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DIGITAL ASSET TAX POLICY

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As digital assets reshape the global financial landscape, policymakers are considering the challenge of incorporating novel digital transactions into the U.S. Internal Revenue Code in a fair and effective manner. Legislative proposals are emerging, including S.2207[1] introduced by Sen. Cynthia Lummis (R-WY) and a discussion draft of the Digital Asset Protection, Accountability, Regulation, Innovation, Taxation, and Yields (PARITY) Act[2] from Reps. Max Miller (R-OH) and Steven Horsford (D-NV). In addition, the Trump White House released Strengthening American Leadership in Digital Financial Technology[3], a comprehensive report framing regulatory and legislative recommendations on digital assets policy, including taxation.

This document examines the principal policy proposals for digital assets taxation and provides a comparison of how lawmakers and the Trump Administration envision balancing innovation with a modernized tax system. Where industry is concerned, this paper presents one approach but acknowledges there are multiple perspectives across the digital asset ecosystem.

This is the beginning of a conversation around balancing fairness and simplicity, novelty and parity, and innovation and compliance in digital asset tax policy.

Digital asset tax policies discussed below include:

- De minimis exemption for small digital asset transactions
- Character, source, and timing of income for mining and staking
- Mark-to-market
- Charitable contributions
- Staking in investment structures
- Nonrecognition events, including wrapping and unwrapping a digital asset
- Nonrecognition for asset transfers in loan transactions
- Safe harbor for foreign persons trading in digital assets
- 6050I digital assets as cash
- Digital assets held as retirement investments
- Wash sales and constructive sales rules
- R&D eligibility for blockchain development

[1] https://www.congress.gov/bill/119th-congress/senate-bill/2207
[2] https://horsford.house.gov/sites/evo-subsites/horsford.house.gov/files/evo-media-document/miller-horsford_digital-asset-tax-bill-discussion-draft.pdf
[3] https://www.whitehouse.gov/crypto

It is worth noting that the Lummis bill, in setting definitions in the first section, establishes look-through tax treatment in which a digital asset that represents a financial asset shall be treated in the same manner as that financial asset (excluding stablecoins) and a digital asset that represents property shall be treated in the same manner as that property.

De minimis exemption for small digital asset transactions

Current law

Under U.S. tax law, digital assets are generally treated as property for federal tax purposes. This means that every time a taxpayer sells, exchanges, or uses a digital asset, including for small everyday purchases, they may trigger a taxable event. There is not a de minimis exemption in effect for capital gains or losses on these transactions.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should support a de minimis exemption, indexed to inflation, under which small gains or losses on digital asset transactions are excluded from tax reporting.	No recommendation on a de minimis exemption for small payment activities. Instead, the Trump PWG report recommends a narrow de minimis exemption only for high-volume low-value digital asset receipts in which valuations change rapidly, dominion and control is unclear, and taxpayers have limited ability to influence timing of receipt. This includes receipts of airdrops, staking, hard forks, and	Threshold: Total value of $300 per transaction (or related transactions) for gains or losses from digital assets. Type: Purchase of products or services in a personal transaction (not deductible as trade or business expense). Cap: After exclusions, if total gain for year exceeds $5,000, no further exclusion. Limitation: Shall not apply to any disposition with	For the sale or exchange of regulated payment stablecoins: Gain excluded from gross income, loss recognition allowed. For routine consumer payments using regulated payment stablecoins: Per-transaction de minimis exclusion up to $200, possible annual cap to apply.

	mining rewards for taxpayers who do not operate a node or carry out digital asset mining.	principal purpose to eliminate gains. Recordkeeping: Taxpayer shall maintain books and records or separate wallets or accounts to distinguish between dispositions eligible for exclusion and those not eligible. Inflation adjustment: Beginning after 2026. Sunset: December 31, 2035.	

Character, source, and timing of income for mining and staking

Current law: Timing and character

The receipt of property in exchange for services is taxable as ordinary income at the time of receipt, based on the fair market value of the property at the time received.

In comparison, income received from self-created property, such as manufactured goods, farmed crops, mined gold, and self-created intellectual property, is not taxable until the property is sold or disposed of.

IRS Revenue Ruling 2023-14[4] states that rewards from mining and staking activities are includable in gross income as property in exchange for services at the time the taxpayer gains "dominion and control" over the reward (i.e., when the taxpayer can sell or transfer them). The amount included as income is the fair market value (FMV) of the token at the moment of "dominion and control." When the taxpayer later sells, trades, or spends the mined token / staking reward, they realize a capital gain or loss. The cost basis is the FMV at

[4] https://www.irs.gov/pub/irs-drop/rr-23-14.pdf

the time of receipt, and the gain/loss is the difference between the sale price and this basis.

In summary, first, the taxpayer pays ordinary income tax on the FMV of the mining/staking reward at the moment of receipt; later, the taxpayer pays capital gains tax on any appreciation (or claims a loss on depreciation) from that basis. For example, if a taxpayer stakes and receives 1 ETH when ETH is $2,000, they report $2,000 as ordinary income for that year. If they later sell the ETH for $2,500, they report a $500 capital gain.

Current law: Source

For U.S. tax purposes, income sourcing generally depends on where the income-generating activity occurs. In the case of staking, the activity (validating transactions or staking tokens) occurs on a decentralized network, which is not tied to any specific geographic location.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Mining and staking rewards should be treated as property created by the taxpayer and therefore should be taxed upon disposition rather than receipt. As a general rule, a taxpayer who creates property does not realize income at the time of the property's creation but at the time the property is sold. Staking and mining rewards should be sourced to the residence of the recipient. The source of staking rewards should not	Treasury and the IRS should review previously issued guidance related to the timing of income from staking and mining and consider whether to clarify, modify, or reverse that guidance. If Congress passes legislation regarding the timing of taxation, Congress should consider whether similar rules should apply to rewards from other digital asset validation methods, what the character of income upon disposition should be and if ordinary, what rules should	Defers income recognition until digital assets from mining/staking are sold or disposed, then included in gross income and treated as ordinary income. Source: Source of income related to validation shall be residence of recipient at time of receipt. Sunset: December 31, 2025.	Creates an election regime for mining and staking rewards by allowing taxpayers to defer ordinary income recognition on rewards for up to five years, then set basis at FMV on recognition with subsequent appreciation treated as capital gain. Source is not included. Mechanics based on section 83(b) election.

depend on the location of the validator, whether the owner stakes on their own versus through a staking pool, or any other factor.	apply to determine the order of dispositions of ordinary versus capital units, and potential differences between the FMV of rewards at the time of receipt compared with the FMV of rewards at the time of sale or disposition.		

Mark-to-market

Current law

The U.S. tax code requires dealers in securities, and, by election, certain traders in securities or commodities, to use the "mark-to-market" accounting method for tax purposes. This means that at the end of each tax year, these taxpayers value their securities at fair market value and recognize any gains or losses as ordinary income or loss for that year, regardless of whether the securities have actually been sold. This approach eliminates the need to track capital gains and losses, and it bypasses limitations on capital losses and wash sale rules that typically apply to investors.

The mark-to-market method is mandatory for dealers in securities, but traders can opt in by making a timely election, which comes with both advantages (such as ordinary loss treatment and simplified tax reporting) and disadvantages (such as recognizing unrealized gains as ordinary income).

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should extend mark-to-market accounting to digital assets for which the fair market value can be determined on an exchange or an	Legislation should be enacted to amend Section 475 to include actively traded fungible digital assets.	Application: Dealer/trader election for actively-traded “specified assets.” “Specified assets” defined as digital asset, notional principal	Allows dealers and traders in digital assets to elect mark-to-market treatment, but only for digital assets that meet an

industry-recognized index. Extending mark-to-market to digital assets would ease compliance costs for high-frequency dealers and traders and place them "on par" with participants in other markets.		contract with respect to a digital asset, or any option or contract in a digital asset. Dealer: Dealer in specified assets is defined as a taxpayer which regularly purchases specified assets from, or sells to, customers in ordinary course of trade or business, OR regularly offers to enter into, assign or terminate positions in specified assets with customers in ordinary course of trade or business. Revocation: Election applies to taxable year made an all subsequent taxable years unless revoked with consent of Secretary. Sunset: December 31, 2025.	"actively traded" standard.

Charitable contributions

Current law

Under current law, a taxpayer donating digital assets to a qualified charity and claiming a deduction of more than $5,000 is required by law to obtain a qualified appraisal for the donated property. The appraisal must be conducted by a qualified appraiser (someone who meets IRS standards for education and experience in appraising the relevant type of property). The qualified appraisal must be completed no earlier than 60 days before the date of the donation and before the due date of the tax return on which the deduction is claimed.

Even though digital assets are traded on public exchanges, the IRS does not consider them "publicly traded securities" for this purpose. Thus, a taxpayer cannot simply use the publicly available exchange value; a formal appraisal is required.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Allow charitable deductions for digital assets easily valued or regularly traded without requiring a qualified appraisal.	No recommendation. The Working Group included this issue among those that might warrant future guidance or legislation.	Adds "actively traded digital assets" to section 170(f)(11), treats like other property for appraisals. Adds "qualified appreciated digital assets" to rules on contributions to private foundations. "Qualified appreciated digital assets" defined as a digital asset which is actively traded and is capital gain property.	Adds "actively traded digital assets" to the list of property exempt from qualified appraisal requirements where reliable market pricing exists and that also meet a minimum average yearly market capitalization, with possible additional thresholds. For illiquid / speculative digital assets, the donor's deduction would be limited to the amount actually realized by the charity on disposition.

Staking in investment structures

Current law

U.S. investment funds holding investment assets that qualify as exchange-traded products (ETPs) are typically organized as investment trusts (rather than as business entities) that are treated as grantor trusts for tax purposes. Investment trusts have restrictions on permitted activities, including engaging in a profit-making business or changing the investments of the trust; and are also required to have only one class of ownership interests. If an investor trust treated as a grantor trust does not meet these restrictions, it is considered a partnership for federal tax purposes.

While the IRS has not specifically prohibited grantor trusts from earning staking rewards, there is sufficient regulatory uncertainty to cause public grantor trusts, such as ETFs/ETPs, to not engage in staking assets. A major point of uncertainty relates to grantor trust qualifications: For a trust (such as a spot bitcoin or ether ETP) to qualify as a grantor trust for tax purposes, the trust must have a single class of ownership and trustees must not have the power to vary the trust's investments. If the trust begins staking its assets, this may be seen as varying the trust's investments or engaging in an active trade or business, potentially disqualifying the trust from grantor trust status.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should update grantor trust rules to expressly provide for the flexibility needed to permit staking activities in a grantor trust (or, alternatively, the introduction of a similar vehicle for digital assets, including those that engage in staking activities). In addition, Congress should update the "qualifying income"	Treasury and the IRS should publish guidance addressing whether an investment trust treated as a grantor trust fails to qualify if the trust stakes digital assets owned by the trust.	Not included.	Aims to clarify that passive, protocol-level staking by investment vehicles holding digital assets is not a trade or business for §§512 and 864, while active, customer-facing validation remains an ordinary business activity.

exception to the publicly traded partnership rules to expressly include staking income.			

Nonrecognition events, including wrapping and unwrapping a digital asset

Current law

Digital asset transactions can occur without a clear gain or loss of value. Types of digital asset transactions that require clarification as non-recognition events include wrapping and unwrapping a digital asset, minting and burning/redeeming liquid staking tokens or identifier tokens when providing liquidity on a DeFi protocol, migrating or converting a token in a token migration or protocol upgrade, and transferring a digital asset from one blockchain to another.

Wrapping and unwrapping: Wrapping involves converting a native blockchain asset (e.g., ETH) into a tokenized version (e.g., WETH) to use on another protocol. Unwrapping reverses this process. In the absence of clear guidance, wrapping and unwrapping have generally been treated as non-taxable events if a taxpayer retains beneficial ownership and there is no change in value or economic substance. These are considered technical changes, not disposals or exchanges for tax purposes.

Minting liquid staking tokens or identifier tokens (receiving tokens): When a taxpayer deposits assets into a DeFi protocol (e.g., a liquidity pool or liquid staking service), the taxpayer typically receives a new token (LP token or liquid staking token) representing their position. The IRS and most practitioners tend to treat this as a taxable exchange because the taxpayer is disposing of the original asset and acquiring a new one, triggering a capital gain or loss based on the difference between the cost basis and the asset's fair market value at the time of the transaction.

Burning/redeeming (returning tokens): When a taxpayer redeems a liquidity pool or liquid staking token for the underlying asset, clarification would be helpful for when a swap of the token for the underlying asset is a taxable event.

Rewards: Rewards received (such as yield or incentive tokens) are taxed as ordinary income at the exact time of receipt.

Token migration: In general, if a taxpayer exchanges old tokens for new tokens during a migration, this could be treated as a taxable event (treated as a swap), unless the migration

is purely technical and there is no change in beneficial ownership or value. If the migration is equivalent to a stock split or technical upgrade with no new value received, it generally would not be a taxable event; the new token would inherit the original cost basis and holding period. If the taxpayer receives new tokens or there is a change in economic substance, it could be a taxable event.

Protocol upgrade: If a protocol upgrade does not result in new tokens or a change in property, there is possibly no taxable event.

Transferring a digital asset from one blockchain to another (bridging): If the transfer is purely technical and the taxpayer retains beneficial ownership (i.e., receives the same asset on the new chain), this is likely not a taxable event. If the process results in the receipt of a new or materially different token, or if the taxpayer receives additional value, it may be a taxable event (treated as a swap).

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should clarify and codify where digital asset transactions without clear gain or loss of value are nonrecognition events.	Treasury and the IRS should publish guidance addressing whether wrapping and unwrapping transactions are taxable transactions.	Not included.	Not included.

Nonrecognition for asset transfers in loan transactions

Current law

Posting digital assets as collateral with no transfer of ownership is generally not a taxable event because the taxpayer has not disposed of or exchanged the asset, so no gain or loss is realized. However, if the loan structure requires the taxpayer to transfer digital assets to the lender or a third-party platform (and loses beneficial ownership or control), this may be treated as a taxable disposition. The IRS may view this as a sale or exchange, triggering capital gain or loss based on the difference between the cost basis and the asset's fair market value at the time of transfer.

Unlike traditional securities loans (which can qualify for non-recognition under Code section 1058), there is no equivalent safe harbor for digital assets.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should amend Section 1058 to provide that no gain or loss should be recognized on the transfer of a digital asset pursuant to a loan agreement that meets requirements similar to those currently under Section1058. Congress should clarify that, insofar as loans of digital assets are concerned, fixed-term loans entered into in the normal course of a lending business or the ordinary management of an investment portfolio should be treated as a non-recognition transaction.	Legislation should be enacted to amend Section 1058 to provide that it applies to loans of actively traded fungible digital assets, provided that the loan has terms similar to those currently required for loans of securities. The Treasury Secretary should be granted authority to determine when a digital asset is actively traded, and to address differences between the standard terms of securities loans and crypto loans.	Application: Replaces "securities" with "specified assets." "Specified assets" defined as a security or an actively-traded digital asset. Fixed term: Inserts in section 1058(b)(3) "other than as a result of such agreement being fixed-term, except as otherwise provided by the Secretary." Basis: Mandates basis adjustments, includes income lender would have received. Forks/airdrops: Grants Treasury authority to implement rules for forks, airdrops, and fees associated with digital asset lending. Sunset: December 31, 2025.	Extends §1058 nonrecognition to lending of fungible digital assets, clarifies that fixed-term loans in ordinary course qualify, and confirms basis and income-inclusion mechanics for substitute payments and the return of lent assets.

Safe harbor for foreign persons trading in digital assets

Current law

Non-U.S. persons trading in stocks, securities, and certain commodities for their own accounts are generally not treated as engaged in a U.S. trade or business. Thus, their trading gains are not subject to U.S. federal income tax.

There is uncertainty as to whether digital assets are covered by the existing safe harbor. The IRS has not issued definitive guidance, and digital assets are not explicitly considered.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should codify a safe harbor that mirrors the safe harbors for securities and commodities.	Legislation should be enacted to amend Section 864(b)(2) to include actively traded fungible digital assets.	Not included.	Expands the current "trading safe harbor" so non-U.S. persons can trade digital assets through U.S. intermediaries or exchanges for their own account without being treated as engaged in a U.S. trade or business, excluding dealers. Limits the safe harbor to digital assets and transactions of a kind customarily dealt in and consummated on digital asset exchanges, tying the rule to standard market practice.

6050I digital assets as cash

Current law

In the Infrastructure Investment and Jobs Act (IIJA) of 2021, Congress amended Section 6050I of the Internal Revenue Code to expand the definition of "cash" to include digital assets. This means that any person engaged in a trade or business who receives more than $10,000 in digital assets in one transaction (or two or more related transactions) is required to file an information return (IRS Form 8300[5]) with the IRS and FinCEN. This requirement previously applied only to cash transactions.

Stakeholders have expressed concerns with this expansion of 6050I to digital assets, including privacy concerns in which reporting a digital asset wallet address would expose a user's entire transaction history (including those transactions under the $10,000 threshold) and unintended chilling effects on digital asset use.

The IRS and Treasury have issued guidance[6] that the digital asset reporting requirements under Section 6050I will not take effect until regulations are finalized.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should repeal the addition of "digital assets" from the definition of "cash" under Section 6050I.	Treasury and the IRS should consider proposing regulations implementing reporting of digital assets paid to a trade or business in a manner that takes stakeholder concerns into account.	Not included.	Not included.

[5] https://www.irs.gov/pub/irs-pdf/f8300.pdf
[6] https://www.irs.gov/pub/irs-drop/a-24-04.pdf

Digital assets held as retirement investments

Current law

In May 2025, the Department of Labor (DOL) rescinded its earlier guidance that had strongly discouraged plan fiduciaries from including digital assets in 401(k) investment menus. The DOL now maintains a "neutral" stance, neither endorsing nor prohibiting the inclusion of digital assets in 401(k) plans. Fiduciaries must follow standard ERISA principles of prudence, care, and diligence when evaluating such options.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should consider an amendment to the tax code that specifically allows a digital asset to be held as an investment asset for retirement.	No recommendation. The Working Group included this issue among the policies that might warrant future action.	Not included.	Not included.

Wash sales and constructive sales rules

Current law

The IRS generally classifies digital assets as property rather than as securities for tax purposes. The wash sale rule disallows capital losses on sales of securities if the same or substantially identical security is repurchased within 30 days before or after the sale. Digital assets are not considered securities under current law; this rule does not apply to digital asset losses.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress should apply wash sales and constructive sales rules to digital assets.	The wash sale rules should be amended to add digital assets to the list of assets subject to the wash sale rules.	Application: Loss deduction disallowance extended to “specified assets.” “Specified assets” defined as	Wash sales: Applies wash-sale loss disallowance to a broad category of “specified assets” including securities and actively traded

Congress should enact a general exemption from wash sale rules for transactions in which users are transacting in digital assets as a medium of exchange, such as payment stablecoins.	If legislation is enacted, the broker reporting regulations should be amended to reflect these changes. The wash sale rules should not apply to payment stablecoins.	securities, actively-traded digital assets, notional principal contracts, and derivatives. Applies to contracts/options, including those contracts/options that settle in cash or property other than specified assets. Period: 30 days before/after. Stablecoins: Does not apply to loss from sale or disposition of payment stablecoin or other stablecoin. Exception: Does not apply to dealers. Unequal amounts: Treasury granted authority to promulgate rules regarding situations in which amount of specified assets acquired is less/not less than specified assets sold, resulting in non-deductibility of loss. Basis: Basis of specified asset acquired shall be increased by amount of	digital assets, related derivatives, and contracts. Constructive sales: Conceptually extends constructive sale rules to digital assets where offsetting positions substantially eliminate both risk of loss and opportunity for gain in appreciated positions.

		deduction disallowed. Sunset: December 31, 2025.	

R&D eligibility for blockchain development

Current law

The IRS has a four-part test for research and development (R&D) credit eligibility. Activities must: 1) be technological in nature; 2) be intended to create new or improved products, processes, or software; 3) involve a process of experimentation; and 4) resolve technical uncertainty. IRS and Treasury regulations, as well as IRS audit guidelines, have explicitly listed qualifying activities, including new product or process development, software development, process improvement, prototype design and testing, and experimentation with new technologies. While blockchain development activities tend to fall within these activities, they are not explicitly referenced among the qualifying activities.

Proposals

Industry	Trump PWG Report	Lummis, S.2207	DA PARITY Act Draft
Congress or Treasury/IRS should clarify that blockchain infrastructure, cryptographic engineering, and smart contract development fall within the scope of qualified research under the R&D tax credit.	No recommendation.	Not included.	Not included.

Note: The Digital Asset PARITY Act discussion draft from Reps. Max Miller (R-OH) and Steven Horsford (D-NV) includes codifying CAMT clarifications to exclude unrealized gains and losses from purely accounting-driven mark-to-market investments from the corporate alternative minimum tax base.