



Written Testimony for Full Committee Legislative Hearing on Digital Asset Taxation

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Chairman Smith, Ranking Member Neal, and distinguished members of the Committee, thank you for the opportunity to testify.¹ I am the Deputy Director of the Tax Law Center at NYU Law, which is a non-partisan, non-profit center dedicated to improving the integrity of the federal tax system. I started my career advising clients at law firms. I then spent seven years working for the IRS Office of Chief Counsel (International), where I advised the IRS and worked on the implementation of new laws including FATCA and the TCJA. I spent two years on detail to the Committee on Ways and Means before joining the Tax Law Center. Relevant to this hearing, I have studied various issues related to the taxation of digital assets for the last decade, including at the IRS, the Committee on Ways and Means, and now at the Tax Law Center.

SUMMARY

This written testimony has three parts. First, it provides a general framework for policymakers to consider as legislation on the taxation of digital assets develops. It encourages policymakers to focus primarily on the following tax policy principles: a) parity with similar assets, b) administrability, and c) guardrails to prevent abuse. This testimony then provides brief initial analysis of selected provisions of the bills relevant to the hearing. The Tax Law Center continues to study and analyze these bills. In our initial analysis, the single most problematic provision in these bills is the deferral of mining and staking rewards paid in newly minted digital assets. This provision violates parity, harms administrability, and creates unnecessary potential for abuse. This testimony discusses deferral more fully in the analysis of the Tax Clarity for Mining and Staking Act. Finally, this testimony raises additional issues related to the taxation of digital assets that deserve further study.

¹ This testimony draws heavily on my prior work. See Michael Kaercher et seq., [Taxing Digital Assets: Applying Principles to Policies](#), Tax Law Center (Mar. 4, 2026); Michael Kaercher et seq., [Recommendations for Guidance Regarding Broker Reporting of Digital Asset Transactions](#), Tax Law Center (Nov. 13, 2023); Michael Kaercher et seq., [Congress Should Extend Wash Sale Rules to Digital Assets](#), Tax Law Center (Apr. 17, 2023); Michael Kaercher et seq., [Taxing Digital Assets: What's at Stake?](#), Tax Law Center (Aug. 4, 2022). Commentary and publications from the Tax Law Center do not represent the views of NYU, faculty, or students, unless explicitly stated, nor do publications and commentary from NYU faculty and students represent the views of the Center.

1. A Framework for Taxation of Digital Assets

As someone who follows this space closely, I hear a lot about how we need to write rules of the road for taxing digital assets. This is a helpful metaphor, but I might tweak it slightly. The tax system is built to be adaptive to any economic activity or new industry. That includes digital assets.

So when we talk about the need for metaphorical rules of the road, in tax the road already exists, and it already has rules. But new industries and structures can create potholes for the tax system. Left unchecked, these potholes can turn into sinkholes. Policymakers should look out for these and address real problems we have seen as the digital assets industry has grown. And keep in mind the first rule of road maintenance – do not make the roads worse.

As these bills progress, I encourage policymakers to consider three tax policy principles most closely: a) parity, b) administrability, and c) guardrails to prevent abuse. Some of the provisions in these bills would make improvements consistent with these principles. For example, one of the bills would extend anti-abuse regimes like the wash and constructive sale rules to digital assets. That is a good idea. Another example is the de minimis provision on qualifying stablecoins. A targeted approach with guardrails can reduce paperwork and compliance burdens without creating substantial hidden tax subsidies for digital assets. But the rule should remain targeted, because a broader de minimis provision risks abuse, and would favor investments in digital assets over stocks, bonds, and other traditional financial investments.

There are some provisions in these bills that do provide subsidies or create risks of abuse. Take, for example, the bill addressing the treatment of mining and staking rewards. These rewards are payment in digital assets for validating transactions, similar to the income earned by a notary for validating documents.

First, the bill makes explicit the default rule that rewards are taxable when earned. That is the correct policy and is already the law. It is consistent with long-established tax principles. It is consistent with section 61 and the IRS position. It is consistent with how income from other similar activities are treated. And it is consistent with a correct Tax Court ruling from last week, which found that staking rewards are taxable on receipt. The opinion explicitly states that “[t]he fact that these tokens may be newly created is immaterial because the stakers are not the ones who created them.”

The problem is that the bill provides an election for stakers and miners to defer income paid in the form of newly minted coins until disposition. This violates parity with traditional finance and the principle that income is taxed on receipt. Economically, it functions as an interest-free loan from the government.

Here is one example of how this might play out in the real world. The CLARITY Act would allow consumers to earn deposit-like interest on stablecoin balances held in accounts. If CLARITY and deferral become law, consumers would get a better tax result by investing in a stablecoin account than in a high yield savings account at a bank. Deferral would become a new tax subsidy encouraging investment in digital assets relative to other types of investment, risking deposit flight from banks into accounts without FDIC insurance.

Deferring tax on mining and staking rewards is not just a distortive subsidy. It could also undermine administrability. Deferral increases complexity for taxpayers and makes it harder for the IRS to do its job. The government will need to write new rules. Taxpayers will need to track and trace various aspects of transactions over many years. It would be simpler for everyone to tax the income upon receipt, consistent with normal tax principles.

Deferral of tax on mining and staking rewards also creates risks of abuse, despite some thoughtful guardrails in the bill. It may be possible for taxpayers to permanently escape tax by earning rewards through certain business structures. This would convert an interest-free loan into a loan that never gets paid back. This is better tax treatment than even what traditional retirement plans receive.

Here is my final point. To date, industry has properly identified some of the potholes. The wash and constructive sale rules are good examples. But if you are out fixing potholes that others have flagged, it is worth fixing the other ones you see along the way. For example, the risk of tax non-compliance for digital assets operating on decentralized finance (DeFi) networks remains high. If we cannot find a way to improve transparency and compliance for DeFi transactions, it will remain difficult for honest taxpayers to pay the taxes they owe. And DeFi will be a favored tool for tax evasion and illicit finance.

2. Initial Analysis of Bills

While some of the bills introduced on June 8, 2026, have predecessors, others are new or take a different approach than prior bills. Therefore, this analysis is preliminary, and we will continue to study these bills and provide commentary.

Less Tax Paperwork for Digital Asset Owners Act

This bill would make several changes to the current treatment of digital assets, including:

- Excluding from tax gain or loss certain stablecoin transactions;
- Excluding from tax gain or loss digital assets used to pay certain fees for these transactions;
- Allowing an election for “simplified accounting” for gain or loss on widely traded digital assets (similar in concept to a mark-to-market election);
- Providing updated rules for brokers to implement these provisions; and
- Providing additional definitions related to digital assets.

Initial analysis:

- **Provisions to exclude gain or loss on stablecoins that reliably track the US dollar should not be further expanded.** The targeted exclusion of gain or loss on stablecoins that reliably track the US dollar can improve administrability and can be drafted to avoid unintended subsidies or risks of abuse. However, these provisions should not be further expanded. Extending exclusions to other digital assets would create a subsidy for those assets, treating them more favorably than traditional financial assets (e.g., stocks).
- **The provision excluding gain or loss on related fees in such transactions creates some risk of abuse, violates parity with traditional financial products, and introduces new standards in the tax code that warrant further study.**
 - This provision would allow taxpayers to pay fees to validators in appreciated digital assets without ever recognizing taxable gain on digital assets used to pay these fees. Compare this treatment to traditional financial transactions, where taxpayers are required to pay transaction-related fees like wire transfers or ATM fees with cash that has generally already been taxed. This exclusion essentially serves as a tax subsidy for

validation services over traditional finance, violating parity. Additional ways to further minimize this subsidy are worth further study and may be appropriate.

- Guardrails should be retained and risk of abuse could be further reduced by limiting the exclusion of tax on fees to fees paid in U.S. dollar stablecoins.
- The administrative convenience exception that enables taxpayers to make the case for their preferred tax treatment of digital asset transaction fees is novel and so warrants careful further study. The exception is permitted in cases where the taxpayer is the “type” of taxpayer where that preferred tax treatment does not result in “substantial Federal revenue loss,” which is a highly unusual grant of authority in the tax code.
- **The simplified accounting election provides more optionality for taxpayers holding digital assets than for other investments, creates administrative burdens, and would require improved information reporting to reduce the risk of abuse.**
 - This provision would allow an election that is not available to most retail investors in traditional investments like stocks, potentially violating the principle of parity.
 - The regime would require an annual accounting of unrealized gain or loss in digital assets. The regime is elective to taxpayers who own digital assets, and so electing taxpayers would voluntarily take on this burden. But it is not elective for tax administrators and brokers. The IRS has already lost about a quarter of its staff and three quarters of its senior leadership in the last 18 months,² and has a depleted capacity to write timely guidance and enforce existing tax law. That means that Treasury and the IRS will need to invest resources in guidance, forms, education and compliance. Brokers may also need to build out systems to accommodate this regime. Therefore, it would tend to add administrative burdens.
 - Finally, there is a risk that electing taxpayers leave out some assets from the annual accounting, either intentionally or unintentionally. The risk is most prominent where taxpayers will not receive broker reporting (e.g., transactions involving DeFi assets). This puts additional pressure on the need for creative approaches to improve information reporting to reduce risks of abuse.

Tax Clarity for Mining and Staking Act

This bill would make several changes to the current treatment of digital assets, including:

- Codifying the general rule that mining and staking rewards are taxable when earned;
- Providing elective deferral for rewards paid in digital assets that have not previously been owned by a person; and
- Modifying definitions related to grantor trusts.

Initial analysis:

- **Deferral of mining and staking rewards violates parity and administrability and creates unnecessary potential for abuse.** Policymakers should reject deferral of tax on income from digital asset rewards, especially in its current form. We take it for granted in the tax policy world that deferral of tax is a taxpayer favorable subsidy. All else equal, from a taxpayer’s perspective,

² See Vanessa Williamson & Ellis Chen, [Tax season with a hollowed-out IRS: What do taxpayers need to know?](#), Brookings (March 10, 2026).

paying tax later is better than paying tax now. I would emphasize that the flip side of this coin is that the Federal government, and in turn other taxpayers, are footing the bill for this subsidy. When the government relinquishes the ability to collect tax currently, in favor of collecting it later, it must borrow more today to meet its spending needs. That increased borrowing comes at a real cost to taxpayers in the form of additional interest expense, or at the cost of other, better-evidenced investments in meeting the nation's current and future challenges.

The Tax Law Center has previously described mining and staking as follows:

Mining and staking are, broadly speaking, the two ways of adding a transaction to the blockchain, which is the ledger (usually public) that provides a recorded history of transactions.

Miners race to solve a randomly generated cryptographic problem using computing power. The first to do so updates the blockchain with the latest validated transactions and receives a certain amount of digital assets in exchange. Bitcoin is an example of a digital asset that is mined.

Stakers “stake” (or put up) a certain amount of their own digital assets and place them in a digital wallet, where they are frozen and cannot be used in transactions. The network randomly picks which of the stakers gets to validate a transaction. The likelihood of being picked varies with the amount of digital assets staked. Validators receive a reward in the native cryptocurrency of the blockchain in proportion to their stake. Ethereum is an example of a digital asset that is staked.³

Under current law, mining and staking rewards, like other income, are taxable when the taxpayer has dominion and control over the rewards. In other words, these rewards are taxable as soon as the taxpayer has the ability to sell the rewards.⁴ This was affirmed by the Tax Court last week, in a memorandum opinion – a format reserved for cases where the relevant area of law is considered well-settled.⁵

- **Deferral violates parity because income from similar activities in other industries are taxed upon receipt.** For example, notaries public are taxed upon receipt of income for the service of validating the identity of a party to a transaction or source of funds for a transaction.

Some argue that rewards of new digital assets are “self-created property” and should therefore be taxed upon disposition. This argument draws on analogies like a baker making bread or a furniture maker making furniture, where the goods are inventory, and there is no related income inclusion until the good is sold. As the Tax Court correctly held last week, this analogy is misplaced:

Stakers do not create anything by themselves. Instead, the staked tokens validate transactions on the blockchain. In exchange for validation, the cryptocurrency's protocol grants stakers additional tokens. The fact that

³ Kaercher, *Taxing Digital Assets: What's at Stake?*, *supra* note 1, at 3.

⁴ See Rev. Rul. 2023-14, at 4; sections 61(a), 83; Treas. Reg. §1.61-2(d)(1).

⁵ See *Paschall v. Comm'r*, [T.C. Memo 2026-46](#); “Generally, a Memorandum Opinion is issued in a regular case that does not involve a novel legal issue. A Memorandum Opinion **addresses cases where the law is settled** or factually driven.” United States Tax Court, [Guidance for Petitioners: Things That Occur After Trial](#) (emphasis added).

these tokens may be newly created is immaterial because the stakers are not the ones who created them. Further, petitioners were not owners or operators of a staking pool; unlike the baker . . . they lacked the power to decide whether (and when) the property was created.⁶

- **Deferral raises administrability issues.** By value, most rewards are paid in widely-traded, highly-liquid digital assets that have values that are readily and publicly accessible. However, instead of taxing the rewards immediately based on these known values, the deferral provision would require separately accounting for rewards between newly-minted digital assets and preexisting digital assets. It then requires tracking which digital assets are eligible for deferral until the earlier of disposition (e.g., sale, gift, or bequest). This could require decades of tracking both the deferred gain and certain associated expenses.
- **Deferral creates opportunities for abuse: filers would try to convert deferred gains into gains that are permanently excluded from tax.** Under the provision, income would be recognized at disposition. Typically, this means sale, but recognition could also be triggered by other events (e.g., gift or bequest). The problem is that entities are also able to make this election, and this creates the opportunity for elimination (rather than deferral) of taxable income.

Simplified Illustrative Example

Step 1) Set up a partnership that holds digital assets and earns rewards within the partnership.

Step 2) Never sell the deferred rewards.

Step 3) When a partner in the partnership dies, transfer the partnership interest to a beneficiary.

In this simplified example, our initial analysis suggests that the current draft would allow the interest in the digital asset rewards to be transferred without triggering inclusion, because the partnership has not disposed of the digital assets. Tax planning could be facilitated with certain tax elections available to partnerships, ensuring that, if the digital assets ever are sold, they have increased basis, eliminating taxable income permanently instead of deferring it.

Charitable Deductions for Digital Asset Donations Act

This bill would allow taxpayers to value charitable donations of “widely traded digital assets” without an appraisal. In effect, this would allow taxpayers to rely on the publicly-available price of these digital assets. Under current law, an appraisal is generally required to determine the value of the charitable contribution of digital assets.

Initial analysis:

- **This proposal may improve parity, administrability, and reduce risks of abuse.** In concept, the proposal would improve parity and administrability and would reduce risks of abuse. But this

⁶ *Id.*, at 10.

proposal can be improved further by reducing reliance on risky and costly appraisals for digital assets that are not widely traded.

The bill would improve parity by putting widely traded digital assets on par with publicly-traded securities, which also can be valued using the spot price (rather than requiring an appraisal). It would improve administrability by reducing the need for appraisals for a large swath (perhaps most) digital assets. And it would reduce the risk of abuse involving improperly-inflated appraisals for widely traded digital assets.

- **The bill can be improved in several ways to further reduce risks of abuse.** First, it is worth studying further whether a higher market cap threshold (similar the one proposed in the Digital Asset PARITY Act) is more appropriate. Second, it is also worth studying whether a minimum annual trading volume, as the Digital Asset PARITY Act proposed, should also be added as well. The key risk to manage is whether a charitable donor has the power to increase the value of the digital assets prior to making the donation.
- **The proposal can be improved further by reducing unnecessary reliance on risky and expensive appraisals for digital assets that are not widely traded.** The appraisal requirement comes with costs to taxpayers who must pay for them, and the IRS who must review them in exams. Additionally, given how appraisers are compensated, they risk potential capture by the industries that employ them, leading to valuations driven at least in part by taxpayer preferences, rather than the economics. Historically, charitable appraisals have put serious strain on the tax system, including in the syndicated conservation easement space, which resulted in subsequent bipartisan legislation⁷ addressing these valuation issues.
- **Policymakers should consider an alternative approach that leverages the market for price discovery and that would reduce risk of abuse and administrative burden.** For digital assets that are not widely traded, the general rule could be to limit the deduction to the donor's basis. This would be less favorable than other assets where the deduction is based on fair market value. To address this concern, the law could allow deductions equivalent to fair market value if the taxpayer sells the digital assets and donates the cash within a certain number of days. This should eliminate the need for appraisals, while leveraging the market to determine the correct value. As long as the cash is donated within a certain number of days of the sale, the gain associated with the sold assets could be excluded.

This approach would put digital assets economically on par with donations of other appreciated assets. But it would reduce the risk of improper appraisals and the need to pay for them. If this approach is considered, the donation period should be short to prevent people from simply deciding to wipe out prior unrelated digital asset gain when making cash donations.

⁷ See Consolidated Appropriations Act of 2023, Pub. L. No. 177-328, §605, 136 Stat. 4459, 5393-96 (2023); S. Comm. on Finance, [Bipartisan Investigative Report on Syndicated Conservation-Easement Transactions](#), S. Prt. 116-44 (Aug. 2020).

Applying Existing Tax Anti-Abuse Rules to Digital Assets Act

This bill would extend existing wash sale rules and constructive sale rules to digital assets.

Initial analysis:

- **Conceptually, this proposal would improve parity with traditional finance and reduce the risk of abuse.** As we have previously written, this is an appropriate policy and would improve the tax system, if implemented appropriately.⁸
- **The ability for Treasury to issue regulations treating non-qualified stablecoins as currency “if such treatment would increase Federal revenues” is a novel standard in the tax code and warrants further study.**

End Digital Assets Tax Shelters Act

This bill aims to address existing issues where taxpayers are improperly escaping tax on digital asset gain.

Initial analysis:

- **It is important to shut down existing abuses in this space.** There are a variety of approaches to the problem⁹, and those approaches are worth further study.

3. Additional Issues Requiring Further Study

As this legislation develops, policymakers should consider additional problems in digital asset tax policy that need attention. In my view, these are some of the most pressing issues:

- **Ensuring timely and proper implementation of the Crypto Asset Reporting Framework (CARF).** CARF is an important international reporting regime that would reduce the risks of digital assets being used for tax evasion and other illicit activities. Treasury submitted CARF-related proposed regulations for OIRA review on November 14, 2025, and they have not yet been cleared over six months later. To put that timeline into perspective, this is more than quadruple the review target of 45 days¹⁰ for tax-related regulations. Policymakers should determine why these rules are delayed, and whether legislation is needed to push them forward or to fully implement CARF.
- **Addressing risks of DeFi use in tax evasion, money laundering, and other illicit activities and making it easier for DeFi users to meet existing tax filing obligations.** DeFi is generally not subject to the same rules to prevent tax evasion, money laundering, or other illicit activities. Policymakers should consider approaches to reduce these risks. A streamlined and targeted reporting solution could make it far easier for taxpayers who use DeFi to meet their filing obligations.

⁸ Kaercher, *Congress Should Extend Wash Sale Rules to Digital Assets*, *supra* note 1.

⁹ *See, e.g.*, H.R. 2982, 119th Cong. (as referred to the House Committee on Ways and Means, April 21, 2025).

¹⁰ Dep’t of Treasury and the Office of Mgmt. and Budget, [Review of Tax Regulations under Executive Order 12866](#) (April 11, 2018).

- **Addressing tax avoidance involving offshoring digital asset intellectual property (IP).** My understanding is that, in some cases, US companies are developing IP domestically and then transferring the IP to foreign entities. This strategy is often driven partially by tax, and care is taken to ensure that significant portions of future gain are outside the US tax and withholding net. This often includes structures that avoid US rules like the Net Controlled Foreign Corporation Tested Income regime (NCTI, formerly, GILTI). Policymakers should study these structures and consider whether guardrails are needed to prevent abuse.
- **Understanding and addressing digital asset-related tax noncompliance.** As the digital asset industry continues to grow and evolve, access to timely and reliable information is critical for tax administrators and policymakers. Additional studies, including some of those included in the Digital Asset PARITY Act would help illuminate important trends, challenges, and opportunities, providing a stronger foundation for informed policymaking and effective tax administration. In particular, studies to identify the amount of tax noncompliance that can be sourced to digital assets, and information on the specific tax risks presented by decentralized financial platforms would be especially helpful.

Additional Resources

Tax Law Center

- Amicus Brief in *Jarrett v. U.S.*, No. 3:24-cv-01209 (M.D. Tenn. Oct 10, 2024), https://taxlawcenter.org/files/Jarrett-v.-United-States_TLC.pdf.
- *Taxing Digital Assets: Applying Principles to Policies*, The Tax Law Center (Mar. 4, 2026), <https://taxlawcenter.org/blog/taxing-digital-assets-applying-principles-to-policies>.
- *Recommendations for Guidance Regarding Broker Reporting of Digital Asset Transactions*, The Tax Law Center (Nov. 13, 2023), <https://taxlawcenter.org/work/recommendations-for-guidance-regarding-broker-reporting-of-digital-asset-transactions>.
- *Congress Should Extend Wash Sale Rules to Digital Assets*, The Tax Law Center (Apr. 17, 2023), <https://taxlawcenter.org/blog/congress-should-extend-wash-sale-rules-to-digital-assets-309a73b1a4a4>.
- *Taxing Digital Assets: What's at Stake?*, The Tax Law Center (Aug. 4, 2022), <https://taxlawcenter.org/work/taxing-digital-assets-whats-at-stake>.

Other Key Resources

- *Paschall v. Comm'r*, T.C. Memo 2026-46, <https://dawson.ustaxcourt.gov/case-detail/7382-24>.
- Alexandra Thornton & Jean Ross, *Cryptocurrency Income Is Taxable Income*, CAP (Jan. 11, 2024), <https://www.americanprogress.org/article/cryptocurrency-income-is-taxable-income/>.
- Omri Marian, *Law, Policy, and the Taxation of Block Rewards*, 175 Tax Notes Fed. 1493 (2022), <https://www.taxnotes.com/featured-analysis/law-policy-and-taxation-block-rewards/2022/06/03/7dhq5>.