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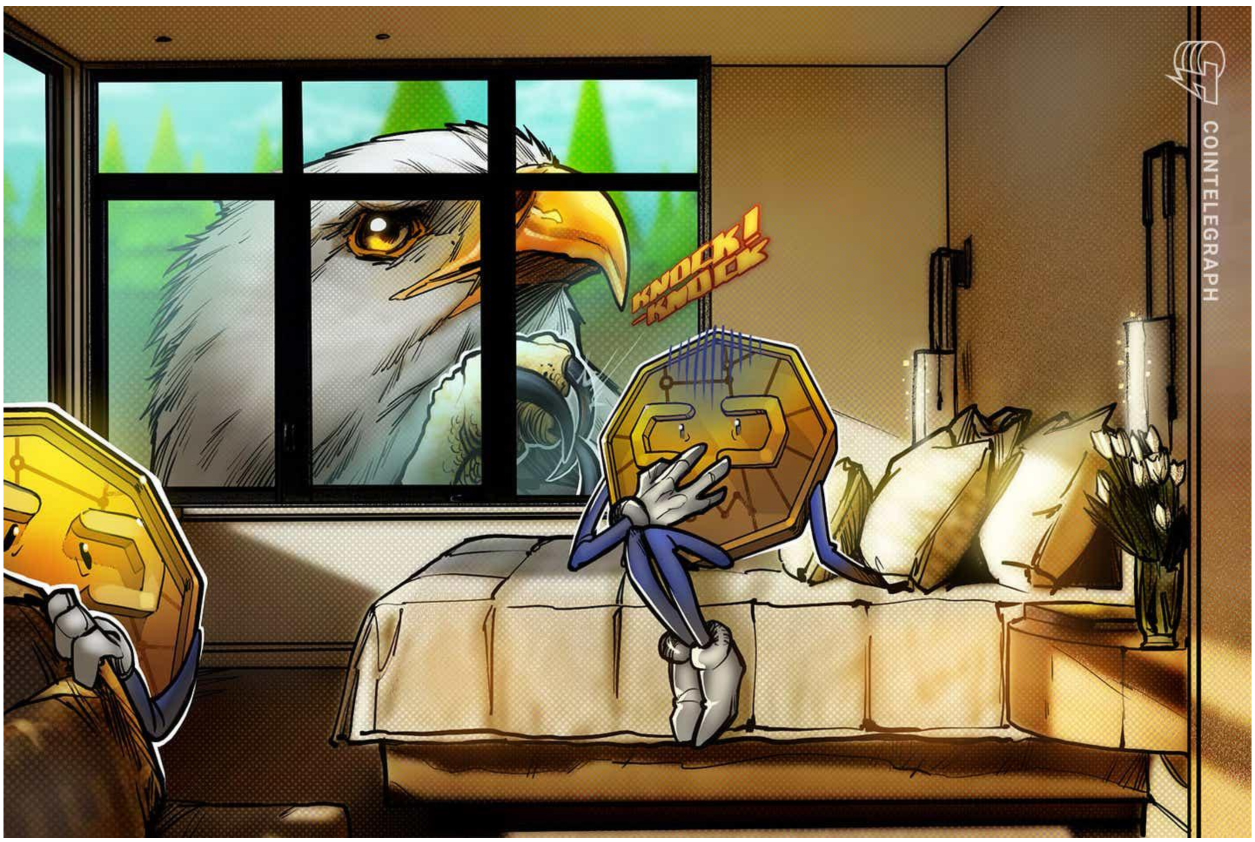
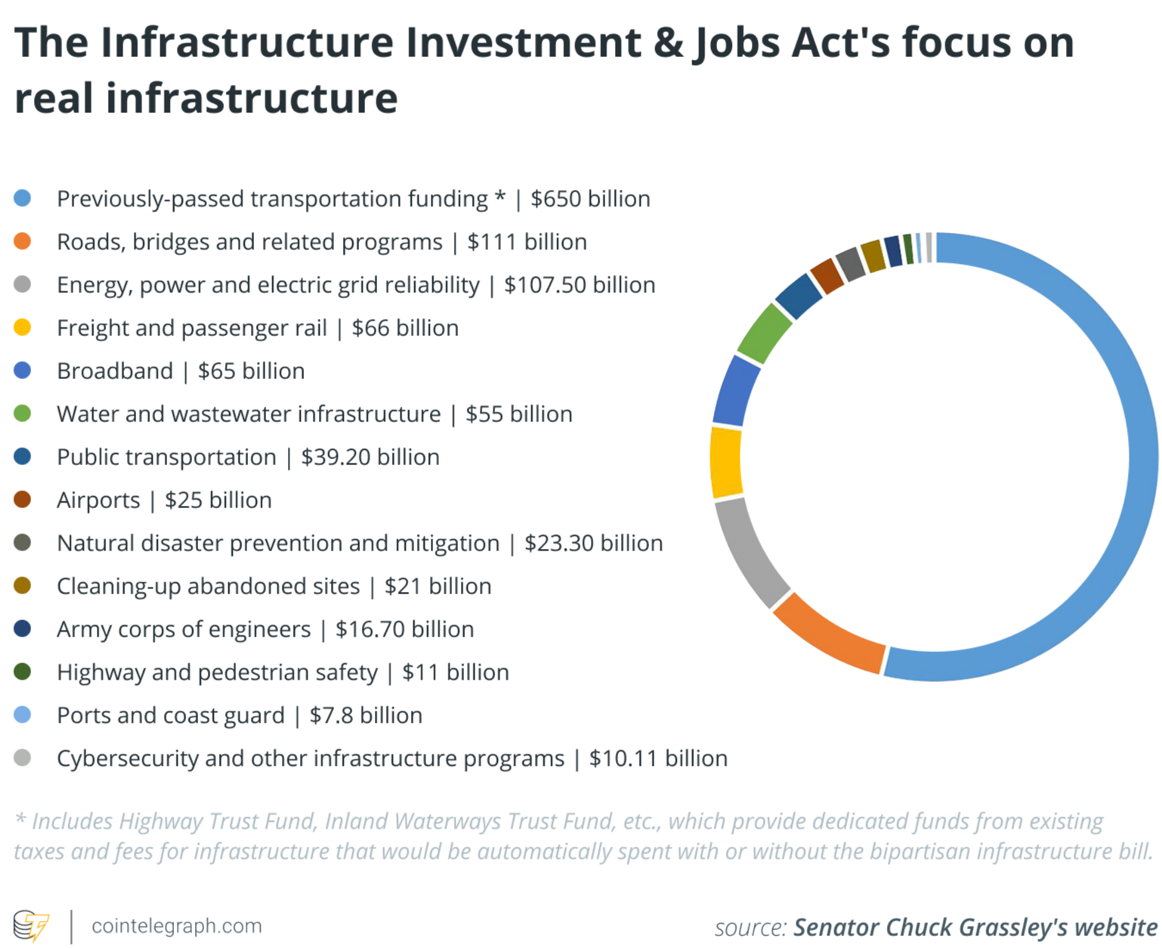
By **Robert W. Wood**

Things to know (and fear) about new IRS crypto tax reporting

The new law redefines "cash" to include "any digital representation of value" including cryptocurrency, but in an anonymous system, is this going to work?



The Infrastructure Investment and Jobs Act (H.R. 3684) put crypto in the crosshairs, where Congress and the Internal Revenue Service (IRS) hope to scoop up enormous tax dollars. This reporting regime is projected to rake in an astounding $28 billion over the next ten years. No other provision in this massive recently enacted federal law is supposed to produce tax dollars that are even close. If you don't think that means the IRS is coming for your crypto in a very big way and that Congress is trying hard to facilitate it, think again.



The crypto community was outraged when the measure was first proposed and tried to push back hard. That effort resulted in some narrowing, but the provisions were enacted anyway. Some people are still talking about a repeal effort, but that could prove to be a hard sell when $28 billion is on the line that the Biden administration may need. As enacted, Form 1099 and other reporting rules don't take effect until December 31, 2023. Even so, since Form 1099 reports are done in January for the prior year. That means 2023 will be a big tax year.

And with 2022 right around the corner and 2021 tax returns due soon thereafter, it's a good time to get your tax affairs in order. Key new questions are whether you are a broker, and who is. And how will these sweeping onerous reporting rules be applied? With potential civil and even criminal penalties, you can bet that most exchanges, and others who might be in doubt about whether they are brokers subject to the new law, may resolve any doubts in favor of reporting. Surprisingly, exactly what constitutes being engaged in a trade or business may be open questions too.

The IRS still says that many people are not reporting their crypto, but more reporting inevitably means a lot more compliance, $28 billion worth. The definition of a broker under section 6045 of the tax code now includes:

“Any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.”

Digital assets are defined as “any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary [of the Treasury]”. Digital assets are now specified securities that are subject to reporting on IRS Form 1099-B. That’s the same form brokers use to report stock sales if you sell some Amazon or other stock.

The new law gives the Treasury Department and the IRS the ability to write regulations about these new rules. There are broker-to-broker rules and others.

Over $10,000 crypto reporting

The broker reporting on Form 1099-B pales in comparison to the new cash-like reporting form requirements with their staggering criminal liability. In 2014, the IRS announced that it would treat crypto as property, not as money. The reverberations of that rule to your taxes are huge. That’s the reason just about every successive transfer or trade of crypto (even for other crypto) triggers more taxes. Yet ironically, Congress and the IRS are now taking a page from cash reporting.

For decades, transactions of more than $10,000 in cash have generated a requirement for any business to file an IRS Form 8300 within 15 days, to report the cash transaction to the IRS. Buy a car with more than $10,000 of cash, and the car dealer has to report you. If you go to the bank and take out your own $10,001 in cash, the bank is required to report you to the IRS. Pay a consultant with more than $10,000 in cash, and your consultant must report you to the IRS.

If you do successive smaller withdrawals or payments to avoid the cash report, that is “structuring” your transactions to evade the rules, and it is itself a federal criminal offense. Many people have been caught by this rule, trying to cover up some embarrassing but legal payments, and have unwittingly committed a crime, been convicted of a felony, fined and then jailed for up to five years. Whether for structuring or for ignoring the rules, you don’t want to mess around with these cash reporting rules.

The bank, merchant or person in business must fill out the person’s full name, birth date, address, Social Security number and occupation. And now, Congress and the IRS are requiring this form for crypto, too. As amended, the new law redefines "cash" to include "any digital representation of value" involving distributed ledger technology, such as blockchain. In an anonymous system, is this going to work?

Starting Jan. 1, 2024, a crypto transaction may trigger a Form 8300 filing when any "person" (including an individual, company, corporation, partnership, association, trust or estate) receives digital assets in the course of a trade or business with a value exceeding $10,000. Valuation is done on the day of receipt, and as with all things crypto, valuation matters a lot. Again, structuring transactions into smaller receipts to avoid reporting is a felony. And since receipts must be aggregated if they are related in a series of connected transactions, virtually any receipt of digital assets is potentially reportable, regardless of dollar value.

Of course, the IRS being interested in crypto is nothing new. Everyone is already required to report crypto gains to the IRS. There's even a "do you crypto" question on every IRS Form 1040 or individual income tax return now. It's often compared to the "do you have a foreign bank account" question that appears on Schedule B, and that has led to many criminal convictions for the IRS, and big civil penalties.

The new requirements are sweeping. And although there is a grace period until Dec. 31, 2023, many changes will be needed to make them suitable and applicable. The new law mandates that a recipient of more than $10,000 in crypto who is in business must collect, verify and report a sender's personally identifiable information within 15 days. If you don't, you can face fines and even criminal liability.

Saying that you are an investor and not in business might seem to be attractive if you have strong arguments on that point. However, there is an enormous body of tax law on that topic, with some discernible standards, and the stakes are big. Will any of this be easy in what is often an anonymous peer-to-peer system? Probably not, but there will likely be fear about the new rules, and some degree of filing to be safe rather than sorry.

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