

Part IV – Items of General Interest

Transitional guidance under sections 6045 and 6045A with respect to the reporting of information on digital assets by brokers.

Announcement 2023-2

Section 80603 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, 135 Stat. 429, 1339 (2021) (Infrastructure Act) clarifies and expands the rules regarding the reporting of information on digital assets by brokers under sections 6045 and 6045A of the Internal Revenue Code. This announcement provides transitional guidance under sections 6045 and 6045A with respect to the reporting of information on digital assets.

Section 6045(a) provides that every person doing business as a broker shall make a return showing the name and address of each customer, with such details regarding gross proceeds and such other information as the Secretary of the Treasury or her delegate (Secretary) may by forms or regulations require with respect to such business. These rules apply when required by the Secretary and in accordance with regulations prescribed by the Secretary. Other subsections of section 6045 require a broker to furnish a payee statement to customers, define the term “broker,” require basis reporting for specified securities that are also covered securities, and provide other applicable rules.

A person doing business as a broker is required to file information returns and furnish payee statements in accordance with existing regulations under section 6045 for each customer for whom the broker has sold stocks, certain commodities, and other specified categories of assets in exchange for cash. The information returns and payee statements are required to show each customer's name and address, details regarding gross proceeds, the adjusted basis of certain categories of assets sold, and certain other information. Brokers must furnish payee statements to customers by February 15 of the year following the calendar year of the sale. Brokers must file information returns on Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, with the Internal Revenue Service (IRS) by February 28 (or March 31 if filing electronically) of the year following the calendar year of the sale. The existing regulations under section 6045 do not specifically address the extent to which these requirements apply to sales or exchanges of digital assets and do not specifically include digital assets as a specified security subject to basis reporting.

Section 6045A(a) generally requires a broker who transfers to another broker securities that are covered securities in the hands of the transferring broker to furnish to the receiving broker a written statement setting forth information required by the regulations. The existing regulations under section 6045A require transfer statements to include specified information about the customer, the brokers involved, and the original acquisition information about the covered security. Brokers must furnish the transfer statements required under section 6045A(a) not later than 15 days after the date of the transfer. Section 6045A(c). The existing regulations under section 6045A do not specifically address the extent to which these requirements apply to transfers of

digital assets.

Section 80603 clarifies and expands the rules regarding how digital assets should be reported by brokers under sections 6045 and 6045A to improve tax administration and tax compliance with respect to trading and investing in digital assets. First, section 80603(a) clarifies the definition of broker in section 6045(c)(1) to include any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. Second, section 80603(b)(1) modifies the definition of specified securities subject to basis reporting under section 6045(g) to explicitly include digital assets and to provide that these specified securities are treated as covered securities for purposes of basis reporting if they are acquired on or after January 1, 2023. Third, section 80603(b)(1)(B) defines a digital asset to mean any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary, except as otherwise provided by the Secretary. Fourth, section 80603(b)(2) clarifies that transfer statement reporting under section 6045A(a) applies to transfers between brokers of covered securities that are digital assets and adds a new information reporting provision for certain transfers under section 6045A(d). Under this new provision, brokers must report to the IRS transfers during a calendar year of digital assets that are covered securities, provided the transfer is not part of a sale or exchange and is not to an account maintained by a person that the broker knows or has reason to know is also a broker. Finally, section 80603(c) provides that these amendments apply to returns required to be filed, and statements required to be furnished, after December 31, 2023.

The Department of the Treasury (Treasury Department) and the IRS intend to

implement section 80603 of the Infrastructure Act by publishing regulations specifically addressing the application of sections 6045 and 6045A to digital assets and providing forms and instructions for broker reporting. A notice of proposed rulemaking will be published that sets forth proposed regulatory text, explains the proposed rules, solicits public comments, and announces a public hearing. This process will allow the Treasury Department and the IRS to accept comments from affected taxpayers, industries, and other interested parties and enable the public to meaningfully participate in the regulatory process. After careful consideration of all public comments received and all testimony at the public hearing, final regulations will be published.

Until the Treasury Department and the IRS issue new final regulations pursuant to section 80603 under section 6045, a broker may report gross proceeds and basis as required under existing law and regulations as of December 23, 2022. In addition, until the Treasury Department and the IRS issue new final regulations pursuant to section 80603 under section 6045A, a broker may furnish statements on transfers of covered securities as required under existing law and regulations as of December 23, 2022. Brokers will not be required to report or furnish additional information with respect to dispositions of digital assets under section 6045, or issue additional statements under section 6045A, or file any returns with the IRS on transfers of digital assets under section 6045A(d) until those new final regulations under sections 6045 and 6045A are issued.

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