our prior comments that the Proposed Regulations, and now the proposed Form 1099-DA, fail to adequately address the economic impact of the new rules to U.S. taxpayers and the digital asset industry. Without a final Form 1099-DA or instructions, it is impossible to adequately comment on the full economic burden of the new form. As we recommended above, both the Form 1099-DA and draft form instructions should be released concurrently and a new comment period be allocated to the form and instructions.

Even in the absence of a final Form 1099-DA and final form instructions, it is readily apparent that the IRS's estimates are woefully understated. The estimate of 2,833 responses per respondent fails to take into account the number of transactions for brokers at the lot level. Each transaction will be made up of multiple lots based on whether the basis is being reported to the IRS and its holding period. Given the granular level of information required for lots with missing cost basis, it is conceivable that a single transaction could have half a dozen or more possible Form 1099-DAs.

Consider the following example of a single sale of cryptocurrency that could require Coinbase to report the data on six Form 1099-DAs:

- Form 1099-DA #1
 - Short term gain, basis reported
- Form 1099-DA #2
 - Long term gain, basis reported
- Form 1099-DA #3
 - Short term gain, noncovered acquired before 2023, basis not reported
- Form 1099-DA #4
 - Short term gain, noncovered transferred into broker*, basis not reported
 - *note: if a sale is made up of lots that were transferred in from multiple digital wallet addresses each transferred lot will require an additional Form 1099-DA.
- Form 1099-DA #5
 - Long term gain, noncovered acquired before 2023, basis not reported
- Form 1099-DA #6
 - Long term gain, noncovered transferred into broker*, basis not reported



- *note: if a sale is made up of lots that were transferred in from multiple digital wallet addresses each transferred lot will require an additional Form 1099-DA.

Each of these reports adds to the total cost and burden to provide a Form 1099-DA to taxpayers. As we described in our Comment Letter 2, Coinbase expects that it would need to report well over one *billion* transactions annually under the Proposed Regulations—many multiples more than the world’s largest traditional financial services institutions are required to report today. The number of reportable digital asset transactions can only be expected to increase in coming years. Because the IRS’s estimates of 2,833 responses per respondent grossly underestimates the number of Form 1099-DAs that brokers will be required to submit, the IRS should issue revised estimated compliance burdens.

The IRS’s public statements confirm the inadequacy of the agency’s own estimates. Following issuance of the Proposed Regulations, and as described in our Comment Letter 2, the IRS’s former Project Director for its Digital Assets Initiative conceded that the Treasury’s and the IRS’s estimates are off by orders of magnitude—and that the IRS is not equipped to handle the flood of reporting that would follow. According to the former IRS Project Director, the agency now expects to receive *eight billion* 1099-DA reports annually, a more than *55,000% increase* over what the Treasury and the IRS estimated in the Proposed Regulations issued in August 2023.⁴ Under the IRS’s own cost assumptions, that volume of reports would mean annual reporting cost of *\$76 billion* and startup costs of *\$419 billion*—amounting to more than a sixth of the global crypto market cap (and a third of the global crypto market cap at the submission date of our Comment Letter 2).⁵ Form 1099-DA repeats the figures from the Proposed Regulations and fails to reconcile or address the latest IRS public statements. Absent a reconciliation of the eight billion figure with the IRS’s “respondent” and “forms per respondent” figure, U.S. taxpayers are unable to meaningfully comment or provide feedback on the actual economic burden of Form 1099-DA.

The former IRS Project Director also acknowledged that eight billion 1099-DAs would more than double the amount of all 1099s the IRS currently receives annually, and that the IRS’s current technology cannot handle that volume of reporting.⁶ The simple example above of a single transaction that results in six Form 1099-DAs demonstrates how quickly digital asset tax reporting, if not meaningfully streamlined, will multiply into an unmanageable volume of information. Investing scarce resources wrangling a torrent of low-value reports will only cannibalize critical modernization efforts with attenuated

⁴ Jonathan Curry, *IRS Prepping for at Least 8 Billion Crypto Information Returns*, Tax Notes (Oct. 26, 2023) (emphasis added).

⁵ As of June 10, 2024, the total crypto market cap is approximately \$2.48 trillion. CoinMarketCap, <https://coinmarketcap.com>.

⁶ Jonathan Curry, *IRS Prepping for at Least 8 Billion Crypto Information Returns*, Tax Notes (Oct. 26, 2023).

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benefits.⁷ The IRS Project Director's comments underscore the inadequacy of the Treasury's and the IRS's cost-benefit analysis and drive home the need for Treasury and the IRS to slow down, reconsider the scope of the regulations, and re-submit them for meaningful public comment after receipt of comments on this Form 1099-DA.

We greatly appreciate your consideration of our comments, and we would be happy to discuss these and other tax policy issues or technological questions with you at your convenience. We view our mission to include proactive engagement on tax policy initiatives around the world and look forward to hearing back from you and helping you develop constructive tax rules for the digital asset ecosystem.

Very truly yours,



Lawrence Zlatkin
Vice President, Tax
Coinbase Global, Inc.

⁷ See, e.g., Gen. Acct. Off., *Outdated and Old IT Systems Slow Government and Put Taxpayers at Risk* (Feb. 15, 2023), <https://www.gao.gov/blog/outdated-and-old-it-systems-slow-government-and-put-taxpayers-risk>.