



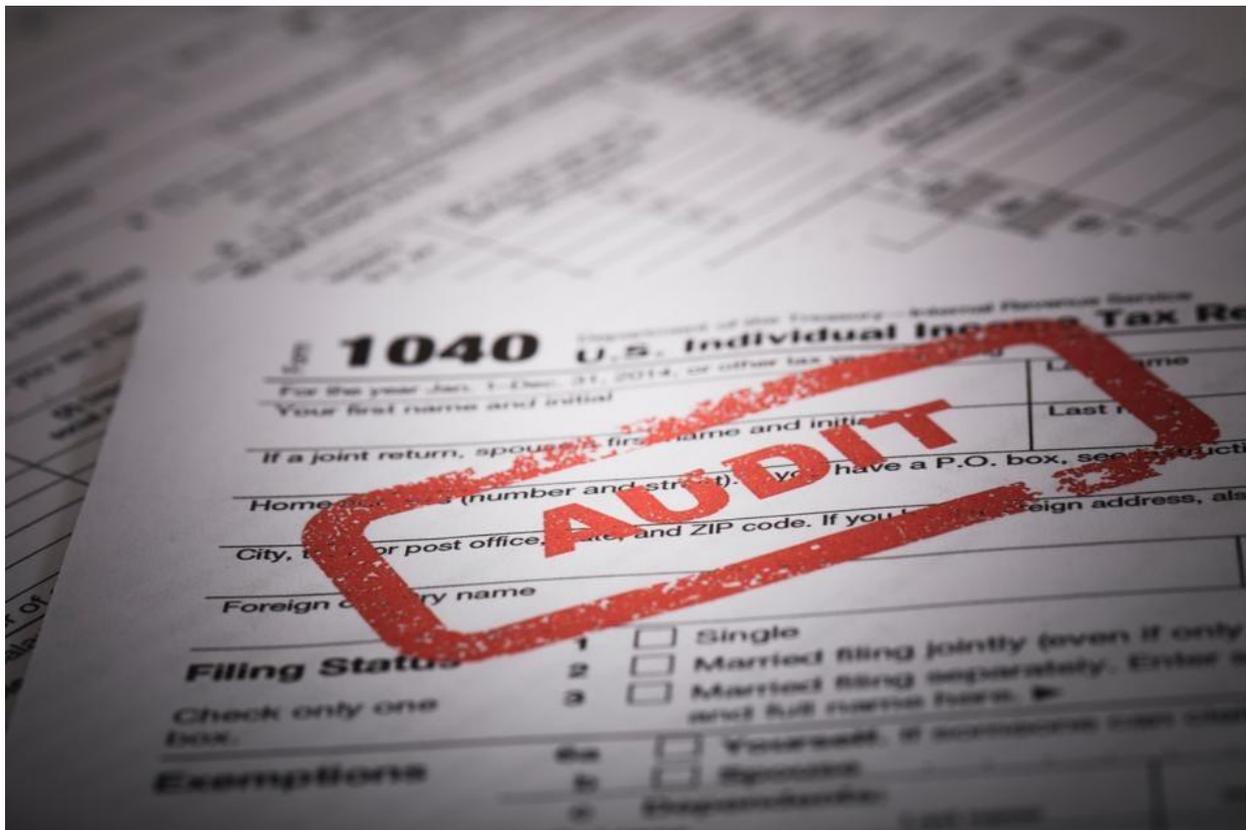
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Crypto IRS Reporting Rules Promise Tax Compliance—And Enforcement

The Infrastructure Investment and Jobs Act ([H.R. 3684](#)) put crypto in the crosshairs in a comprehensive way. The crypto community was outraged when the measures were first proposed, and pushed back hard. Those efforts 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 staggering tax dollars are on the line that the Biden administration may need. Indeed, Congress and the IRS hope to scoop up enormous tax dollars with the new crypto reporting regimes that are projected to rake in an astounding \$28 billion over the next ten years. No other provision in the massive federal law is supposed to produce tax dollars even close. It means that tax reporting and enforcement for crypto is ramping up. It isn't only individual taxpayers that should be paying attention to their tax returns, including amending past returns as needed. The stakes for crypto exchanges, funds and other businesses that handle crypto are arguably even bigger, with a widening tax net for what it means to be "in business" in this context.

There are two new sets of rules slated to take effect on December 31, 2023. One set is about broker reporting on Form 1099-B, and the other involves a new cash-like reporting form that has potentially staggering criminal liability. Of course the IRS says crypto is not currency. 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 [Form 8300](#) within 15 days, to report the cash transaction to the IRS. Buy a car with more than \$10k 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” of 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, fine and then jailed for up to five years over transactions that involve their own legally obtained money—on which they already paid taxes. One famous example was [former House Speaker Dennis Hastert](#). Whether for structuring or for ignoring the rules, you don’t want to mess around with these cash—and now crypto—reporting rules. Under the long-established cash reporting rules, the bank, merchant or other 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 January 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.

Plainly, 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, the individual income tax return. It's often compared to the "do you have a foreign bank account" question that appears on Schedule B to tax returns, a question 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 12/31/23, there will be many changes needed to adapt. 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 actually have strong arguments on that point. However, there is an enormous body of tax law on that topic, with some discernable 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. As enacted, the 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.

The Form 1099-B rules are nothing to sneeze at either. Key new questions are whether you a broker, and who is. And how sweeping will these onerous new reporting rules be applied? 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 [AMZN -6%](#) or other stock. The new law gives the Treasury Department and the IRS the ability to write regulations about these new rules. With potential civil and even criminal penalties, it seems reasonable to assume that most exchanges, and others who might be in doubt about whether they are brokers subject to the new law, may resolve doubts in favor of reporting. Given the staggering potential liability for being wrong about the Form 8300, the same may apply there. In the meantime, you can read more about IRS [Form 8300 and reporting cash payments of over \\$10,000](#).

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