

Simple Question On IRS Form 1040? Be Careful

By Robert W. Wood

Tax returns have to be filed under penalties of perjury. You might not think about it each year when you get to the bottom of the form, but you should. That can make seemingly harmless yes or no questions have teeth. When you file your taxes this year, the IRS wants to ask you a simple question: "At any time during 2019, did you receive, sell, send, exchange or otherwise acquire any financial interest in any virtual currency?" It's pretty simple, just yes or no, right?

What could go wrong? It's not really asking for numbers or any detail. Of course, if you sold some crypto it should go elsewhere on your tax return. Since the IRS classifies crypto as property, any sale is going to produce either gain or loss. Perhaps the IRS is just surveying who is using crypto, you might guess? Not necessarily, and a simple yes or no box can turn out to be pretty important.

In fact, given the IRS's track record with offshore bank accounts, it could even mean big penalties or even jail. The new IRS question appears at the top of the Schedule 1 to your 2019 Form 1040. It explicitly asked if you received, sold, sent, exchanged, or otherwise acquired any financial interest in any virtual currency at any time during the year. Tax savvy people will probably recognize that this is similar to the foreign account question included on the Schedule B.

That is, the question could even set you up as committing perjury for checking the wrong box. Thus, if a taxpayer answers "no" and then is discovered to have engaged in transactions with cryptocurrency during the year, the fact that they explicitly answered no to this new question (under penalties of perjury) could be used against them. So if you did any of the listed things, you check yes, right?

What if you just have a kind of 'signature authority' over crypto owned by your non-computer savvy parents or other relatives? That way, you can help them manage their crypto. If you sell a parent's crypto on their behalf, at their request and/or for their benefit, should you answer "yes" or "no" to the question? Either way, should you attach an explanatory statement to the return explaining your relationship to the virtual currency?

There probably aren't perfect answers to these questions. But what is clear is that answering "no" if the truth is "yes" is a big mistake. Skipping the boxes entirely might not be as bad, but it isn't good either if the truth is "yes." If the truth is "yes," say so, and remember to disclose and report your income, gains, losses, etc. Maybe that's the point of the question, as a prominent reminder.

If this makes you realized that you forgot to report your crypto gains in past years, considering amending to fix it. Don't wait for the IRS to find you, even if you did not get one of those 10,000 IRS crypto warning letters last year. Just remember, the IRS is quite interested in crypto, and is taking steps to ferret out people who do not report.

The IRS appears to believe that millions of transactions might still be unreported. Taxpayers may think they will not be caught, but the risks are growing, and the best way to avoid penalties is to disclose and report as accurately as you can. IRS Commissioner Chuck Rettig has even moved to increase

criminal investigations too. Last year's IRS letters to 10,000 crypto taxpayers was just a start.

The new crypto tax question on Form 1099 should tell you something. We should be guided by how important the yes or no box was during the offshore bank account mess that netted the IRS over \$10 billion dollars. In criminal tax cases and civil penalty cases, the federal government has successfully argued that the mere failure to check a yes or no box related to foreign account reporting is per se willfulness. Trying to explain your way out of it is therefore unlikely to work.

Everyone can make a mistake, but willful failures carry higher penalties and an increased threat of criminal investigation. The IRS's Criminal Investigation Division is even meeting with tax authorities from other countries to share data and enforcement strategies to find potential cryptocurrency tax evasion. So you should not assume that the old fashioned IRS will not catch up with new fangled crypto.

Don't try saying that you didn't look at your own return either. Perhaps it is even more tempting in this age of electronic filing, where you don't really affix your John Hancock the old-fashioned way. Still, the "I didn't read it" defense usually doesn't work. Courts have consistently ruled that taxpayers have a duty to read their returns to ensure that all income items are included.

For more than 90 years, the courts in federal tax cases have held that even if you hand over everything to your tax return preparer, you still have a duty to read the return, to make sure all income items are included, and so on. See *Mackay v. Commissioner*, 11 B.T.A. 569 (1928). So pay attention to the numbers and the details, even seemingly simple yes or no questions. And don't get carried away by the last-minute filing rush. Try to plan ahead, and allow time to catch mistakes.

Robert W. Wood is a tax lawyer with www.WoodLLP.com, and the author of "Taxation of Damage Awards & Settlement Payments" (www.TaxInstitute.com). This is not legal advice.