

Take-Away: The IRS just released Final Regulations, Notices, and a Revenue Procedure on the reporting requirements for digital asset custodians.

Background: The IRS has been slow to provide much guidance on transactions that deal with digital assets. In the past the IRS has taken the clear position that digital assets are *personal property* that is subject to gain recognition when the owner sells or exchanges his or her digital asset. The IRS now has turned its attention to the digital asset custodial brokers and identified their reporting responsibilities when digital assets are involved in transactions.

Notice 2024-56: This Notice provides transition relief with respect to the reporting of information and backup withholding on digital assets by brokers as required by IRC 6045. The Notice provides that if there is a good faith effort to comply with the rules or a mistake is made, “*you will not be subjected to penalties.*” The upshot of this Notice is that digital asset brokers need to try to do something, they will need to report, but they will be **protected by their ‘good faith effort.’**

Notice 2024-57: This Notice provides that digital asset brokers are not required to file information returns and furnish payee statements for some digital asset transactions that are expressly identified in the Notice—until further notice, that is. Apparently, this Notice will have to be read to identify the excepted digital asset transactions.

Revenue Procedure 2024-28: This Procedure, subject to certain identified requirements, generally permits an individual to rely on any reasonable allocation of units of **unused basis** to a ‘wallet’ or digital asset account that holds the same number of remaining digital asset units based on the individual’s records of such unused basis and remaining units. The allocation of basis must be a ‘reasonable allocation’ as defined in Section 5.02 of the Revenue Procedure and must be made as of **January 1, 2025.**

Final Regulations: The Final Regulations issued on June 28, 2024 require custodial brokers to report certain sale and exchange transactions **beginning in 2026** for

transactions that occurred in calendar year 2025. The transactions will be reported on Form 1099-DA (this IRS form will be released later.)

Covered Digital Asset Brokers: These Final Regulations require reporting by custodial brokers, which are brokers that take possession of the digital assets being sold by its customers. Brokers include operators of custodial digital asset trading platforms, certain digital asset-hosted ‘wallet’ providers, digital asset ‘kiosks’, and some processors of digital asset payments (PDAPs).

Custodians Not Covered: These Regulations do **not** include reporting requirements for noncustodial (decentralized) brokers that do **not take possession** of the digital assets sold or exchanged. The IRS promises, however, to provide a separate set of rules for these noncustodial brokers under a different set of Regulations which will be forthcoming-sometime.

Real Estate Transactions: Real estate professionals will also be required to report the fair market value of digital assets paid by buyers and received by sellers in real estate transactions with closing dates **on or after January 1, 2026**.

Aggregate Reporting: These Regulations provision for an optional, aggregate reporting method for certain sales of **stablecoins and some nonfungible tokens (NFTs)** applicable only after those sales exceed *de minimis* thresholds. For transactions that involve certain PDAP’s the Regulations require reporting on a transactional basis only if the customer’s sales are above the *de minimis* threshold.

Record Retention: Unlike the proposed Regulations, these Regulations do not require that individuals report transaction identifications on their Form 1099-DA. However, the individual must collect the information and retain it for **seven years** and make it available to the IRS upon request.

Conclusion: The announced purpose of the Final Regulations is part of a larger effort to obtain high-income individual tax compliance, to be assured that digital assets are not used to hide taxable income, and “*to improve detection of noncompliance in the high-risk space of digital assets.*” The real take-away is that the IRS continues to take a slow approach to regulating and reporting digital assets and cryptocurrencies. As such, the IRS will continue to provide some relief to digital asset custodians that make a ‘good faith effort’ to report.