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Submitted via Federal eRulmaking Portal

Internal Revenue Service
Room 5203; CC:PA:LPD:PR (REG – 122793 – 19)
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

The Honorable Lily Batchelder
Assistant Secretary (Tax Policy)
U.S. Department of Treasury
1500 Pennsylvania Avenue NW
Washington, DC 20220

Re: Comments Regarding the Reporting of Gross Proceeds by Brokers for Digital Asset Transactions; IRS REG – 122793 – 19

Dear Ms. Batchelder:

On behalf of the Electronic Transactions Association (ETA), we appreciate the opportunity to share our thoughts in response to the Department of the Treasury and the Internal Revenue Service notice of proposed rulemaking regarding the regulations on gross proceeds and basis reporting by brokers and the determination of amount realized and basis for digital asset transactions.

ETA appreciates the opportunity to contribute to this important dialogue and remains committed to supporting efforts that promote fair, transparent, and competitive markets for consumer financial products and services. However, we urge the Department of the Treasury and the Internal Revenue Service to carefully consider the impact the proposal has on marketplace facilitators and closed-system virtual assets.

Who We Are

ETA is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing more than $44 trillion in purchases worldwide and deploying payments innovation to merchants and consumers.

ETA's Input on Digital Asset Proposal

In the evolving landscape of digital transactions and regulatory frameworks, a critical debate is unfolding concerning marketplace facilitators and their obligations under the proposed regulations. These regulations delve deeply into the intricate web of scenarios where merchants accept digital assets as payment for goods and services. However, contentious reporting requirements loom large when customers procure items from sellers in a marketplace that facilitates these transactions. Surprisingly, the proposed regulations classify the facilitators, like the marketplace platform itself, as payment processors, even if they merely transmit digital assets from buyer to seller without converting them into cash. This

categorization raises questions about the broader implications and feasibility of these requirements. In parallel, another set of regulations is causing ripples within the digital asset industry by attempting to define the boundaries of what constitutes a digital asset, specifically excluding certain types of virtual assets existing within closed systems. These regulations have sparked discussions around the implications for various enclosed environments and the need for broader definitions. As we navigate this complex regulatory landscape, it's evident that the digital asset industry is at a crossroads, and it's imperative to consider the practicality, fairness, and broader implications of these proposed rules.

Marketplace facilitators

The proposed regulations discuss a variety of scenarios where merchants accept digital assets as payment for goods and services. However, unfavorable, and burdensome reporting requirements are proposed to apply to instances where a customer procures an item from a seller in a marketplace that facilities the transaction. In that case, the facilitator (the marketplace platform in this example) would fall under the definition of a payment processor, even when it merely transmits the same digital asset from a buyer to a seller without converting such asset into cash. Both the preamble and the actual proposal discuss in detail how the transmission of the digital assets would be viewed as if the payment recipient is provided with a temporarily fixed exchange rate on a digital assets payment that is transferred directly from a customer to that payment recipient, which in turn results in the application of the reporting rules to the payment processor.

The preamble further elaborates that, "the fixed exchange rate provided by the digital asset payment processor both facilitates the transaction and serves as a foundation to determine the fair market value received by the customer in the exchange. Accordingly, to meet their information reporting obligations in these alternatively structured payment transactions, digital asset payment processors will need to ensure that they obtain the required personal identifying information (that is, name, address, and tax identification number) from the customer (that is, the party making the payment in digital assets) in advance of these transactions. It is anticipated that digital asset payment processors will report gross proceeds from the disposition of digital assets by customers but may not have the information necessary or available to report the basis of the disposed-of digital assets unless they also hold digital assets for those customers." Examples 12 through 16 (Prop. Treas. Reg. 1.6045-1(b)) illustrate the proposed approach.

These requirements are impractical and onerous. Instead, the exception under Prop. Treas. Reg. §1.6045-1(a)(10) that absolves merchants directly accepting digital assets as payment for goods or services from the reporting requirements should be extended to include marketplace platforms that facilitate transactions between unrelated parties, regardless of whether the platform itself is a merchant, an intermediary, or can act in either capacity, depending on the particular sale. Further, such marketplaces would not be able to provide meaningful information beyond the gross proceeds of each transaction solely due to the lack of the capability to trace the cost basis of the assets. The technological undertaking to develop this capability is insurmountable. It is clear that the regulations were drafted with the key digital asset industry participants in mind (e.g., digital asset exchanges and other similar platforms), who are exponentially better positioned to obtain the cost basis information, and marketplace facilitators are inadvertently caught in the draft legislation.

Closed-system virtual assets

The preamble to the regulations specifically states that the definition of digital assets does not include certain other types of virtual assets that, exist only in a closed system (such as video game tokens that can

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be purchased with U.S. dollars or other fiat currency but can be used only in-game and that cannot be sold or exchanged outside the game or sold for fiat currency). While the provided video game example is helpful, we encourage considering broader examples of such assets, which may be contained in other "walled garden"-type environments (i.e., enclosed environments that control the end user's access to certain services or functions). For instance, consider a loyalty program that could be represented with an NFT, where a customer would buy a blockchain token for fiat currency and receive exclusive access to the events or discounts on the apparel, among other things. If said customer is unable to transfer the token outside of the program's walled garden in any manner (by sale or gift), it should follow that such token should also not fall under the definition of digital assets as this use case is in substance no different from the closed system video game tokens mentioned in the preamble.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or Scott Talbott, ETA's Executive Vice President, at stalbott@electran.org.

Sincerely,

Jeff Patchen
Director of Government Affairs
Electronic Transactions Association