DESCRIPTION OF H.R. 10357,
THE "DIGITAL ASSET TAX CERTAINTY ACT"

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HOUSE COMMITTEE ON WAYS AND MEANS
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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup for September 16, 2026, of H.R. 10357, the "Digital Asset Tax Certainty Act." This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of this bill.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 10357, the "Digital Asset Tax Certainty Act"* (JCX-47-26), September 14, 2026. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references in the document are to the Internal Revenue Code of 1986, as amended (the "Code"), unless otherwise stated.

TITLE I—REMOVING TAX BARRIERS TO THE USE OF DIGITAL ASSETS AS A MEDIUM OF EXCHANGE

A. Treatment of De Minimis Digital Asset[2] Fees

Present Law

Generally, the gain or loss from the sale of property is recognized at the time of the sale or other disposition of the property, unless there is a specific statutory provision of nonrecognition.[3] The taxpayer's gain or loss on a disposition of property is the difference between the amount realized and the adjusted basis.[4]

In general, if digital assets are sold or otherwise disposed of for cash, other property differing materially in kind or in extent, or services, the amount realized is the excess of:

(A) the sum of:

1. Any cash received;

2. The fair market value of the property received; and

3. The fair market value of any services received; reduced by

(B) the amount of digital asset transaction costs allocable to the sale or disposition of the transferred digital asset.[5]

The section 1001 regulations define "digital asset transaction costs" as amounts paid in cash or property (including digital assets) to effect the sale, disposition, or acquisition of a digital asset.[6] If digital assets are used to pay digital asset transaction costs, then the regulations treat such use as a disposition of a digital asset for services.[7]

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[2] The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

[3] Sec. 1001.

[4] *Ibid*.

[5] Treas. Reg. sec. 1.1001-7(b)(1).

[6] Treas. Reg. sec. 1.1001-7(b)(2)(i).

[7] Treas. Reg. sec. 1.1001-7(b)(1)(ii).

Description of Proposal

In general

The proposal provides that no gain or loss is recognized on the disposition of a digital asset in payment of a *de minimis* network fee or a *de minimis* transaction fee (the "*de minimis* digital asset fee exception").

A network fee means an amount paid or incurred in a digital asset transaction to validate another digital asset transaction. A *de minimis* network fee means a network fee if the aggregate amount paid or incurred with respect to the validation of another digital asset transaction does not exceed $10.

A transaction fee means an amount (other than a network fee) paid or incurred as a brokerage fee, trading fee, liquidity fee, or similar fee to facilitate a transfer of a digital asset (the "underlying digital asset transfer") if the digital asset disposed of in payment of such fee is a digital asset of the same type[8] as the digital asset disposed of, or acquired by, the taxpayer in the underlying digital asset transfer. A *de minimis* transaction fee means a transaction fee if the aggregate amount paid or incurred with respect to the underlying digital asset transfer does not exceed $10.

The term "digital asset transaction" means any transfer of a digital asset recorded on the cryptographically secured digital ledger (or similar technology). The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

Any payment of a network fee or transaction fee using a digital asset is treated as a disposition of such asset in exchange for consideration equal to the fair market value of the digital asset. In the case of a network fee, a disposition of a digital asset does not fail to be treated as a payment merely because the digital asset is not received by another person.

The amount of any network fee or transaction fee taken into account in determining the amount of gain or loss on the disposition of any asset, the amount of any deduction, or the basis of any asset acquired, must be reduced by any gain and increased by any loss not recognized with respect to the disposition of the digital asset used to pay the network fee or transaction fee.

[8] Rules similar to the rules for determining types of assets under sec. 1051(b)(2), as added by the bill, apply. For further discussion of the section 1051 rules, see the discussion in Title I.B (simplified accounting for gain and loss on widely traded digital assets).

Exclusions

Method of accounting

The *de minimis* digital asset fee exception does not apply to the disposition of a digital asset if any of the following apply: mark-to-market method of accounting;[9] simplified accounting for gain or loss on widely traded digital assets;[10] mark-to-market rules of section 1256(a); or any mark-to-market provision under any other provision of subtitle A (unless otherwise provided by the Secretary).

Certain taxpayers

The *de minimis* digital asset fee exception generally does not apply to the disposition of a digital asset by the following taxpayers:

1. A trader, broker, or dealer in digital assets;

2. A person in the trade or business of batching or facilitating the validation of digital asset transactions on behalf of others;

3. Any person in a trade or business substantially similar to a trade or business described in (1) or (2) to the extent provided by the Secretary; or

4. Any person that engaged in more than 5,000 digital asset transactions during the proceeding taxable year (determined without regard to any transfer made in payment of a *de minimis* network fee or *de minimis* transaction fee).

However, a taxpayer described in any of the four categories above may use the *de minimis* digital asset fee exception by demonstrating to the Secretary that the taxpayer is of a type with respect to which disregarding the exclusions for that type of taxpayer will not result in a substantial Federal revenue loss.

The proposal requires the Secretary to issue regulations or other guidance that: (i) identifies the types of taxpayers to which disregarding the exclusions for certain taxpayers will not result in substantial Federal revenue loss; and (ii) specifies the information each such type of taxpayer must provide to the Secretary. The Secretary's regulations or other guidance must take into account the method(s) used by such type of taxpayer for selecting the digital assets used to pay network and transaction fees and the average holding period of such digital assets by such type of taxpayer. Additionally, the guidance must determine the Federal revenue loss by reducing the loss by a reasonable approximation of the additional administrative costs to the Department of the Treasury and the additional compliance cost to such type of taxpayer and any

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[9] Sec. 475.

[10] Sec. 1051(a), as added by the bill. For further discussion of the section 1051 rules, see the discussion in Title I.B (simplified accounting for gain and loss on widely traded digital assets).

person required to make additional information return reporting with respect to such type of taxpayer.

Effective Date

The proposal applies to the disposition of assets after December 31, 2027.

B. Simplified Accounting for Gain and Loss on Widely Traded Digital Assets

Present Law

As a general matter, a taxpayer is required to recognize gain on the sale or other disposition of property equal to the excess of the amount realized over its adjusted basis, if any, and loss on the sale or other disposition of property equal the excess of its adjusted basis over the amount realized, if any.[11] The sale or disposition of each property, or part thereof, is a separate transaction and gain or loss is computed separately for each.[12]

Description of Proposal

The proposal provides an election under which a taxpayer may change the method by which they recognize gain and loss on digital assets.

Under the proposal, a "designated type of digital asset" (or "DTDA") means, with respect to any taxpayer and taxable year, any type of widely traded digital asset (other than a qualified U.S. dollar stablecoin) for which the taxpayer elects to apply the alternative method for recognizing gain and loss.

For any DTDA, with respect to any taxable year, the taxpayer's gain for the year with respect to all of its widely traded digital assets of that designated type is equal to the excess, if any, of:

(1) The sum of
- (i) The aggregate amount realized by the taxpayer on sales or exchanges (including nonrecognition transactions) of such DTDA during the taxable year;
- (ii) In the case of dispositions (including nonrecognition transactions) other than such sales or exchanges, the fair market value of such DTDA at the time of disposition; and
- (iii) The fair market value of such DTDA held by the taxpayer at the close of the taxable year; over

(2) The sum of
- (i) The fair market value of the consideration provided by the taxpayer for the acquisition of such DTDA during the taxable year (other than DTDA acquisitions described in (iii) below);
- (ii) In the case of any disposition described in (1)(ii) above, any amounts which would have reduced the amount realized by the taxpayer on such disposition if such disposition had been a sale or exchange;

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[11] Sec. 1001.

[12] See Treas. Reg. sec. 1.61-6(a).

(iii) In the case of the acquisition of such DTDA during the taxable year that has a basis determined by reference to the basis of the transferor, the taxpayer's basis in such DTDA immediately after acquisition;

(iv) The fair market value of such DTDA held by the taxpayer as of the close of the preceding taxable year; and

(v) The net dollar amount of any adjustments to the basis of such DTDA (treating increases as a positive amount and decreases as a negative amount).

If the sum in (2) exceeds the sum in (1), the taxpayer's loss for the year with respect to such DTDA is the excess of the second sum over the first sum. The taxpayer does not recognize any gain or loss on the disposition of such DTDA during the taxable year except as provided by these formulas. Any gain or loss recognized under the proposal is treated as short-term capital gain or short-term capital loss, respectively.

Under the proposal, widely traded digital assets are treated as being of the same type if and only if the assets are fungible or are determined under rules provided by the Secretary to have values that are directly linked or highly correlated.

In addition, for purposes of this proposal, qualified pool token assets are treated as widely traded digital assets with respect to the taxpayer if and only if (1) not more than 10 percent of the tokens are owned, directly or indirectly, by the taxpayer or a related party,[13] and (2) the taxpayer and such related parties do not have control or effective management of the composition of the assets to which the value of such tokens is attributable, including in a manner similar to a manager, sponsor, director, shareholder, general partner, commonly controlled affiliate, or other similar role. For this purpose, the term "qualified pool token asset" means any type of digital asset if (1) at substantially all times during the calendar year that ends in or with the taxpayer's taxable year preceding the relevant taxable year (i) substantially all the value of that type of the digital asset is attributable to widely traded digital assets (including qualified pool token assets treated as widely traded digital assets) and (ii) such type of digital asset is redeemable on demand for a proportionate share of the assets to which the value of the digital asset is attributable; and (2) the Secretary has determined that allowing such type of digital asset to be treated as a widely traded digital asset is consistent with efficient tax administration and not subject to abuse. For this purpose, digital assets are treated as being of the same type if and only if the assets are fungible or are determined under rules provided by the Secretary to have values that are directly linked or highly correlated.

In the case of a designated type of qualified pool token assets with respect to the taxpayer for which the taxpayer has elected to apply the alternative method for recognizing gain and loss, the taxpayer does not recognize gain or loss on the particular assets to which the value of the qualified pool token assets is attributable.

[13] Determined under section 267(b) (applied without regard to section 267(c)(3)) or section 707(b)(1).

Treatment of lending transactions

The proposal also provides an exception for certain lending agreements. If widely traded digital assets are transferred in a transaction to which section 1058(a) applies, the transferor is treated as continuing to own the assets for purposes of this provision. Similarly, if widely traded digital assets are loaned in a transaction not described in section 1058(a), then, except as otherwise provided by the Secretary, the lender is treated as continuing to own the assets for purposes of the proposal.

Election rules

Under the proposal, if a taxpayer makes an election with respect to a DTDA, the election generally applies to the first taxable year that begins after the date on which the election was made, and to each taxable year thereafter unless revoked. However, if the taxpayer has not held any unit of the DTDA at any time during the two-year period ending on the date on which the taxpayer makes the election, then the taxpayer may apply the election to its current taxable year.

The election may be revoked for any taxable year, provided the taxable year both has not begun as of the date on which the taxpayer requests the revocation, and is not one of the first five taxable years to which the election applies. Similarly, once an election has been revoked with respect to any DTDA, the taxpayer may not make a new election for such DTDA with respect to any of the first five taxable years after the last year to which the election applied.

In the case of partnerships or S corporations, the election is made by the partnership or S corporation.

If the taxpayer is a dealer that is eligible to make an election under section 475(g), or a trader that has an election in effect under section 475(f)(3), with respect to a taxable year, the taxpayer may not make this election with respect to that taxable year. In addition, if the taxpayer makes the election under section 475(f)(3) with respect to any taxable year, then the taxpayer is treated as revoking all elections under the proposal with respect to such taxable year.

If any DTDA ceases to be a widely traded digital asset, the election is treated as revoked for that DTDA with respect to the first taxable year beginning after it ceased to be a widely traded digital asset.

Special rules related to election, revocation, and transfers

The proposal also provides transition rules. Under the proposal, when a taxpayer makes an election with respect to any DTDA and taxable year, any DTDA owned by the taxpayer is treated as sold for fair market value on the last day of the prior taxable year. If the taxpayer revokes an election, proper adjustment is made to the amount of any gain or loss subsequently realized for gain or loss taken into account under the proposal.

If the taxpayer transfers a DTDA in a transaction in which the basis of the asset in the hands of the transferee is determined by reference to the taxpayer's basis in the asset, then solely for purposes of determining the transferee's basis in the asset, the taxpayer's basis is treated as equal to the asset's fair market value at the time of the transfer.

Special rules related to partnerships

If a partner transfers a partnership interest, the amount of money or fair market value of property received in exchange for the partnership interest attributable to a DTDA of the partnership is treated as an amount realized from the sale or exchange of a capital asset held for less than one year (under rules similar to the rules that apply for purposes of section 751(a)), by treating such type of DTDA in the same manner as an unrealized receivable. In addition, rules similar to the rules in section 751(b) apply to treat a DTDA of the partnership in the same manner as an unrealized receivable and to treat any resulting gain or loss as short-term capital gain or short-term capital loss. Rules similar to the rules for allocating basis to unrealized receivables (including sections 755 and 732(c)) apply to any allocation of basis to a DTDA of a partnership, except that proper adjustments are be made to treat the DTDA as a capital asset held for less than one year. Except to the extent provided by the Secretary, if a partner contributes a widely traded digital asset to a partnership in a section 721 contribution and the widely traded digital asset is a DTDA to a partnership, any gain or loss recognized by the partnership on the DTDA pursuant to this election is allocated to the contributed partner to the extent of the built-in gain or built-in loss on the widely traded digital asset at the time of contribution.

Coordination with other provisions

The proposal also provides that the wash sales rules and the constructive sales rules do not apply to any transaction with respect a DTDA. In addition, section 267 does not apply with respect to a sale or exchange of a DTDA.

The proposal clarifies that the distribution of a digital asset from a trust to a beneficiary and the transfer of a digital asset from a decedent (whether or not incident to the decedent's death) are treated as dispositions for purposes of the proposal.

In addition, under the proposal, the Secretary is instructed to prescribe regulations or other guidance as may be necessary or appropriate to carry out the purposes of the proposal, including relating to (1) the form and manner of making or revoking an election; (2) any adjustments related to making or revoking the election, including adjustments to the basis of a DTDA; (3) any adjustments to reporting requirements for DTDAs of a taxpayer; (4) the treatment of derivative of a covered digital asset; and (5) preventing abuse.

Definitions

The term "widely traded digital asset" means, with respect to any taxpayer for any taxable year and except as otherwise provided by the Secretary to prevent abuse, any traded digital asset if (i) quotations for the asset were readily available on an exchange for the entire calendar year which ends in or with the taxable year preceding such taxable year, (ii) the market capitalization of the asset exceeded $500 million (adjusted for inflation) at substantially all times during such calendar year, and (iii) not more than 10 percent of the units of the asset were owned, directly or indirectly, by the taxpayer under section 267(b) (applied without regard to section 267(c)(3)) or section 707(b)(1) at any time during such taxable year or such preceding year.[14] In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[15] the asset is treated as a widely traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a widely traded digital asset with respect to the taxpayer.

The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[16] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[17]

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[14] The Secretary may adjust the requirements that apply in lieu of one or more requirements of the "widely traded asset" definition if the Secretary determines that due to changes in market conditions (including by reason of the enactment of Federal digital asset market structure legislation) that alternative requirements would more effectively or efficiently identify traded digital assets for which there is consistent and reliable price discovery.

[15] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[16] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[17] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[18] or (ii) a foreign payment stablecoin issuer[19] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term "U.S. dollar stablecoin" means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[20] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

Effective Date

The proposal applies to taxable years beginning after December 31, 2027.

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asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

[18] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[19] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[20] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

C. Treatment of U.S. Dollar Stablecoin Transactions

Present Law

Gain or loss is generally recognized for Federal income tax purposes on realization of that gain or loss (for example, through the sale of property giving rise to the gain or loss). The taxpayer's gain or loss on a disposition of property is the difference between the amount realized and the adjusted basis.[21]

To compute adjusted basis, a taxpayer must first determine the property's unadjusted or original basis and then make adjustments prescribed by the Code.[22] The original basis of property is its cost, except as otherwise prescribed by the Code (for example, in the case of property acquired by gift or bequest or in a tax-free exchange). Once determined, the taxpayer's original basis generally is adjusted downward to take account of depreciation or amortization, and generally is adjusted upward to reflect income and gain inclusions or capital outlays with respect to the property.

In general, the basis of a digital asset received in a purchase or exchange is generally equal to the cost at the date and time of purchase or exchange, plus any allocable digital asset transaction costs.[23] "Digital asset transaction costs" are amounts paid in cash or property (including digital assets) to effect the sale, disposition, or acquisition of a digital asset.[24]

Description of Proposal

In general

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[25] or (ii) a foreign payment stablecoin issuer[26] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term "U.S. dollar stablecoin" means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of

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[21] Sec. 1001.

[22] Sec. 1016.

[23] Treas. Reg. sec. 1.1012-(h)(1).

[24] Treas. Reg. sec. 1.1001-7(b)(2)(i) and Treas. Reg. sec. 1.1012-1(h)(2)(i).

[25] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[26] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[27] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

Acquisition of qualified U.S. dollar stablecoin

The basis of any qualified U.S. dollar stablecoin acquired by a taxpayer in any sale or exchange equals the redemption value of such stablecoin. The preceding rule does not apply if it is unreasonable under the facts and circumstances to conclude that the value of the consideration provided for such stablecoin is not less than 99.5 percent of the redemption value. "Redemption value" means, with respect to a qualified U.S. dollar stablecoin, the dollar amount the issuer is obligated to convert, redeem, or repurchase such stablecoin.

The income, gain, or loss resulting from the provision of consideration other than money provided in exchange for a qualified US. dollar stablecoin is determined by treating the value of the qualified U.S. dollar stablecoin as equal to the redemption value. The preceding rule does not apply if it is unreasonable under the facts and circumstances to conclude that the value of such stablecoin is not less than 99.5 percent, and not more than 100.5 percent, of the redemption value.

Sale or exchange of U.S. dollar stablecoin

If the basis of any qualified U.S. dollar stablecoin acquired by a taxpayer in any sale or exchange equals the redemption value of such stablecoin, then the taxpayer's gain or loss on the sale or exchange of such stable coin is determined as though the stablecoin were sold or exchanged for the redemption value. The preceding rule does not apply if it is unreasonable under the facts and circumstances to conclude that the value of the consideration received for the stablecoin in the sale or exchange is not more than 100.5 percent of the redemption value.

In the case of any consideration other than money received in exchange for a qualified U.S. dollar stablecoin, the cost of the consideration is determined by treating the value of such qualified U.S. dollar stablecoin as equal to its redemption value. The preceding rule does not apply if it is unreasonable under the facts and circumstances to conclude that the value of such stablecoin is not less than 99.5 percent, and not more than 100.5 percent, of the redemption value.

Related parties

In the case of a sale or exchange between related parties as described in section 267(b) (applied without regard to section 267(c)(3)) or section 707(b)(1), the general rules discussed above apply by substituting "100 percent" for "99.5 percent" or "100.5 percent."

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[27] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

Exceptions

The general rules described above do not apply to any taxpayer for any taxable year if such taxpayer is:

1. A trader, broker, or dealer in qualified U.S. dollar stablecoins;

2. Any person in a trade or business substantially similar to a trade or business described in (1), to the extent provided by the Secretary; or

3. Any other person that engaged in more than 5,000 digital asset transactions during the proceeding taxable year to which the general rules above applied, determined without regard to: (i) any such transaction predominately with respect to a trade or business (other than a trade or business described in (1) or (2)), including the acceptance of qualified U.S. dollar stablecoin at redemption value as a payment for goods and services and the use of qualified U.S. dollar stablecoins at redemption value to acquire goods and services, and (ii) any such transaction which is a sale (for money) of a qualified U.S. dollar stablecoin at or below redemption value.

The general rules of the proposal also do not apply to any taxpayer or qualified business unit[28] that uses a functional currency other than the dollar.

Effective Date

The proposal applies to taxable years beginning after December 31, 2026.

[28] As defined in section 989(a).

TITLE II—PROVIDING PARITY BETWEEN DIGITAL ASSETS AND COMPARABLE TRADITIONAL FINANCIAL ASSETS

A. Transfers of Traded Digital Assets Pursuant to a Lending Agreement

Present Law

Transfer of securities under certain agreements

As a general matter, taxpayers recognize gain or loss on the sale or exchange of an asset, but not on lending or leasing the asset.[29] However, the treatment of certain securities lending transactions historically generated uncertainty because, pursuant to these transactions, the taxpayer "lending" the security would receive back an identical, but different, security.[30] Congress addressed the uncertainty by providing that, if a taxpayer transfers securities pursuant to an agreement which meets certain requirements, then the taxpayer recognizes no gain or loss either on the exchange of such securities for an obligation under such agreement or on the exchange of rights under such agreement for securities identical to the securities originally transferred.[31] For this purpose, "security" has the meaning provided in section 1236(c), and means any share of stock in any corporation, certificate of stock or interest in any corporation, note, bond, debenture, or evidence of indebtedness, or any evidence of an interest in or right to subscribe to or purchase any of the foregoing.[32]

To qualify for the treatment described above, an agreement must (1) provide for the return to the transferor of securities identical to the securities transferred; (2) require that payments be made to the transferor of amounts equivalent to all interest, dividends, and other distributions that the owner of the securities is entitled to receive during the period beginning with the transfer of the securities by the transferor and ending with the transfer of identical securities back to the transferor; (3) not reduce the risk of loss or opportunity for gain of the transferor of the securities in the securities transferred; and (4) meet such other requirements as the Secretary may by regulation prescribe.[33]

[29] See sec. 1001.

[30] S. Rep. No. 762, 95th Cong., 2d Sess. 3 (1978).

[31] Sec. 1058(a).

[32] Secs. 1058(a) and 1236(c).

[33] Sec. 1058(b).

Securities loans

A loan of securities held by a financial institution in almost all cases is governed by a standard form agreement that complies with the requirements described above.[34] For example, consider a taxpayer who holds stock in a brokerage account and allows her broker to engage in securities lending. The broker might lend the stock to another investor (say, one trading on margin) who wants to sell the stock short. Because the agreement governing the securities lending complies with the requirements of section 1058 (described above), the taxpayer recognizes no gain or loss on the lending of the stock (and will recognize no gain or loss on its return). Thus, a taxpayer's income on lending stock generally is only the compensation paid by the borrower.

Digital assets

Many investors choose to lend their digital assets in exchange for payments (known as "yield") and the right to be returned an equivalent digital asset. Nonetheless, because section 1058 applies only to a loan of securities, as defined in section 1236(c), many digital assets may fall outside this narrow definition. Further complicating the status of digital asset loans is that the agreements governing the lending of digital assets, especially through "decentralized finance" ("DeFi") protocols, are far more diverse than those governing securities lending. There is not yet a common standard.

While there are arguments that perhaps the law preceding the enactment of section 1058 (or at least its reasoning)[35] might provide some relief for those lending digital assets, the arguments are untested in their application to digital assets and their strength is unclear.

Description of Proposal

Under the proposal, the section 1058 rules that apply to transfers of securities under certain agreements also apply to transfers of traded digital assets. Specifically, section 1058 is revised to apply to transfers of "specified assets" and then "specified assets" is defined to mean both securities (as defined in section 1236(c)) and traded digital assets. As a result, if the requirements of section 1058(b) are met, then no gain or loss is recognized by the taxpayer on an exchange of traded digital assets described in section 1058(a).

In addition, the proposal modifies the second requirement in section 1058(b), which relates to payments during the period beginning with the transfer of the specified assets by the transferor and ending with the transfer of identical specified assets back to the transferor. Under the proposal, this requirement is met if, during such period: (i) payments are made to the transferor of amounts equivalent to all interest, dividends, and other distributions which the

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[34] The International Swaps and Derivatives Association ("ISDA") and the Securities Industry and Financial Markets Association ("SIFMA") publish and maintain the two standard forms used throughout the financial industry.

[35] See, *e.g.*, GCM 36948 (finding a securities loan in which identical securities returned to be an exchange of securities in which no gain or loss is recognized).

owner of the specified assets is entitled to receive; and (ii) if the specified assets are traded digital assets, (A) payments are made to the transferor of amounts equivalent to all property and other legal entitlements which the owner of the traded digital assets is entitled to receive, except as otherwise provided by the Secretary, and (B) the transferor assumes all obligations imposed on the owner of the traded digital assets.

The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[36] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[37]

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[36] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[37] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

The term “qualified U.S. dollar stablecoin” means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[38] or (ii) a foreign payment stablecoin issuer[39] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term “U.S. dollar stablecoin” means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting “dollars” for “monetary value” each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[40] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

Effective Date

The proposal applies to transfers made after the date of enactment.

[38] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[39] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[40] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

B. Dealers and Traders of Widely Traded Digital Assets

Present Law

Generally, dealers in securities are required to use the mark-to-market method of accounting for securities that are held at year end. Any security that is inventory in the hands of the dealer is included in inventory at fair market value. Also, any security that is not inventory in the hands of the dealer but is held by the dealer at the end of the calendar taxable year triggers recognition of gain or loss by the dealer for the year as if the security were sold for its fair market value on the last business day of the year.[41]

A dealer in securities is a taxpayer that either: (1) regularly purchases securities from or sells securities to customers in the ordinary course of a trade or business; or (2) regularly offers to enter into, assume, offset, assign, or otherwise terminate positions in securities with customers in the ordinary course of a trade or business.[42] A security is defined to include any: (A) share of stock in a corporation; (B) partnership or beneficial ownership interest in a widely held or publicly traded partnership or trust; (C) note, bond, debenture, or other evidence of indebtedness; (D) interest rate, currency, and equity notional principal contract; (E) option, forward contract, or short position in any security described in (A), (B), (C), or (D); and (F) other position identified as a hedge with respect to a security described in (A), (B), (C), (D), or (E).[43]

Exceptions are provided for certain securities that would otherwise be subject to the application of the mark-to-market rules. Subject to proper identification by the taxpayer, these exceptions include: (1) any security held for investment; (2) any note, bond, debenture, or other evidence of indebtedness that is acquired or originated by the taxpayer in the ordinary course of the taxpayer's trade or business and is not held for sale; (3) any obligation to acquire debt described in (2) if such obligation is entered into in the ordinary course of the taxpayer's trade or business and is not held for sale; and (4) any hedge that is with respect to (a) a security to which the mark-to-market rules do not apply or (b) a position, right to income, or a liability which is not a security in the hands of the taxpayer.[44]

Dealers in commodities and traders in securities or commodities may also elect to use the mark-to-market accounting method and to be treated in the same manner as dealers in

[41] Sec. 475(a).

[42] Sec. 475(c)(1).

[43] Sec. 475(c)(2). Section 1256 contracts, which include regulated futures contracts and foreign currency contracts, generally are excluded from the definition of the term "security."

[44] Sec. 475(b).

securities.[45] A commodity is defined to include "any commodity which is actively traded within the meaning of section 1092(d)(1)," but the term "commodity" is not explicitly defined.[46]

Any gain or loss on dealer securities is generally treated as ordinary income or loss.[47] Any gain or loss on other assets that are marked to market pursuant to an election is also generally treated as ordinary income or loss. Limitations on the deductibility of capital losses generally do not apply to losses on assets that are marked to market. The wash sales rule does not apply to any loss recognized on assets that are marked to market.[48]

Section 475 does not explicitly address the treatment of digital assets.

Description of Proposal

The proposal allows traders and dealers of certain digital assets to elect application of the mark-to-market accounting rules, similar to elections that may be made under present law by securities traders and commodities traders and dealers. All covered digital assets held by an electing taxpayer in connection with a trade or business as a trader or dealer in covered digital assets are subject to mark-to-market treatment. With respect to covered digital assets held by a trader or dealer in covered digital assets, rules apply in the same manner as those that apply to securities held by securities traders and dealers, respectively.

A covered digital asset means (1) any specified traded digital asset; (2) any notional principal contract with respect to a specified traded digital asset; (3) any evidence of an interest in, or a derivative instrument in, any digital asset described in (1) or (2), including any option, forward contract, futures contract, short position, and any similar instrument in the digital asset; and (4) any position which (a) is not a covered digital asset described in (1), (2), or (3), (b) is a hedge with respect to the covered digital asset, and (c) is clearly identified in the taxpayer's records as being described in (4) before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

The term "specified traded digital asset" means (1) any widely traded digital asset; (2) any qualified U.S. dollar stablecoin; (3) any qualified pool token asset; (4) any traded digital asset which (a) would be a widely traded digital asset but for the market capitalization requirement (defined below) and (b) has an average daily trading volume, determined on the basis of business days during the calendar year that ends in or with the preceding taxable year, that exceeds $5,000,000; and (5) any traded digital asset which (a) would be a widely traded

[45] Sec. 475(e) and (f).

[46] Sec. 475(e)(2)(A). The term "commodity" also includes any notional principal contract with respect to any commodity that is actively traded, any evidence of an interest in, or derivative instrument in, any commodity that is actively traded or any notional principal contract with respect to such a commodity (such as an option, forward contract, futures contract, short position, or similar instrument) and, any position that is a hedge with respect to any interest treated as a commodity under the foregoing definitions and that meets certain identification requirements. Sec. 475(e)(2)(B)-(D).

[47] Sec. 475(d)(3).

[48] Sec. 475(d)(1).

digital asset but for the ownership limitation (defined below) and (b) constitutes the principal asset held by an entity that is not registered under the Investment Company Act of 1940 and the securities of which are listed and traded on a national securities exchange registered under section 6 of the Securities and Exchange Act of 1934. In the case of a taxpayer for a taxable year, the term "specified traded digital asset" also includes any traded digital asset that would be a widely traded digital asset but for the market capitalization requirement, if, with respect to one or more of the three preceding taxable years, the following conditions are met: (1) the traded digital asset was a widely traded digital asset or qualified U.S. dollar stablecoin with respect to the taxable year, (2) the taxpayer had an election in effect under the proposal that applied to the taxable year and each intervening taxable year, and (3) the taxpayer held specified traded digital assets of such type,[49] or covered digital assets that were not specified traded digital assets with respect to the type of specified digital asset, to which the mark-to-market election in covered digital assets applied.

The term "qualified pool token asset" means any type of digital asset (determined under section 1051(b)(2), as added by the bill, by substituting "digital assets" for "widely traded digital assets") for any taxable year if (1) at substantially all times during the calendar year which ends in or with the taxable year preceding the taxable year (a) substantially all of the value of the type of digital asset is attributable to widely traded digital assets, and (b) the type of digital asset is redeemable on demand for a proportionate share of the assets to which the value of the digital asset is attributable, and (2) the Secretary has determined that allowing the type of digital asset to be treated as a widely traded digital asset is consistent with efficient tax administration and not subject to abuse.[50]

The term "widely traded digital asset" means, with respect to any taxpayer for any taxable year and except as otherwise provided by the Secretary to prevent abuse, any traded digital asset if (i) quotations for the asset were readily available on an exchange for the entire calendar year which ends in or with the taxable year preceding such taxable year, (ii) the market capitalization of the asset exceeded $500 million (adjusted for inflation) at substantially all times during such calendar year (the "market capitalization requirement"), and (iii) not more than 10 percent of the units of the asset were owned, directly or indirectly, by the taxpayer under section 267(b) (applied without regard to section 267(c)(3)) or section 707(b)(1) at any time during such taxable year or such preceding year (the "ownership limitation").[51] In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[52] the asset is treated as a widely traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a widely traded digital asset with respect to the taxpayer. The term

[49] Determined under rules similar to the rules of section 1051(b)(2), as added by the bill.

[50] As defined in section 1051(b)(3)(B), as added by the bill.

[51] The Secretary may adjust the requirements that apply in lieu of one or more requirements of the "widely traded asset" definition if the Secretary determines that due to changes in market conditions (including by reason of the enactment of Federal digital asset market structure legislation) that alternative requirements would more effectively or efficiently identify traded digital assets for which there is consistent and reliable price discovery.

[52] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

"digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[53] or (ii) a foreign payment stablecoin issuer[54] that is registered with the Office of the Comptroller of the Currency. The term "U.S. dollar stablecoin" means a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section. The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[55] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

Additional rules

Under the proposal, a mark-to-market election may be made without the consent of the Secretary. However, once an election is made, it applies to the taxable year for which it is made and all subsequent taxable years unless it is revoked with the consent of the Secretary. With respect to a covered digital asset which is a security or commodity, the proposal provides that the digital asset is not treated as a security or commodity for purposes of the mark-to-market rules.

In the case of an adjustment described in section 481(a) which is attributable to a mark-to-market election with respect to securities, commodities, or covered digital assets, the character of any income or loss with respect to any property as a result of the adjustment is the same as the character of gain or loss which would have resulted from the sale of the property as of the close of the taxable year preceding the year of the change[56] under the method of accounting used for that preceding taxable year.

In the case of a taxpayer that is a trader or dealer in covered digital assets that makes an election to change the taxpayer's method of accounting for the taxpayer's first taxable year beginning after the date of enactment, any identification required with respect to covered digital assets held on the first day of the taxable year is treated as timely made if made on or before the 30th day of the taxable year, and the net amount of the adjustments required to be taken into

[53] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[54] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[55] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[56] Within the meaning of section 481.

account by the taxpayer under section 481 is taken into account ratably over the four-year taxable year period beginning with such taxable year.

Transitional coordination with wash sale rules

In the case of a taxpayer that is a trader or dealer in covered digital assets that makes a mark-to-market election for the taxpayer's first taxable year beginning after the date of enactment, the wash sale rule under section 1091 is applied without regard to any specified transaction made by the taxpayer during the preceding taxable year if the taxpayer does not, during the first such taxable year, identify under section 475(b)(2) any built-in-gain security as being a security held for investment.[57] The term "specified" transaction" means any acquisition or disposition of a covered digital asset made in the ordinary course of the taxpayer's activity as a dealer or trader (as the case may be). A "built-in gain security" is any security if (as of the time of the identification) the fair market value of the security exceeds the adjusted basis of the security. The Secretary may issue regulations or guidance as may be necessary or appropriate to provide additional transitional rules with respect to taxpayers that are traders or dealers in covered digital assets that make a mark-to-market election for the taxpayer's first taxable year beginning after the date off enactment, including regulations or other guidance to provide for simplified adjustments in the case of such an action which applies to digital assets to which an election under section 475(e) (election for of mark-to-market for commodities dealers) applied for the preceding year.

Effective Date

The proposal is effective for taxable years beginning after the date of enactment.

[57] For a description of the wash sale proposal, see Title III.A.

C. Digital Asset Trading Safe Harbor

Present Law

Foreign persons are subject to U.S. taxation generally on two types of income: (1) income effectively connected with the conduct of a trade or business within the United States ("effectively connected income" or "ECI"), which is generally taxed in the same manner as business income of a U.S. resident;[58] and (2) investment income received from sources within the United States which are "fixed or determinable annual or periodical gains, profits, and income" ("FDAP income").[59] ECI is subject to net-basis income tax; FDAP income is subject to a 30-percent gross-basis tax (generally collected through withholding, with rates often reduced by a bilateral income tax treaty).

In many instances, whether a foreign person has ECI depends on having a U.S. trade or business. Thus, the U.S. taxation of foreign persons depends on whether the foreign person's activities in the United States rise to the level of a U.S. trade or business. In general, to rise to that level, an activity must be considerable, continuous, and regular. Whether an activity rises to that level is, for many activities, unambiguous. For certain activities, though, the line separating a U.S. trade or business from an activity not subject to net U.S. income tax is less clear. One such activity is buying and selling stock or securities (or commodities). The test for whether an activity rises to the level of a U.S. trade or business is based on all facts and circumstances: there is no straightforward line.

To provide certainty to taxpayers and to attract foreign direct investment in U.S. capital markets, the Code provides a safe harbor for trading stock or securities (or commodities) (the "trading safe harbor").[60] Under the trading safe harbor, if a foreign person trades in stock or securities (or commodities) within the United States through a broker or agent, the trading is not treated as a U.S. trade or business if the foreign person does not have an office or other fixed place of business in the United States through which the transactions are effected.[61] In addition, if a foreign person trades stock or securities (or commodities) within the United States for the person's own account, and the person is not a dealer in stock or securities (or commodities), the trading is not treated as a U.S. trade or business.[62]

[58] Secs. 871(b) and 882.

[59] Secs. 871(a) and 881.

[60] Sec. 864(b)(2).

[61] Sec. 864(b)(2)(A)(i), (B)(i), and (C).

[62] Sec. 864(b)(2)(A)(ii) and (B)(ii).

With respect to trading in commodities, the trading safe harbor applies only if the commodities are of a kind customarily dealt in on an organized commodity exchange and if the transaction is of a kind customarily consummated at such place.[63]

Thus, a foreign person trading in stock or securities (or commodities) within the United States is generally not treated as engaged in a U.S. trade or business, and income from the trading would generally not be treated as effectively connected with a U.S. trade or business. Certain U.S. source income from the trading may be subject to U.S. tax as FDAP income (including, for example, dividends paid from a U.S. corporation) but gain or loss on the trading would generally not be subject to U.S. tax.

Description of Proposal

The proposal amends section 864(b)(2) by adding traded digital assets to the trading safe harbor. The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.[64]

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically

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[63] Sec. 864(b)(2)(B)(iii).

[64] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded. [65]

If a foreign person trades in traded digital assets within the United States through a resident broker, commission agent, custodian, staking service provider, or other independent agent, the trading is not treated as a U.S. trade or business if the foreign person does not have an office or other fixed place of business in the United States through which the transactions are effected. In addition, if a foreign person trades traded digital assets within the United States for the person's own account, and the person is not a dealer in traded digital assets, the trading is not treated as a U.S. trade or businesses. For purposes of section 864(b)(2), a traded digital asset is not treated as a security or commodity.

Effective Date

The proposal applies to taxable years beginning after December 31, 2025.

[65] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

D. Charitable Contributions of Certain Digital Assets

Present Law

Taxpayers may generally reduce Federal income tax liability by taking a deduction for contributions to public charities, private foundations, and certain other organizations.[66]

Itemized deduction for charitable contributions

An income tax deduction is permitted for charitable contributions for individuals who itemize deductions, subject to certain limitations that depend on the type of taxpayer, the property contributed, and the recipient organization.[67] Special rules apply to deductions for charitable contributions for individuals who do not itemize, discussed below.

Charitable contributions of cash are deductible in the amount contributed. In general, contributions of capital gain property to a qualified charity are deductible at fair market value with certain exceptions. Capital gain property means any capital asset or property used in the taxpayer's trade or business the sale of which at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of other appreciated property generally are deductible at the taxpayer's basis in the property. Contributions of depreciated property generally are deductible at the fair market value of the property.

Percentage limitations

For individuals, in any taxable year, the amount deductible as a charitable contribution is limited to a percentage of the taxpayer's contribution base ("applicable percentage").[68] The contribution base is defined as the taxpayer's adjusted gross income ("AGI") computed without regard to any net operating loss carryback.[69] The applicable percentage of the contribution base varies depending on the type of recipient organization and property contributed.

Contributions by an individual taxpayer of property (other than appreciated capital gain property) to a charitable organization described in section 170(b)(1)(A) (*e.g.*, public charities, private foundations other than private non-operating foundations, and certain governmental units) ("section 170(b)(1)(A) contributions") may not exceed 50 percent of the taxpayer's contribution base. Contributions of this type of property to nonoperating private foundations and certain other organizations ("section 170(b)(1)(B) contributions") generally may be deducted up to 30 percent of the taxpayer's contribution base. However, the amount of section 170(b)(1)(B)

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[66] Sec. 170. This section generally applies to individuals who itemize deductions and to corporations. In certain cases, trusts and estates may claim an income tax deduction for a charitable contribution under section 642(c). Certain charitable contributions are also deductible for gift or estate tax purposes. See secs. 2055 and 2522.

[67] Sec. 170.

[68] Sec. 170(b).

[69] Sec. 170(b)(1)(H).

contributions that may be deducted is limited by the excess of 50 percent of the taxpayer's contribution base over the amount of allowable section 170(b)(1)(A) contributions for the taxable year.[70]

Section 170(b)(1)(G) increases the percentage limit for contributions by an individual taxpayer of cash to an organization described in section 170(b)(1)(A) to 60 percent ("section 170(b)(1)(G) contributions"). The 60-percent limit does not apply to noncash contributions.

Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(A) ("section 170(b)(1)(C) contributions") generally are deductible up to 30 percent of the taxpayer's contribution base. An individual may elect, however, to bring contributions of appreciated capital gain property for a taxable year within the 50-percent limitation category by reducing the amount of the contribution deduction by the amount of the appreciation in the capital gain property. Contributions of appreciated capital gain property to charitable organizations described in section 170(b)(1)(B) (*e.g.*, private nonoperating foundations) ("section 170(b)(1)(D) contributions") are generally deductible up to 20 percent of the taxpayer's contribution base. Section 170(b)(1)(C) contributions are taken into account only after all other types of charitable contributions, other than section 170(b)(1)(D) contributions. Section 170(b)(1)(D) contributions are taken into account only after all other types of charitable contributions.

Charitable contributions that exceed the applicable percentage limit generally may be carried forward for up to five years.[71] In general, contributions carried over from a prior year are taken into account after contributions for the current year that are subject to the same percentage limit.

<u>Charitable deduction for nonitemizers</u>

Under section 170(p), an individual who does not itemize deductions may claim a deduction in an amount not to exceed $1,000 ($2,000 in the case of a joint return) for certain charitable contributions made in taxable years beginning after December 31, 2025.

Contributions taken into account for this purpose include only contributions made in cash during the taxable year to a charitable organization described in section 170(b)(1)(A) (generally, public charities), other than contributions to (1) a supporting organization[72] or (2) for the establishment of a new, or maintenance of an existing, donor advised fund.[73] Contributions of noncash property, such as securities, are not taken into account. Contributions must be to an organization described in section 170(b)(1)(A); thus, contributions to, for example, a charitable remainder trust generally are not qualified contributions, unless the charitable remainder interest is paid in cash to an eligible charity during the applicable time period. A qualifying charitable

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[70] For this purpose, section 170(b)(1)(C) contributions, described below, are not taken into account.

[71] Sec. 170(b)(1)(D)(ii), (b)(1)(G)(ii) and (d).

[72] Sec. 509(a)(3).

[73] Sec. 4966(d)(2).

contribution does not include an amount that is treated as a contribution in the taxable year by reason of being carried forward from a prior contribution year under section 170(b)(1)(G) or (d)(1).

Valuation of charitable contributions of property

Charitable contributions of cash are deductible in the amount contributed. Contributions of appreciated property that is long-term capital gain property to a public charity generally are deductible at the full fair market value of the property.[74]

In certain cases, however, the amount of the deduction for appreciated property is limited to the donor's tax basis in the property.[75] This limitation applies, for example, to: (1) contributions of inventory or other ordinary income or short-term capital gain property;[76] (2) contributions of tangible personal property if the use by the recipient charitable organization is unrelated to the organization's tax-exempt purpose;[77] and (3) contributions to or for the use of a private foundation (other than certain private operating foundations).[78]

Contributions of property with a fair market value that is less than the donor's tax basis generally are deductible at the fair market value of the property.

Substantiation of charitable contributions of property

No charitable contribution deduction is allowed for a contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether the charity provided any good or service (and an estimate of the value of any such good or service) to the taxpayer in consideration for the contribution.[79]

If the total charitable deduction claimed for noncash property is more than $500, the taxpayer generally must attach a completed Form 8283 ("Noncash Charitable Contributions") to

[74] Sec. 170(e)(1)(A).

[75] See sec. 170(e).

[76] Sec. 170(e). Certain contributions of inventory qualify for an "enhanced deduction" in an amount greater than the taxpayer's basis. See sec. 170(e)(3).

[77] Sec. 170(e)(1)(B)(i)(I).

[78] Sec. 170(e)(1)(B)(ii). Certain contributions of publicly traded stock to a private nonoperating foundation are, however, deductible at the fair market value of the stock. Sec. 170(e)(5).

[79] Sec. 170(f)(8). The acknowledgement also must include the amount of cash and a description (but not value) of any property other than cash contributed. *Ibid*. In addition, any organization receiving a contribution exceeding $75 made partly as a gift and partly as consideration for goods or services furnished by the charity (a "quid pro quo" contribution) is required to provide in writing an estimate of the value of the goods or services and a statement that only the portion of the contribution that exceeds the value of the goods or services is deductible as a charitable contribution. Sec. 6115.

the taxpayer's return.[80] In general, a taxpayer who claims a deduction of more than $5,000 for contributions of property must obtain a qualified appraisal and attach an appraisal summary to the tax return.[81] If the claimed value is more than $500,000, the taxpayer must attach the qualified appraisal to the return.[82]

The substantiation requirements described in the preceding paragraph for contributions of property with a claimed value of more than $500, $5,000, or $500,000 do not apply if it is shown that a failure to meet the requirements is due to reasonable cause and not to willful neglect.[83] In addition, the appraisal requirements for contributions with a claimed value of more than $5,000 or $500,000 do not apply to certain contributions of readily valued property.[84] For this purpose, readily valued property includes: (1) cash; (2) certain intellectual property; (3) securities for which (as of the date of the contribution) market quotations are readily available on an established securities market; and (4) certain vehicles for which separate substantiation rules apply.[85]

Application to digital assets

In a January 10, 2023 memorandum[86] from the Office of Chief Counsel, the IRS considers whether a taxpayer who makes a charitable contribution of cryptocurrency and claims a deduction of more than $5,000 is required to obtain a qualified appraisal. The taxpayer at issue transferred her units of Cryptocurrency B to a charity, attached Form 8283 to her return, and claimed a $10,000 charitable deduction. The taxpayer based this $10,000 value on a value listed at the exchange on which Cryptocurrency B was traded at the time of the contribution. The taxpayer did not obtain, or attempt to obtain, an appraisal.

The memorandum first notes that general tax principles applicable to property transactions apply to transactions involving cryptocurrency. The memorandum states that Cryptocurrency B does not qualify as a readily valued asset to which the appraisal requirements do not apply, because it is not cash, a publicly traded security,[87] or any other type of property

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[80] See sec. 170(f)(11)(B).

[81] Sec. 170(f)(11)(C).

[82] Sec. 170(f)(11)(D).

[83] Secs. 170(f)(11)(A)(ii)(II).

[84] Sec. 170(f)(11)(A)(ii)(I).

[85] Secs. 170(f)(11)(A)(ii)(I) and 6050L(a)(2)(B).

[86] IRS Chief Counsel Advice Memorandum 202302012, January 10, 2023.

[87] The memorandum notes that Treasury Regulation section 1.170A-13(c)(7)(xi) defines "publicly traded securities" for this purpose to mean securities as defined by section 165(g)(2). Section 165(g)(2) defines a security as a share of stock in a corporation, a right to subscribe for or to receive a share of stock in a corporation, or a bond, debenture, note, certificate, or other evidence of indebtedness issued by a corporation or a government or political

that qualifies for the exception. The memorandum concludes that, because the taxpayer claimed a deduction of more than $5,000, and Cryptocurrency B is not a "readily valued asset" that qualifies for an exception to the appraisal requirement, the taxpayer was required to obtain a qualified appraisal.

Finally, the memorandum considers whether the taxpayer's use of a value reported by a cryptocurrency exchange constituted reasonable cause for failure to satisfy the appraisal requirement, such that the appraisal requirement would not apply to the taxpayer's contribution. Concluding that the taxpayer did not establish reasonable cause, the memorandum states that "[t]he reasonable cause exception was not intended to provide taxpayers with the choice of whether to obtain a qualified appraisal, but to provide relief where an unsuccessful attempt was made in good faith to comply with the requirements of section 170." As a result, the memorandum provides that the taxpayer's deduction is disallowed.

Description of Proposal

Exception from appraisal requirement

The proposal adds (1) qualified U.S. dollar stablecoins and (2) widely traded digital assets (except as the Secretary determines appropriate to prevent abuse) to the types of readily valued property that are excepted from the qualified appraisal requirements for contributions of property for which a deduction of more than $5,000 or $500,000 is claimed.

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[88] or (ii) a foreign payment stablecoin issuer[89] that is registered with the Office of the Comptroller of the Currency. The term "U.S. dollar stablecoin" means a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section. The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[90] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily

subdivision with interest coupons or in registered form. The cryptocurrency at issue does not fall within the definition.

[88] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[89] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[90] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[91] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[92]

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

Nondeductibility of charitable contributions of conversion eligible digital assets

Under the proposal, no deduction is allowed for any charitable contribution of a conversion eligible digital asset and instead allows such assets to be sold or exchanged with recognition of gain, if proceeds from such sale or exchange are subsequently donated to charity. A "conversion eligible digital asset" is a digital asset other than a qualified U.S. dollar stablecoin, a widely traded digital asset excepted from the qualified appraisal requirement, and a tokenized digital asset.

The proposal provides that no gain is recognized on a "qualifying sale or exchange," which is the sale of a conversion eligible digital asset, or the exchange of a conversion eligible digital asset for qualified U.S. dollar stablecoins, if the entire proceeds of the sale (or all of the

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[91] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[92] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

qualified U.S. dollar stablecoins received in the exchange) are contributed by the taxpayer as a charitable contribution not later than the earlier of (1) the date that is seven days after the date of the sale or exchange or (2) the close of the taxpayer's taxable year. Except as otherwise provided by the Secretary, if less than the entire proceeds of the sale are contributed, the amount of gain that is not recognized is equal to the amount of the entire gain multiplied by a ratio equal to the contributed amount divided by the amount of the entire proceeds. For purposes of the income limitation for cash contributions under section 170(b)(1)(G) and the non-itemizer deduction under section 170(p), the contribution is not treated as a contribution of cash. For purposes of section 170(b)(1)(C), section 170(b)(1)(D), and section 170(e) (rules pertaining to capital gain property), the contribution is treated as a contribution made directly by the taxpayer on the date of the qualifying sale or exchange.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2026.

TITLE III—APPLYING EXISTING TAX ANTI-ABUSE RULES TO DIGITAL ASSETS

A. Application of Wash Sale Rules to Traded Digital Assets

Present Law

In general, a sale or other disposition of property is a recognition event—meaning that, upon such sale or other disposition, a taxpayer calculates gain or loss with respect to the property. Certain exceptions to the general rule apply. For example, a taxpayer holding property at a loss may want to recognize the loss while still owning the property. As a close proxy, the taxpayer might try to sell the property and quickly buy it back. (Such a strategy is simplest with fungible, publicly traded property.)[93] However, upon such a "wash sale," a loss in some cases is deferred until a later sale of the new, identical property.

Section 1091 provides that no deduction is allowed currently with respect to any loss claimed to have been sustained from any sale or other disposition of stock or securities if, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer acquires substantially identical stock or securities (the "wash sale rule").[94] Instead, the basis of the new stock or securities is adjusted to reflect the loss not allowed.[95] This rule does not apply to a dealer in stock or securities if the loss is sustained in a transaction made in the ordinary course of such business.

For this purpose, the term "stock or securities" includes contracts or options to acquire or sell stock or securities. The Code, however, does not further define the term. Not all fungible, publicly traded property is within the scope of the wash sale rule. For example, neither foreign currency[96] nor commodities[97] are stock or securities for purposes of the wash sale rule.

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[93] A separate rule applies to sales between related parties. See sec. 267.

[94] Sec. 1091(a). Under its authority under section 1092(b), Treasury has issued a rule, sometimes referred to as the "modified wash sale rule," which extends principles relating to wash sales under section 1091 to losses on straddle positions. Sec. 1092(b); Temp. Treas. Reg. sec. 1.1092(b)-1T(a). Because the straddle rules relate to offsetting positions with respect to actively traded personal property (in comparison to the wash sale rule, which applies to sales and dispositions of stock or securities), the modified wash sale rule may apply to certain transactions and certain types of property that the wash sale rule under section 1091 does not.

[95] Sec. 1091(d).

[96] Rev. Rul. 74-218, 1974-1 C.B. 202 (foreign currency).

[97] Rev. Rul. 71-568, 1971-2 C.B. 312 (commodity futures). By holding that commodity futures are not stock or securities, the ruling implicitly holds that commodities (*i.e.*, the underlying) are also not stock or securities. In other words, if the underlying commodities were stock or securities, then the commodity futures would also be stock or securities.

Generally, if a taxpayer engages in a wash sale in a brokerage account, the broker must account for and report the wash sale (and loss deferred).[98]

Digital assets are not expressly within the scope of section 1091, and the IRS has not issued regulations or guidance addressing whether the wash sale rule may apply to sales or dispositions of digital assets.

Description of Proposal

The proposal extends the wash sale rule to certain digital assets and certain related derivatives. Under the proposal, the wash sale rule is modified to apply to specified assets, such that no deduction is allowed with respect to any loss claimed to have been sustained from any sale or other disposition of such assets if, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer acquires substantially identical assets. The term "specified asset" means (1) any stock or security (as under present law), (2) any traded digital asset other than a qualified U.S. dollar stablecoin, and (3) any contract or option to acquire or sell an asset described in (1) or (2).

The proposal provides that a tokenized digital asset (and a wrapped digital asset with respect to which the reference digital asset is a traded digital asset) is treated as substantially identified to any stock, security, or traded digital asset if the tokenized digital asset (or wrapped digital asset) is economically equivalent to such stock, security, or traded digital asset.

The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[99] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[100]or (ii) a foreign payment stablecoin issuer[101] that is registered with the Office of the Comptroller of the Currency. The term "U.S. dollar stablecoin" means a payment stablecoin as

[98] See sec. 6045(g)(2)(B)(ii).

[99] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[100] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[101] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section. The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[102] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

Other rules

The proposal also provides that in the case of a taxpayer or qualified business unit[103] that uses a functional currency other than the dollar, a qualified U.S. dollar stablecoin is treated as a specified asset for purposes of the wash sale rule. However, the acquisition of a traded digital asset is not taken into account for purposes of the wash sale rule if the traded digital asset is acquired in connection with the validation of digital asset transactions (including digital asset validation supporting activities) or in a transaction which is part of a regular or periodic series of acquisitions of traded digital assets which are included by the taxpayer as ordinary income. The term "validate," and any derivative the term (including "validation"), when used in connection with a digital asset transaction, includes the processes of proposing transactions for validation and verifying the validation of transactions. The term "digital asset validation supporting activities" means staking, mining, or except as otherwise provided by the Secretary, similar activities in support of the validation of digital asset transactions. The term "digital asset validation supporting activities" means staking, mining, or except as otherwise provided by the Secretary, similar activities in support of the validation of digital asset transactions.

Rules similar to the rules of section 1091(a) apply to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a specified asset futures contract[104] to sell) specified assets, if, within a period beginning 30 days before the date of the closing and ending 30 days after such date (1) substantially identical specified assets were sold, or (2) another short

[102] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[103] As defined in section 989(a).

[104] As defined in section 1234B(c), as added by the bill.

sale of (or specified asset futures contract to sell) substantially identical specified assets was entered into.

For purposes of the broker reporting rules under section 6045, in the case of a sale or other disposition before January 1, 2028, of a traded digital asset to which section 1091 would not have applied but for the amendments made by the proposal, the customer's adjusted basis is determined without regard to section 1091.[105]

Effective Date

The proposal applies to dispositions after the date of introduction.

[105] For information on the broker reporting rules under section 6045, see the discussion in Title V.A (broker requirements).

B. Application of Constructive Sale Rules to Digital Assets

Present Law

Generally, a taxpayer is required to recognize gain upon a constructive sale of an appreciated financial position as if the position were sold, assigned, or otherwise terminated at its fair market value on the date of the constructive sale.[106] An appreciated financial position is generally defined as any position with respect to any stock, debt instrument, or partnership interest if there would be gain if the position were sold, assigned, or otherwise terminated at its fair market value.[107] The term "position" means an interest, including a futures or forward contract, short sale, or option.[108]

A taxpayer is treated as having made a constructive sale of an appreciated financial position if the taxpayer (or a related person) (A) enters into a short sale of the same or substantially identical property; (B) enters into an offsetting notional principal contract with respect to the same or substantially identical property; (C) enters into a futures or forward contract to deliver the same or substantially identical property; (D) in the case of an appreciated financial position that is a short sale or a contract described in (B) or (C) with respect to any property, acquires the same or substantially identical property; or (E) to the extent prescribed by the Secretary in regulations, enters into one or more other transactions (or acquires one or more positions) that have substantially the same effect as a transaction described in (A), (B), (C), or (D).

However, a taxpayer is not treated as having made a constructive sale solely because the taxpayer enters into a contract for sale of any stock, debt instrument, or partnership which is not a marketable security[109] if the contract settles within one year after the date the contract is entered into.[110]

The rules for constructive sales do not expressly apply to digital assets.

Description of Proposal

The proposal amends the constructive sales provision by expanding the term "appreciated financial position" to also include digital assets other than qualified U.S. dollar stablecoins. As a result, the constructive sale rule applies to digital assets other than qualified U.S. dollar

[106] Sec. 1259(a)(1). Any gain or loss realized after the constructive sale with respect to the position is adjusted to reflect any gain taken into account as a result of the constructive sale. In addition, the holding period of the position is determined as if the position were originally acquired on the date of the constructive sale. Sec. 1259(a)(2).

[107] Sec. 1259(b)(1).

[108] Sec. 1259(b)(3).

[109] As defined in section 453(f).

[110] Sec. 1259(c)(2).

stablecoins. The proposal also modifies the exception for sales of nonpublicly traded property to apply to stock, debt instruments, and partnership interests that are not marketable securities or widely traded digital assets.[111]

The proposal also provides a rule for tokenized digital assets. Under this rule, for purposes of the constructive sales provision, a tokenized digital asset is treated as substantially identical to any stock, debt instrument, or partnership interest if such tokenized digital asset is economically equivalent to such stock, debt instrument, or partnership interest.

In addition, the proposal limits the definition of qualified U.S. dollar stablecoins for purposes of this provision. Under the proposal, if a taxpayer or qualified business unit[112] uses a functional currency other than the dollar, then, with respect to the taxpayer or qualified business unit, a qualified U.S. dollar stablecoin is not treated as a qualified U.S. dollar stablecoin for purposes of the provision.

The term "widely traded digital asset" means, with respect to any taxpayer for any taxable year and except as otherwise provided by the Secretary to prevent abuse, any traded digital asset if (i) quotations for the asset were readily available on an exchange for the entire calendar year which ends in or with the taxable year preceding such taxable year, (ii) the market capitalization of the asset exceeded $500 million (adjusted for inflation) at substantially all times during such calendar year, and (iii) not more than 10 percent of the units of the asset were owned, directly or indirectly, by the taxpayer under section 267(b) (applied without regard to section 267(c)(3)) or section 707(b)(1) at any time during such taxable year or such preceding year.[113] In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[114] the asset is treated as a widely traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a widely traded digital asset with respect to the taxpayer.

The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[115] the

[111] For purposes of this rule, marketable securities are defined in section 453(f).

[112] As defined in section 989(a).

[113] The Secretary may adjust the requirements that apply in lieu of one or more requirements of the "widely traded asset" definition if the Secretary determines that due to changes in market conditions (including by reason of the enactment of Federal digital asset market structure legislation) that alternative requirements would more effectively or efficiently identify traded digital assets for which there is consistent and reliable price discovery.

[114] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[115] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[116]

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[117] or (ii) a foreign payment stablecoin issuer[118] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term "U.S. dollar stablecoin" means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the

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116 If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

117 As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

118 As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[119] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

Effective Date

The proposal applies to constructive sales after the date of introduction.

[119] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

C. Application of Subpart F and PFIC Rules

Present Law

1. Subpart F

In general, income earned directly by a U.S. person from the conduct of a foreign trade or business is taxed currently,[120] while income earned indirectly through certain related foreign entities (*e.g.*, controlled foreign corporations ("CFCs"))[121] is taxed in the year earned or not at all. One way the income of CFCs is taxed is under the traditional anti-deferral regime of subpart F.[122] The income constitutes an income inclusion to U.S. shareholders, which applies to certain passive income and income that is readily movable from one jurisdiction to another.[123] Subpart F was designed as an anti-abuse regime to prevent U.S. taxpayers from shifting passive and mobile income to low-tax jurisdictions.[124] Also, subpart F income is taxed at full rates with related foreign taxes generally eligible for the foreign tax credit and is included by the U.S. shareholder without regard to whether the earnings are distributed by the CFC.

Under subpart F, U.S. shareholders of a CFC must include in income their *pro rata* shares of subpart F income, without regard to whether the income is distributed to the shareholders.[125] In effect, U.S. shareholders of a CFC are treated as having received a current distribution of the CFC's subpart F income. With exceptions described below, subpart F income generally includes passive income and other related party income that is readily movable from one jurisdiction to another. Subpart F income consists of foreign base company income,[126] insurance income,[127] and certain income relating to international boycotts and other violations of public policy.[128]

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[120] Such income is called foreign branch income.

[121] A CFC generally is defined as any foreign corporation in which U.S. persons own (directly, indirectly, or constructively) more than 50 percent of the corporation's stock (measured by vote or value), taking into account only "U.S. shareholders," that is, U.S. persons that own at least 10 percent of the stock (measured by vote or value). See secs. 951(b), 957, and 958.

[122] Another is section 951A, which generally applies to income of a CFC that is not subpart F income (referred to as net CFC tested income ("NCTI")).

[123] Subpart F comprises sections 951 through 965.

[124] See Joint Committee on Taxation, *Tax Effects of Conducting Foreign Business through Foreign Corporations* (JCS-5-61), July 21, 1961, Part V. This document can be found on the Joint Committee on Taxation website at www.jct.gov. See also Rev. Act. of 1962, Pub. L. No. 87-834.

[125] Sec. 951(a).

[126] Secs. 952(a)(2) and 954.

[127] Secs. 952(a)(1) and 953.

[128] Sec. 952(a)(3)-(5).

Foreign personal holding company income[129]

Foreign base company income consists of foreign personal holding company income ("FPHCI"), which includes passive income such as dividends, interest, rents, and royalties, as well as certain categories of income from business operations, including foreign base company sales income[130] and foreign base company services income.[131]

FPHCI generally includes income from dividends, interest, royalties, rents, and annuities; net gains on certain property transactions; net gains from commodities transactions; net gains from foreign currency transactions; income equivalent to interest; income from notional principal contracts; payments in lieu of dividends; and amounts received under certain personal service contracts.[132]

Several exceptions apply to exclude certain income from FPHCI. For example, FPHCI does not include certain dividends, interest, rents, and royalties received by a CFC from a related corporation organized and operating in the same foreign country in which the CFC is organized.[133] The same-country exception is not available to the extent that the payments reduce the subpart F income of the payor. Another exception excludes from FPHCI dividends, interest, rents, and royalties received or accrued by one CFC from a related CFC to the extent attributable or properly allocable to income of the payor that is not subpart F income.[134]

In addition, there is an "active business" exception for rents and royalties that are derived from an active trade or business conducted by the CFC and not received from a related party.[135]

Lastly, there is also an exception for a securities dealer. FPHCI excludes any interest or dividend (or certain equivalent amounts) from any transaction entered into in the ordinary course of the dealer's trade or business as a dealer in securities within the meaning of section 475.[136]

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[129] For more information on the other components of foreign base company income, and subpart F income in general, see Joint Committee on Taxation, *Background and Analysis of the Taxation of Income Earned by Multinational Enterprises* (JCX-35R-23), July 17, 2023. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

[130] Sec. 954(d)(1).

[131] Sec. 954(e).

[132] Sec. 954(c)(1)(A)-(H).

[133] Sec. 954(c)(3).

[134] Sec. 954(c)(6). This exception is colloquially referred to as the CFC look-through rule.

[135] Sec. 954(c)(2)(A).

[136] Sec. 954(c)(2)(C).

2. Passive foreign investment companies

The Tax Reform Act of 1986[137] established the PFIC anti-deferral regime. A PFIC is generally defined as any foreign corporation if 75 percent or more of its gross income for the taxable year consists of passive income, or 50 percent or more of its assets consists of assets that produce, or are held for the production of, passive income.[138]

Under the PFIC regime, passive income is any income of a kind that would be FPHCI, including dividends, interest, royalties, rents, and certain gains on the sale or exchange of property, commodities, or foreign currency. However, among other exceptions, passive income does not include income derived in the active conduct of an insurance business by a corporation (1) that would be subject to tax under subchapter L if it were a domestic corporation;[139] and (2) the applicable insurance liabilities of which constitute more than 25 percent of its total assets as reported on the company's applicable financial statement for the last year ending with or within the taxable year.[140]

Coordination rules

Rules for coordination among the anti-deferral regimes are provided to prevent U.S. persons from being subject to U.S. tax on the same item of income under multiple regimes. For example, a corporation generally is not treated as a PFIC with respect to a particular shareholder if the corporation is also a CFC and the shareholder is a 10-percent U.S. shareholder. That is, subpart F trumps the PFIC rules.

Description of Proposal

The proposal amends section 954(c)(1) by adding digital assets to the types of property for which gain over losses from the sale or exchange of such property are included in FPHCI. In addition, the proposal adds certain passive digital asset validation supporting income to FPHCI. This passive digital asset validation supporting income includes income derived from staking, mining, or similar activities in support of the validation of digital asset transactions.

However, such passive digital asset validation supporting income does not include income if the following conditions are met: (1) such income is derived in the active conduct of a trade or business of validating such transactions; (2) substantially all of the CFC's digital assets are related to such trade or business; and (3) substantially all of the activities of such trade or business occur in the same country as the country in which such corporation is created or

[137] Pub. L. No. 99-514.

[138] Sec. 1297.

[139] Sec. 1297(f)(1)(A).

[140] Sec. 1297(f)(1)(B).

organized (or in the case of a qualified business unit described in section 989(a) (a "QBU"),[141] substantially all the activities of such trade or business occur in the country in which the QBU both maintains its principal office and conducts substantial business activity).

In addition, the proposal amends section 954(c)(1) by adding that, in the case of digital asset lending agreements within the meaning of section 1058(a),[142] pursuant to which traded digital assets are transferred, any payment made under the agreement is included in FPHCI, other than payments within the meaning of section 1058(b)(1) (*i.e.*, the borrower returns identical traded digital assets to the transferor).

The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.[143]

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

There is also an expansion of the exception for dealers under section 954(c)(2)(C). As a result, their FPCHI is determined without regard to the passive digital asset supporting income described above. Lastly, there is also an exception for a dealer in covered digital assets (within the meaning of section 475). Their FPHCI excludes certain interest or dividends (or certain equivalent amounts) and such passive digital asset validation supporting income from any transaction, including any hedging transaction, entered into in the ordinary course of the dealer's trade or business as a dealer in covered digital assets. However, for the exclusion to apply, the income from the transaction must be attributable to activities of the dealer in the country under the laws of which the dealer is created or organized (or in the case of a qualified business unit within the meaning of section 989(a), the income from the transaction must be attributable to activities of the unit in the country in which the unit both maintains its principal office and conducts substantial business activity).

[141] The term "qualified business unit" means any separate and clearly identified unit of a trade or business of a taxpayer which maintains separate books and records.

[142] In the case of a taxpayer who transfers specified assets pursuant to an agreement which meets the requirements of subsection (b), section 1058(a) (as modified by the bill) states that such taxpayer shall not recognize gain or loss on the exchange of such specified assets by the taxpayer for an obligation under such agreement, or on the exchange of rights under such agreement by that taxpayer for specified assets identical to the specified assets transferred by that taxpayer.

[143] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

The term “covered digital asset” means (1) any specified traded digital asset; (2) any notional principal contract with respect to a specified traded digital asset; (3) any evidence of an interest in, or a derivative instrument in, any digital asset described in (1) or (2), including any option, forward contract, futures contract, short position, and any similar instrument in the digital asset; and (4) any position which (a) is not a covered digital asset described in (1), (2), or (3), (b) is a hedge with respect to the covered digital asset, and (c) is clearly identified in the taxpayer’s records as being described in (4) before the close of the day on which it was acquired or entered into (or such other time as the Secretary may by regulations prescribe).

The term “specified traded digital asset” means (1) any widely traded digital asset; (2) any qualified U.S. dollar stablecoin; (3) any qualified pool token asset; (4) any traded digital asset which (a) would be a widely traded digital asset but for the market capitalization requirement (defined below) and (b) has an average daily trading volume, determined on the basis of business days during the calendar year that ends in or with the preceding taxable year, that exceeds $5,000,000; and (5) any traded digital asset which (a) would be a widely traded digital asset but for the ownership limitation (defined below) and (b) constitutes the principal asset held by an entity that is not registered under the Investment Company Act of 1940 and the securities of which are listed and traded on a national securities exchange registered under section 6 of the Securities and Exchange Act of 1934. In the case of a taxpayer for a taxable year, the term “specified traded digital asset” also includes any traded digital asset that would be a widely traded digital asset but for the market capitalization requirement, if, with respect to one or more of the three preceding taxable years, the following conditions are met: (1) the traded digital asset was a widely traded digital asset or qualified U.S. dollar stablecoin with respect to the taxable year, (2) the taxpayer had an election in effect under the proposal that applied to the taxable year and each intervening taxable year, and (3) the taxpayer held specified traded digital assets of such type, or covered digital assets that were not specified traded digital assets with respect to the type of specified digital asset, to which the mark-to-market election in covered digital assets applied. [144]

The term “qualified pool token asset” means any type of digital asset (determined under section 1051(b)(2), as added by the proposal, by substituting “digital assets” for “widely traded digital assets”) for any taxable year if (1) at substantially all times during the calendar year which ends in or with the taxable year preceding the taxable year (a) substantially all of the value of the type of digital asset is attributable to widely traded digital assets, and (b) the type of digital asset is redeemable on demand for a proportionate share of the assets to which the value of the digital asset is attributable, and (2) the Secretary has determined that allowing the type of digital asset to be treated as a widely traded digital asset is consistent with efficient tax administration and not subject to abuse (as defined in section 1051(b)(3)(B) from section 102 of this document).

The term “widely traded digital asset” means, with respect to any taxpayer for any taxable year and except as otherwise provided by the Secretary to prevent abuse, any traded digital asset if (i) quotations for the asset were readily available on an exchange for the entire calendar year which ends in or with the taxable year preceding such taxable year, (ii) the market capitalization of the asset exceeded $500 million (adjusted for inflation) at substantially all times

[144] A type is determined under rules similar to the rules of section 1051(b)(2) (as added by the bill).

during such calendar year (the "market capitalization requirement"), and (iii) not more than 10 percent of the units of the asset were owned, directly or indirectly, by the taxpayer under section 267(b) (applied without regard to section 267(c)(3)) or section 707(b)(1) at any time during such taxable year or such preceding year (the "ownership limitation").[145] In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a widely traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a widely traded digital asset with respect to the taxpayer.[146]

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[147] or (ii) a foreign payment stablecoin issuer[148] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term "U.S. dollar stablecoin" means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[149] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

The proposal requires that the Secretary issue regulations or other guidance[150] not later than 12 months after the date of enactment to clarify the appropriate tax treatment of certain foreign entities (and United States persons related to such entities or involved in the governance of such entities) established in connection with organizations commonly referred to as decentralized autonomous organizations, which are established in a foreign country as a foundation under foreign law (or other similar structure with a purported purpose other than profit). The regulations or other guidance must include rules that clarify the methods by which

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[145] The Secretary may adjust the requirements that apply in lieu of one or more requirements of the "widely traded asset" definition if the Secretary determines that due to changes in market conditions (including by reason of the enactment of Federal digital asset market structure legislation) that alternative requirements would more effectively or efficiently identify traded digital assets for which there is consistent and reliable price discovery.

[146] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[147] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[148] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[149] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[150] Under the authority granted to the Secretary under section 7805.

the foreign entities may reorganize as domestic corporations under subchapter C of chapter 1 of the Code and provide, in appropriate circumstances, temporary safe harbors to encourage the foreign entities (which were organized before the date of introduction) to complete the reorganizations promptly after the enactment of the proposal.

Effective Date

The proposal applies to taxable years of foreign corporations ending after the date of enactment.

D. Rules Related to Possessions for Determining Source of Gain or Loss on Disposition of Traded Digital Assets

Present Law

Special rules applicable to possessions

The worldwide taxable income of a U.S. citizen or resident alien generally is subject to the U.S. individual income tax. However, special rules apply to any individual who is a "bona fide resident"[151] of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the U.S. Virgin Islands (each, a "possession").[152]

In the case of an individual who is a bona fide resident of Guam, American Samoa, or the Northern Mariana Islands (each, a "specified possession") during the entire taxable year, gross income shall not include (1) income derived from sources within any specified possession, and (2) income effectively connected with the conduct of a trade or business by such individual within any specified possession.[153] Similarly, in the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico shall not be included in gross income.[154] In the case of an individual who is a bona fide resident of the U.S. Virgin Islands during the entire taxable year, if such individual (1) files a tax return with the U.S. Virgin Islands, (2) reports income from all sources and the source of each item on such return, and (3) fully pays the required tax liability to the U.S. Virgin

[151] For purposes of this determination, section 937 provides that the term "bona fide resident" means a person: (1) who is present for at least 183 days during the taxable year in Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the Virgin Islands, as the case may be; and (2) who does not have a tax home (determined under the principles of section 911(d)(3) without regard to the second sentence thereof) outside such specified possession during the taxable year and does not have a closer connection (determined under the principles of section 7701(b)(3)(B)(ii)) to the United States or a foreign country than to such specified possession. For purposes of (1), the determination as to whether a person is present for any day shall be made under the principles of section 7701(b).

[152] See secs. 931, 932, 933, and 934.

[153] Sec. 931(a). This does not include amounts paid for services performed as an employee of the United States (or any agency thereof). Sec. 931(d). An individual shall not be allowed as a deduction from gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit, properly allocable or chargeable against amounts excluded from gross income under section 931. Sec. 931(b).

[154] Sec. 933(1). Similar to the rules that apply under section 931, the exclusion from gross income does not include amounts received for services performed as an employee of the United States or any agency thereof, and such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions), or any credit, properly allocable to or chargeable against amounts excluded from gross income under section 933(1).

Islands,[155] then the items of gross income on such return, and allocable deductions and credits, shall not be included in gross income.[156]

The U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands have income tax systems that "mirror" the U.S. Code, with the latter two possessions being permitted under current law to delink and use their own tax systems provided certain conditions are met. The U.S. Virgin Islands may also impose certain local income taxes in addition to taxes imposed by the mirror Code. The Code provides rules for coordination of United States and U.S. Virgin Islands taxation.[157] It permits the U.S. Virgin Islands to reduce or remit tax otherwise imposed by the mirror Code if the tax is attributable to U.S. Virgin Islands source income or income effectively connected to the conduct of a trade or business in U.S. Virgin Islands.[158]

If, for any taxable year, an individual becomes, or ceases to become, a bona fide resident of a possession for U.S. income tax reporting purposes, such individual is subject to a reporting requirement.[159]

Determining possession source income

In general

As a general rule, the principles for determining whether income is U.S. source are applicable for purposes of determining whether the income is possession source. In addition, the principles of determining whether income is effectively connected with the conduct of a U.S. trade or business are applicable for determining whether income is effectively connected to the conduct of a possession trade or business.[160]

Dispositions of personal property

In general, income from the sale of a personal property is determined based on the seller's residence.[161] If an individual who is a U.S. citizen or resident alien has a tax home[162] in

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[155] Such liability is the tax liability referred to in section 934(a).

[156] Sec. 932(c). Special rules apply to joint returns and to returns for years when the individual is not a bona fide resident of the U.S. Virgin Islands during the entire taxable year.

[157] Secs. 932 and 934.

[158] Sec. 934.

[159] Sec. 937(c)(1); see Form 8898, *Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Territory* (Rev. October 2024).

[160] Sec. 937(b)(1). However, except as provided in regulations, any income treated as U.S. source income or as effectively connected with the conduct of a U.S. trade or business is not treated as income from within any possession or as effectively connected with a trade or business within any such possession. Sec. 937(b)(2).

[161] Sec. 865(a).

[162] As defined in section 911(d)(3).

a foreign country, the individual will be treated as a nonresident for purposes of this rule.[163] For purposes of this rule, any possession of the United States is treated as a foreign country.[164]

The regulations promulgated under section 937 of the Code describe further the source rules with respect to income from sources within a particular possession (the "relevant possession").[165] Such regulations provide rules with respect to gain on the disposition of certain property[166] owned by an individual before such individual became a bona fide resident of the relevant possession.[167] In general, income from sources within a relevant possession will not include gain from the disposition of such property if, for the taxable year for which the source of the gain must be determined, the individual is a bona fide resident of the relevant possession and, for any of the 10 years preceding such year, the individual was a citizen or resident of the United States (other than a bona fide resident of the relevant possession).[168] However, notwithstanding this general rule, such individual may make an election to treat as gain from sources within the relevant possession the portion of the gain attributable to the individual's "possession holding period,"[169] which is generally the part of the individual's holding period for the property during which the individual is a bona fide resident of the relevant possession.[170]

Description of Proposal

The proposal provides special rules for determining the source of the gain on disposition of "traded digital asset property" by a "specified possession resident individual."

The term "traded digital asset property" means: (1) any traded digital asset; (2) any notional principal contract with respect to a traded digital asset; (3) any evidence of an interest in, or a derivative instrument in, any traded digital asset described in (1) or (2), including any option, forward contract, futures contract, short position, and any similar instrument in such traded digital asset; (4) to the extent provided by the Secretary, any position which (i) is not a traded digital asset property described in (1), (2), or (3), and (ii) is a hedge with respect to such a traded digital asset property; or (5) any interest in any entity if (i) the taxpayer contributed any traded digital asset to such entity (directly or indirectly), or (ii) more than 25 percent of the value of such entity is derived (directly or indirectly) from traded digital assets (other than qualified

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[163] Sec. 865(g)(1).

[164] Sec. 865(i)(3).

[165] Treas. Reg. sec. 1.937-2.

[166] Property of a kind described in section 731(c)(3)(C)(i) or 954(C)(1)(B). Treas. Reg. sec. 1.937-2(f)(1)(ii)(A).

[167] Treas. Reg. sec. 1.937-2(f)(1)(ii)(B).

[168] Treas. Reg. sec. 1.937-2(f)(1)(iii).

[169] Treas. Reg. sec. 1.937-2(f)(1)(vi).

[170] Treas. Reg. sec. 1.937-2(f)(1)(vii)(B). The portion of the gain attributable to the possession holding period is determined differently for marketable securities and other property. See Treas. Reg. sec. 1.937-2(f)(1)(vi)(A) and (B).

U.S. dollar stablecoins), determined without regard to any assets acquired by such entity as part of a plan a principal purpose of which is to prevent interests in such entity from being treated as traded digital assets for this purpose.

The term “traded digital asset” means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[171] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term “tokenized digital asset” means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

The term “qualified U.S. dollar stablecoin” means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[172] or (ii) a foreign payment stablecoin issuer[173] that is registered with the Office of the Comptroller of the Currency. The term “U.S. dollar stablecoin” means a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting “dollars” for “monetary value” each place it appears in such section. The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[174] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

The term “wrapped digital asset” means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the “reference digital asset”) and (B) is recorded on a cryptographically

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[171] The term “prevent abuse” includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[172] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[173] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025

[174] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[175]

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

A "specified possession resident individual" means, with respect to any taxable year, any citizen of the United States who is a bona fide resident of Guam, American Samoa, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands for such taxable year and was a resident of the United States at any time during the preceding 10 taxable years.

In the case of a specified possession resident individual for any taxable year, any gain recognized (directly or indirectly) on the disposition of traded digital asset property during such taxable year is treated as U.S. source income. However, such gain is treated as from sources within the relevant possession[176] (and not as U.S. source income) to the extent that the taxpayer: (1) timely provides certain information to the Secretary with respect to such property; and (2) demonstrates to the satisfaction of the Secretary that such gain is properly attributable to the increase in the value of such property during periods that such individual was a bona fide resident of such possession.

The information requirement referred to above in (1) is an additional reporting requirement (added by the proposal) for specified possession resident individuals who are required, under present law, to provide notice to the Secretary upon becoming a bona fide resident of a possession for U.S. income tax purposes. For the taxable year to which such notice relates, such notice must (under the proposal) include the fair market value and basis of each traded digital asset property held by the taxpayer as of the close of the preceding taxable year. The proposal provides a transition rule such that, in the case of an individual who was required to provide notice to the Secretary with respect to one of the nine taxable years immediately preceding the first taxable year of the taxpayer beginning after December 31, 2026, and who was a specified possession resident individual for such taxable year, such individual must file a notice with the Secretary stating the fair market value and basis (determined as of the last day of the taxable year preceding the taxable year to which such notice relates) of each traded digital asset property that was held by the taxpayer both on such last day and on January 1, 2027. Such notice must be filed no later than the earlier of (1) the due date of the taxpayer's tax return for the first taxable year beginning after December 31, 2026, during which the taxpayer disposes of any

[175] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

[176] For purposes of this proposal, the term "relevant possession" means, with respect to any specified possession resident individual for any taxable year, the possession with respect to which such individual is a bona fide resident for such taxable year.

traded digital asset property and (2) the date specified in regulations.[177] The proposal provides that the time for assessment of tax with respect to the notice (including notice provided under the transition rule) shall not expire before the date which is three years after the date on which the Secretary is provided such notice. The proposal provides for a *de minimis* exception such that the additional reporting requirement does not apply if the aggregate fair market value of traded digital asset property which would otherwise be required to be included in a notice to the Secretary does not exceed $10,000.

The proposal provides an election for widely traded digital assets such that, in lieu of the procedures above with respect to establishing gain as from sources within a relevant possession, an individual may elect to recognize gain on any widely traded digital assets held by such individual as of the close of the taxable year preceding the taxable year for which such individual first becomes a bona fide resident of the relevant possession as if such assets were sold for their fair market value as of such time. The term "widely traded digital asset" means, with respect to any taxpayer for any taxable year and except as otherwise provided by the Secretary to prevent abuse, any traded digital asset if (i) quotations for the asset were readily available on an exchange for the entire calendar year which ends in or with the taxable year preceding such taxable year, (ii) the market capitalization of the asset exceeded $500 million (adjusted for inflation) at substantially all times during such calendar year, and (iii) not more than 10 percent of the units of the asset were owned, directly or indirectly, by the taxpayer under section 267(b) (applied without regard to section 267(c)(3)) or section 707(b)(1) at any time during such taxable year or such preceding year.[178] In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[179] the asset is treated as a widely traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a widely traded digital asset with respect to the taxpayer.

Finally, the proposal requires the Secretary to issue regulations or other guidance as may be necessary or appropriate to carry out the purposes of the provision, including regulations or other guidance: (1) treating gain on dispositions of traded digital asset property by a partnership as described in section 702(a)(7) of the Code to the extent such gain is taken into account (directly or indirectly) in the distributive share of any specified possession resident individual; (2) providing for the appropriate allocation of losses on the disposition of traded digital asset property with respect to specified possession resident individuals; and (3) providing certain appropriate transition rules for individuals who first became a bona fide resident of the relevant possession during one of the nine taxable years preceding the first taxable year of the taxpayer beginning after December 31, 2026.

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[177] Taxpayers who were required to provide such notice before the effective date and before the application of the transition period are not subject to such additional reporting requirement.

[178] The Secretary may adjust the requirements that apply in lieu of one or more requirements of the "widely traded asset" definition if the Secretary determines that due to changes in market conditions (including by reason of the enactment of Federal digital asset market structure legislation) that alternative requirements would more effectively or efficiently identify traded digital assets for which there is consistent and reliable price discovery.

[179] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2026.

E. Application of Registration-Required Obligation Rules

Present Law

In general, a taxpayer may deduct interest paid or accrued within the taxable year on indebtedness, subject to various limitations.[180] For registration-required obligations, a deduction for interest is allowed only if the obligation is in registered form. A registration-required obligation is any obligation other than one that (1) is made by a natural person; (2) matures in one year or less; or (3) is not of a type offered to the public.[181]

In addition to the denial of an interest deduction, an excise tax is imposed on the issuer of any registration-required obligation that is not in registered form.[182] The excise tax is equal to one percent of the principal amount of the obligation multiplied by the number of calendar years (or portions thereof) during the period beginning on the date of issuance of the obligation and ending on the date of maturity.

However, an exception to the excise tax applies for foreign targeted obligations. Under the exception, the excise tax does not apply to registration-required obligations that are not in registered form if three requirements are met: (1) there are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with the original issue) only to a person who is not a United States person; (2) interest is payable only outside the United States and its possessions; and (3) the face of the obligation contains a statement that any United States person who holds this obligation will be subject to limitations under the U.S. income tax laws.[183]

In addition, any gain realized by the beneficial owner of a registration-required obligation that is not in registered form on the sale or other disposition of the obligation is treated as ordinary income (rather than capital gain), unless the issuer of the obligation was subject to the excise tax described above.[184] Furthermore, deductions for losses realized by beneficial owners of registration-required obligations that are not in a registered form are disallowed, unless the issuer of the obligation was subject to the excise tax described above.[185]

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[180] See sec. 163.

[181] Sec. 163(f)(2)(A). The registration requirement is intended to preserve liquidity while reducing opportunities for noncompliant taxpayers to conceal income and property from the reach of the income, estate and gift taxes. See Joint Committee on Taxation, *General Explanation of the Revenue Provisions of the Tax Equity and Fiscal Responsibility Act of 1982* (JCS-38-82), December 31, 1982, p. 190. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

[182] Sec. 4701.

[183] Sec. 4701(b)(1).

[184] Sec. 1287.

[185] Sec. 165(j).

Description of Proposal

The proposal modifies the definition of "registration-required obligation" in section 163(f). Under the proposal, a "registration-required obligation" does not include a qualified U.S. dollar stablecoin. As a result, the rules that apply to "registration-required obligations" as defined in section 163(f), including the limitation on the deduction of interest expense, imposition of the excise tax under section 4701, treatment of gain on the sale or other disposition of the obligation as ordinary, and disallowance of a deduction for loss do not apply to qualified U.S. dollar stablecoins.

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[186] or (ii) a foreign payment stablecoin issuer[187] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term "U.S. dollar stablecoin" means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[188] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

The proposal also amends the excise tax rules for digital assets in two ways. First, the proposal provides a rule for how digital assets that are registration-required obligations but that are not in registered form can meet the third requirement to be excluded from the excise tax. Specifically, the requirement that there be a statement on the face of the obligation that any United States person that holds the obligation will be subject to limitations under the United States income tax laws is treated as met if the statement is included on all written terms or marketing materials with respect to the digital asset, as well as in other locations or documents that the Secretary may prescribe.

Second, in the case of a digital asset that is subject to the excise tax but which does not have a fixed maturity date at issue, the proposal provides that, for purposes of determining the amount of the excise tax, the digital asset's date of maturity is treated as the date that is 25 years after its date of issuance. As a result, the excise tax will be 25 percent of the principal amount.

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[186] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[187] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[188] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

Effective Date

In general, the proposal applies to taxable years ending after the date of introduction. However, the part of the proposal relating to the excise tax provision applies to digital assets issued after the date of introduction.

F. Certain Rules Related to Character of Gains and Losses Relating to Digital Assets

Present Law

Worthless securities rule

Generally, a taxpayer is allowed a deduction for a loss sustained during the taxable year that is not compensated for by insurance or otherwise.[189] In the case of a security which is a capital asset that becomes worthless during the taxable year, the resulting loss for purposes of subtitle A of the Code is treated as a loss from the sale or exchange of a capital asset on the last day of the taxable year (the "worthless securities rule").[190] For this purpose, the term "security" means a share of stock in a corporation; a right to subscribe for, or to receive, a share of stock in a corporation; or a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

To be deductible for a given taxable year, a loss must generally be evidenced by a closed and completed transaction fixed by identifiable events, be *bona fide*, and actually be sustained during the taxable year.[191] If a security which is not a capital asset becomes wholly worthless during the taxable year, the loss may be deducted as an ordinary loss.[192] If a security is a capital asset, the loss may be treated as a capital loss on the last day of the taxable year, subject to an exception for affiliated corporations.[193]

The IRS in a 2023 memorandum addressed whether taxpayers may deduct losses under section 165 for digital assets that have substantially declined in value without a sale or other disposition.[194] The IRS determined that the taxpayer may not claim a loss under section 165 if the digital asset continues to be traded on an exchange and has a value greater than zero, and the taxpayer has not taken some affirmative step that fixes the amount of the loss, such as abandonment, sale, or exchange.

[189] Sec. 165(a).

[190] Sec. 165(g). However, the loss is treated as ordinary if the corporation is treated as "affiliated" with the taxpayer. Sec. 165(g)(3). For this purpose, a corporation is treated as affiliated with the taxpayer only if the taxpayer owns directly stock in the corporation meeting the requirements of section 1504(a)(2) and more than 90 percent of the corporation's aggregate gross receipts for all taxable years has been from sources other than royalties, certain rents, dividends, certain interest, annuities, and gains on the sale or exchange of stock or securities. *Ibid.*

[191] Treas. Reg. sec. 1.165-1(b).

[192] Treas. Reg. sec. 1.165-5(b).

[193] Treas. Reg. sec. 1.165-5(c) and (d).

[194] Chief Counsel Advice Memorandum 202302011, January 10, 2023.

Securities futures contracts

Generally, gain or loss attributable to the sale, exchange, or termination of a securities futures contract is considered gain or loss from the sale or exchange of property which has the same character as the property to which the contract relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by the taxpayer).[195] For this purpose, a "securities futures contract" means any security future, which is a contract of sale for future delivery of a single security or a narrow-based securities index.[196] Capital gain treatment does not apply to contracts that themselves are not capital assets in the hands of the taxpayer, such as inventory or a clearly identified hedging transaction.[197]

Except as otherwise provided in regulations issued under section 1092(b), section 1234B, or section 1233, if gain or loss on the sale, exchange, or termination of a securities futures contract to sell property is considered as gain or loss from the sale or exchange of a capital asset, such gain or loss is treated as short-term capital gain or loss.[198] Further, under section 1091, rules similar to the wash sale rules apply to any loss realized on the closing of a short sale of (or the sale, exchange, or termination of a securities future contract to sell) stock or securities if, within a period beginning 30 days before the date of the closing and ending 30 days after such date (1) substantially identical stock or securities were sold or (2) another short sale of (or securities futures contracts to sell) substantially identical stock or securities was entered into.[199]

Description of Proposal

Worthless digital assets

For purposes of the worthless securities rule, the proposal expands the term "security" to include a tokenized digital asset that is economically equivalent to (A) a share of stock in a corporation; (B) a right to subscribe for, or to receive, a share of stock in a corporation; or (C) a bond, debenture, note, or certificate, or other evidence of indebtedness, issued by a corporation or by a government or political subdivision thereof, with interest coupons or in registered form.

Under the proposal, if a digital asset (other than a tokenized digital asset described above), becomes worthless during the taxable year, the resulting loss is treated for purposes of subtitle A of the Code as a loss from the sale or exchange of the digital asset on the last day of the taxable year.

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[195] Sec. 1234B(a).

[196] As defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934, as in effect on December 21, 2000.

[197] Sec. 1234B(a)(2).

[198] Sec. 1234B(b).

[199] Sec. 1091(e).

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset. The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[200] The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

Specified asset futures contracts

The proposal also modifies section 1234B to apply to specified asset futures contracts. The term "specified asset futures contract" means (1) any securities future contract (as under present law) and (2) any futures contract in a digital asset. Therefore, under the proposal, gains or losses attributable to the sale, exchange, or termination of a futures contract in digital assets is considered gain or loss from the sale or exchange of property which has the same character as the property to which the contract relates has in the hands of the taxpayer (or would have in the hands of the taxpayer if acquired by the taxpayer).

Effective Date

The proposal applies to taxable years ending after the date of enactment.

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[200] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

G. Miscellaneous Provisions

1. Distributions of traded digital assets from a partnership to a partner

Present Law

Partnership distributions

Neither a partnership nor its partners generally recognize gain upon a distribution of partnership property to a partner,[201] except that a partner recognizes gain to the extent that the amount of money distributed exceeds the partner's adjusted basis in its partnership interest immediately before the distribution.[202] Gain on such a distribution is considered as from the sale or exchange of the partnership interest of the distributee partner.[203]

Distribution of money

In general, if a partnership distributes money to a partner in an amount that exceeds the adjusted basis of its partnership interest, the partner must recognize gain, but if the partnership distributes other property to the partner, the partner can generally defer the gain recognition. The deferral of gain is effectuated by adjustments to the basis of property. More specifically, a partner's basis in property distributed in a non-liquidating distribution is the lesser of the partnership's adjusted basis in the distributed property or the partner's adjusted basis in the partnership interest, reduced by money distributed in the transaction.[204] In a liquidating distribution, the partner's basis in the distributed property equals the partner's basis in the partnership interest, reduced by money distributed in the transaction.[205]

Distribution of marketable securities

For the purpose of determining a partner's gain on a distribution by the partnership under section 731(a)(1), the term "money" includes marketable securities, and such securities are taken into account at their fair market value as of the date of the distribution.[206] A partner recognizes gain (but not loss) on the distribution by a partnership of marketable securities to the extent that the fair market value of the marketable securities exceeds the partner's adjusted basis in its partnership interest immediately before the distribution. For this purpose, the term "marketable

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[201] Exceptions to this general nonrecognition rule for asset distributions include certain distributions of property contributed by a partner or of other property when the partnership holds contributed property, disguised sale transactions, and certain disproportionate distributions that are treated as sales or exchanges.

[202] Sec. 731(a)(1) and (b).

[203] Sec. 731(a).

[204] Sec. 732(a).

[205] Sec. 732(b).

[206] Sec. 731(c)(1).

securities" means financial instruments[207] and foreign currencies which are actively traded[208] as of the date of the distribution, and certain other properties.[209] Gain recognized in the case of a distribution of marketable securities to a partner is limited (reduced but not below zero) to the extent of the distributee partner's share of the partnership's built-in gain (if any) with respect to the type (class and issuer) of securities distributed (e.g., pro-rata distributions).[210]

The partner's basis in the distributed marketable securities is increased by the amount of gain recognized.[211] Sections 733 and 734 are applied as if no gain were recognized, and no adjustment were made to the basis of property.[212] In the case of a distribution of a marketable security which is an unrealized receivable[213] or an inventory item,[214] the character of gain recognized is treated as ordinary income[215] to the extent of any increase in the basis of the distributed marketable security attributable to such gain.[216]

Exceptions to the rules for recognition of a partner's gain on a distribution of marketable securities under section 731(c)(1) are provided: (1) if the distributed security was contributed by the distributee partner,[217] (2) to the extent provided in regulations, if the distributed security was not a marketable security when acquired by the partnership, or (3) if the partnership is an investment partnership[218] and the distributee is an eligible partner thereof.[219]

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[207] Sec. 731(c)(2)(C). Includes stocks and other equity interests, evidences of indebtedness, options, forwards or futures contracts, notional principal contracts, and derivatives.

[208] Within the meaning of section 1092(d)(1).

[209] Sec. 731(c)(2).

[210] Sec. 731(c)(3)(B).

[211] Sec. 731(c)(4).

[212] Sec. 731(c)(5).

[213] As defined in section 751(c).

[214] As defined in section 751(d).

[215] Sec. 731(c)(6).

[216] Sec. 731(c)(4)(A)(ii).

[217] Except to the extent that the value of the distributed security is attributable to marketable securities or money contributed (directly or indirectly) to the entity to which the distributed security relates.

[218] As defined in section 731(c)(3)(C).

[219] Sec. 731(c)(3)(A).

Distribution of contributed property

If appreciated property is contributed to a partnership,[220] and is subsequently distributed to another partner within seven years of the contribution, the contributing partner generally recognizes gain as if the property had been sold for its fair market value at the time of the distribution.[221]

Similarly, under section 737, a contributing partner generally includes pre-contribution gain in income to the extent that the fair market value of other property distributed (other than money) by the partnership to such partner exceeds its adjusted basis in its partnership interest, if the distribution by the partnership is made within seven years after the contribution of the appreciated property. For this purpose, the term "money" includes marketable securities, and such marketable securities are taken into account at their fair market value as of the date of distribution.[222]

Description of Proposal

The proposal adds traded digital assets other than specified stablecoins, determined without regard to whether such asset is a tokenized digital asset, to the definition of marketable securities in section 731(c)(2)(A). The proposal adds specified stablecoins to the definition of money for the purposes of subsection 731(a)(1) and section 737. Such traded digital assets (including specified stablecoins) are taken into account at their fair market value as of the date of distribution.

For the purposes of present-law section 731(c)(4) (relating to the basis of securities distributed), the definition of marketable securities includes specified stablecoins (other than exempt U.S. dollar stablecoins). Under this rule, the partner's basis in the distributed specified stablecoin (other than exempt U.S. dollar stablecoins) is increased by the amount of gain recognized. Except as otherwise provided by the Secretary, for purposes of section 731(c)(5) and (c)(6), the definition of marketable securities includes specified stablecoins. Sections 733 and 734 are applied as if no gain were recognized and no adjustments were made to the basis of property under the subsection, and the character of such gain recognized is treated as ordinary

[220] If a partner contributes appreciated property to a partnership, generally no gain is recognized to the contributing partner or the partnership at the time of the contribution. Sec. 721. The contributing partner's basis in its partnership interest is increased by the basis of the contributed property at the time of the contribution. The pre-contribution gain is reflected in the difference between the partner's capital account and its basis in its partnership interest. Income, gain, loss, and deduction with respect to the contributed property must be shared among the partners so as to take into account the variation between the basis of the property to the partnership and its fair market value at the time of contribution. For additional details, see section 704(c).

[221] Sec. 704(c)(1)(B).

[222] Secs. 737(e) and 731(c).

income[223] in the case of a distribution of such asset which is an unrealized receivable[224] or an inventory item.[225]

The proposal provides that the Secretary shall prescribe such regulations or other guidance as may be necessary or appropriate to carry out these purposes, including those to prevent the avoidance of such purposes.

The term "specified stablecoin" means any digital asset which is designed to track the value of the functional currency of the distributee partner. A specified stablecoin includes an exempt U.S. dollar stablecoin.

The term "exempt U.S. dollar stablecoin" means any specified stablecoin if the functional currency with respect to the stablecoin is the dollar, and no gain or loss would have been recognized by reason of the rules on U.S. dollar stablecoin transactions under section 1063 (as added by the bill) if the partnership had sold the stablecoin for its redemption value immediately before distribution.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[226] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

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[223] To the extent of any increase in the basis of the distributed marketable security attributable to the gain in section 731(c)(4).

[224] As defined in section 751(c).

[225] As defined in section 751(d).

[226] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[227]

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[228] or (ii) a foreign payment stablecoin issuer[229] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term "U.S. dollar stablecoin" means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[230] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

<u>**Effective Date**</u>

The proposal is effective for distributions made after December 31, 2026.

2. Traded digital assets taken into account in determining investment company status

<u>**Present Law**</u>

A contribution of property to a corporation by one or more persons solely in exchange for stock or securities in such corporation generally does not result in the recognition of gain or loss

[227] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

[228] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[229] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[230] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

if the contributing person or persons are in 80 percent control[231] of the corporation immediately after the exchange.[232] A contribution of property to a partnership in exchange for an interest in the partnership generally does not result in recognition of gain or loss to the contributing partner.[233]

Present law provides exceptions to this general rule for deferral of pre-contribution gain and loss. Gain or loss is recognized upon a contribution of property by a shareholder or group of shareholders to a corporation that is an investment company.[234] Gain, but not loss, is recognized upon a contribution by a partner to a partnership that would be treated as an investment company if the partnership were a corporation.[235]

The determination of whether a company is an investment company under these rules is made by taking into account all stock and securities held by the company.[236] A transfer of property after June 30, 1967, is considered a transfer to an investment company if the transfer results directly or indirectly, in diversification of the transferors' interest, and the transferee is (a) a regulated investment company ("RIC"), (b) a real estate investment trust ("REIT"), or (c) a corporation more than 80 percent of the value of whose assets (excluding cash and nonconvertible debt obligations from consideration) are held for investment and are readily marketable stocks or securities, or interests in RICs or REITs.[237]

For this purpose, the following are treated as stock and securities:

(i) money;

(ii) stocks and other equity interests in a corporation, evidences of indebtedness, options, forward or futures contracts, notional principal contracts and derivatives;

(iii) any foreign currency;

(iv) any interest in a REIT, a common trust fund, a RIC, a publicly-traded partnership,[238] or any other equity interest (other than in a corporation) which pursuant to its terms or any other

[231] Control is defined by reference to section 368(c) of the Code, under which such term means the ownership of stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote and at least 80 percent of the total number of shares of all other classes of stock of the corporation.

[232] Sec. 351(a).

[233] Sec. 721(a).

[234] Sec. 351(e)(1) defines an investment company for this purpose.

[235] Secs. 721(b) and 351(e)(1) (defining an investment company).

[236] Sec. 351(e)(1)(A). See also Treas. Reg. sec. 1.351-1.

[237] Treas. Reg. sec. 1.351-1(c)(1).

[238] As defined in section 7704(b).

arrangement is readily convertible into, or exchangeable for, any asset described in any preceding clause, this clause or clause (v) or (viii);

(v) except to the extent provided in regulations prescribed by the Secretary, any interest in a precious metal, unless such metal is used or held in the active conduct of a trade or business after the contribution;

(vi) except as otherwise provided in regulations prescribed by the Secretary, interests in any entity if substantially all of the assets of such entity consist (directly or indirectly) of any assets described in any preceding clause or clause (viii);

(vii) to the extent provided in regulations prescribed by the Secretary, any interest in any entity not described in clause (vi), but only to the extent of the value of such interest that is attributable to assets listed in clauses (i) through (v) or clause (viii); or

(viii) any other asset specified in regulations prescribed by the Secretary.[239]

Description of Proposal

The proposal adds any traded digital asset, determined without regard to whether such asset is a tokenized digital asset, to the section 351(e)(1)(B) list of items treated as stock and securities for the purposes of the determination of whether such entity is an investment company.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[240] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital

[239] Sec. 351(e)(1)(B).

[240] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset.

The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[241]

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[242] or (ii) a foreign payment stablecoin issuer[243] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term "U.S. dollar stablecoin" means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[244] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

Effective Date

The proposal is effective for transfers made after December 31, 2026.

[241] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

[242] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[243] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[244] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

3. Certain stablecoin lending treated as indebtedness

Present Law

For Federal income tax purposes, the borrowing of money is generally treated as debt or indebtedness,[245] and payments on indebtedness, which are "compensation for the use or forbearance of money," are treated as interest.[246] However, although indebtedness is an obligation, not all obligations are treated as indebtedness.[247] Thus, while the borrowing of property other than money may create a similar obligation, such obligation is not treated as indebtedness and payments thereon, which may be characterized as rent or borrow fees, are not treated as interest.[248] The distinction matters, since a number of Code sections apply specifically to indebtedness or interest and not to other obligations or payments for the borrowing of property.[249]

Stablecoins are typically digital assets that are intended to maintain a value pegged to a fiat currency, but they are likely not money themselves.[250] Therefore, the borrowing of stablecoins may not be treated as indebtedness and payments for the borrowing of stablecoins may not be interest.

Description of Proposal

The proposal provides that, except as otherwise provided by the Secretary, for purposes of the Code, the lending, rental, sale and repurchase, or other transfer of specified stablecoins is treated as indebtedness (and that transfers made thereon are treated as interest) in the same manner, and to the same extent as the equivalent transfer of money. In other words, if a transaction involving money would be treated as indebtedness, the same transaction involving specified stablecoins is treated as indebtedness.

Under the proposal, except as otherwise provided by the Secretary, the term "specified stablecoin" means any digital asset that is designed to track the value of any currency (or currencies).

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[245] See, *e.g.*, Treas. Reg. sec. 1.166-1(c) (providing that a "bona fide debt is a debt which arises from a debtor-creditor relationship based upon a valid and enforceable obligation to pay a fixed or determinable sum of money"); see also sec. 385(b)(1).

[246] *Deputy v. Du Pont*, 308 U.S. 488 (1940); *Dorzback v. Collison*, 195 F.2d 69 (3d Cir. 1952).

[247] *Deputy v. Du Pont*, 308 U.S. 488 (1940).

[248] See, *e.g.*, *ibid.*

[249] See, *e.g.*, sec. 103.

[250] See The White House, *Strengthening American Leadership in Digital Financial Technology*, January 23, 2025, p. 130, available at https://www.whitehouse.gov/wp-content/uploads/2025/07/digital-Assets-Report-EO14178.pdf.

For purposes of the proposal, except as otherwise provided by the Secretary, the sale (or repurchase) of a specified stablecoin in connection with the repurchase (or sale) of currency or a different type of specified stablecoin is treated as a sale and repurchase of a specified stablecoin.[251]

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

Effective Date

The proposal applies to taxable years beginning after December 31, 2026.

4. Digital assets not treated as section 197 intangibles

Present Law

15-year amortization of certain intangibles under section 197

Generally, under section 197, when a taxpayer acquires intangible assets held in connection with a trade or business, any value properly attributable to a "section 197 intangible" asset is amortizable on a straight-line basis over 15 years (180 months).[252]

The term "section 197 intangible" includes: goodwill; going concern value; any license, permit, or other right granted by a governmental unit; any covenant not to compete or other arrangement with substantially the same effect; and any franchise, trademark, or trade name.[253] The term "section 197 intangible" also includes the following intangible items: workforce in place including its composition and terms and conditions (contractual or otherwise) of its employment; business books and records, operating systems, or any other information base (including lists or other information with respect to current or prospective customers); any patent, copyright, formula, process, design, pattern, knowhow, format, or other similar item; any customer-based intangible; any supplier-based intangible; and any other similar item.[254]

Exclusion for certain "self-created" section 197 intangibles

In general, "self-created" section 197 intangibles that are created by the taxpayer, are excluded from 15-year amortization.[255] For example, this exclusion from 15-year amortization

[251] For purposes of this proposal, a "type" of specified stablecoin is determined under rules similar to the rules in section 1051(b)(2) (as added by the bill).

[252] Sec. 197(a) and (c).

[253] Sec. 197(d)(1).

[254] Sec. 197(d)(1)(C).

[255] Sec. 197(c)(2).

applies to goodwill that is self-created through advertising and other expenses. This exception for "self-created" intangibles does not apply to: any license, permit, or other right granted by a governmental unit; any covenant not to compete or other arrangement with substantially the same effect; and any franchise, trademark, or trade name.[256]

Exclusions from the term "section 197 intangible"

Certain types of property are specifically excluded from the definition of a "section 197 intangible." The term "section 197 intangible" does not include: any interest in a corporation, partnership, trust, or estate; any interest under an existing futures contract, foreign currency contract, notional principal contract, or other similar financial contract; any interest in land; certain computer software; any interest under an existing lease of tangible property; any interest under any existing indebtedness (except for the deposit base and similar items of a financial institution); certain mortgage servicing rights; and certain transaction costs.[257]

Certain interests or rights acquired separately from the acquisition of assets constituting a trade or business (or substantial portion thereof) are also excluded from the term "section 197 intangible" and are thus not subject to 15-year amortization under section 197. Such interests or rights include any interest in a film, sound recording, video tape, book, or other similar property; certain rights to receive tangible property or services; any interest in a patent or copyright; and certain contract rights.[258]

Description of Proposal

The proposal adds, except as otherwise provided by the Secretary to prevent abuse, "any digital asset" to the section 197(e) list of exceptions to the term "section 197 intangible." As a result, a digital asset is not subject to the 15-year amortization that generally applies to section 197 intangibles.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

Effective Date

The proposal is effective for any digital assets acquired after the date of introduction.

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[256] *Ibid.*

[257] Sec. 197(e).

[258] *Ibid.*

5. Application of straddle rules to traded digital assets, etc.

Present Law

Generally, the straddle rules in section 1092 are intended to prevent deferral of income and conversion of ordinary income and short-term capital gain into long-term capital gain.[259] Under the straddle rules, the deduction of losses on positions which are part of a straddle are generally limited to the amount by which such losses exceed unrecognized gain (if any) in one or more positions which were offsetting positions with respect to one or more positions from which the loss arose.[260]

The term "straddle" means offsetting positions with respect to personal property.[261] Generally, a taxpayer holds offsetting positions with respect to personal property if there is a substantial diminution of the taxpayer's risk of loss from holding any position with respect to personal property by reason of holding one or more positions with respect to personal property (whether or not the same kind).[262] A "position" is an interest (including a futures or forward contract or option) in personal property.[263] The term "personal property" means personal property that is of a type that is actively traded.[264] Personal property that is actively traded includes personal property for which there is an established financial market.[265] With respect to stock, the term "personal property" includes stock only if (1) the stock is of a type that is actively traded and at least one of the positions offsetting the stock is a position with respect to the stock or substantially similar or related property, or (2) the stock is of a corporation formed or availed of to take positions in personal property which offset positions taken by a shareholder.[266]

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[259] Joint Committee on Taxation, *General Explanation of the Economic Recovery Tax Act of 1981* (JCS-71-81), December 1981. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

[260] Sec. 1092(a)(1).

[261] Sec. 1092(c)(1).

[262] Sec. 1092(c)(2).

[263] Sec. 1092(d)(2).

[264] Sec. 1092(d)(1).

[265] Treas. Reg. sec. 1.1092(d)-1(a). An established financial market includes (1) a national securities exchange that is registered under section 6 of the Securities Exchange Act of 1934 (15 U.S.C. sec. 78f); (2) an interdealer quotation system sponsored by a national securities association registered under section 15A of the Securities Exchange Act of 1934; (3) a domestic board of trade designated as a contract market by the Commodities Futures Trading Commission; (4) a foreign securities exchange or board of trade that satisfies analogous regulatory requirements under the law of the jurisdiction in which it is organized; (5) an interbank market; (6) an interdealer market; and (7) solely with respect to a debt instrument, a debt market. Treas. Reg. sec. 1.1092(d)-1(b)(1).

[266] Sec. 1092(d)(3).

The IRS has determined that digital assets are generally treated as property for Federal tax purposes.[267] Therefore, the straddle rules may apply with respect to a digital asset, if the digital asset is treated as personal property that is actively traded. The IRS has not issued regulations or other guidance addressing the application of the straddle rules to digital assets.

Description of Proposal

For purposes of the straddle rules, the proposal expands the term "personal property" to include any traded digital asset (determined without regard to whether the asset is a tokenized digital asset). The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[268] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "tokenized digital asset" means any digital asset (other than any qualified U.S. dollar stablecoin) if more than an insignificant portion of the value of the digital asset is derived from anything other than the operation of the cryptographically secured distributed ledger on which such digital asset is recorded (including the protocols applicable to the operation of the ledger with respect to the digital asset). In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a tokenized digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a tokenized digital asset. The term "wrapped digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if the asset (A) is redeemable on demand, on a one-for-one basis, for another digital asset (the "reference digital asset") and (B) is recorded on a cryptographically secured distributed ledger other than the ledger on which the digital asset referred to in (A) is recorded.[269]

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

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[267] See, *e.g.*, Notice 2014-21, 2014-16 I.R.B. 938, April 14, 2014.

[268] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[269] If, but for this rule, the reference digital asset would itself be a wrapped digital asset, it is a "lower-tier wrapped digital asset," and the lower-tier wrapped digital asset's reference digital asset is treated as the reference digital asset of the wrapped digital asset. For example, digital asset C is a wrapped digital asset, and its reference digital asset is digital asset D. Digital asset D would itself be a wrapped digital asset, so it is referred to as the "lower-tier wrapped digital asset." Digital asset D's reference digital asset is digital asset E. As a result, digital asset E is treated as the reference asset for digital asset C. The same rule applies if, but for the operation of the rule, the reference asset of a lower-tier wrapped asset would itself be a wrapped digital asset.

Effective Date

The proposal applies to positions established after the date of enactment.

6. Backup withholding on illiquid digital assets paid for digital asset validation supporting activities

Present Law

Under present law, payors of reportable payments are required to deduct and withhold tax ("backup withholding") if the recipient fails to provide to the payor a taxpayer identification number or otherwise fails to meet information reporting requirements.[270] Although the Code contains rules addressing backup withholding in cases involving delayed or deferred payments (such as certain non-cash compensation arrangements),[271] present law does not explicitly address how backup withholding applies when the payor transfers digital assets, including digital assets received for digital asset validation supporting activities (for example, mining or staking), particularly when such assets are subject to restrictions that prevent their immediate sale or transfer by the recipient.[272] Present law also does not provide rules for how payors should satisfy withholding obligations when payment consists of illiquid or locked digital assets.

Description of Proposal

The proposal establishes a mechanism for a payor to satisfy its backup withholding obligations when a reportable payment consists of specified illiquid digital assets. The proposal amends section 3406 to provide special rules for cases in which a payor transfers specified illiquid digital assets to a recipient in exchange for the recipient's digital asset validation supporting activities and such assets are restricted from being sold, exchanged, transferred, or otherwise disposed of by the recipient for a fixed period that ends after the date of the transfer.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. The term "digital asset validation supporting activities" means staking, mining, or, except as otherwise provided by the Secretary, similar activities in support of the validation of digital asset transactions. The term "specified illiquid digital assets" means digital assets that (1) are transferred to the recipient in exchange for digital asset validation supporting activities, and (2) are restricted from being sold, exchanged, transferred, or otherwise disposed of for a fixed period that ends after the date of such transfer.

Under the proposal, a payor is treated as having deducted and withheld the amount required if the payor holds the portion of specified illiquid digital assets corresponding to the backup withholding rate in a manner that prevents the recipient from using or withdrawing that

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[270] Sec. 3406.

[271] Sec. 3406(b)(3); sec. 6041.

[272] See Notice 2025-33, 2025-27 I.R.B. 4, June 13, 2025 (providing transitional relief from broker information reporting and backup withholding on digital-asset transactions through 2027).

portion until the close of the fixed period during which the assets are restricted, and liquidates that portion at fair market value no later than the first business day following the end of such period.

The proposal provides that the proceeds of the liquidation are treated as the amount deducted and withheld for purposes of computing the withholding tax liability. The proposal further provides that the amount deducted and withheld is required to be deposited at the time and in the manner applicable to amounts withheld on the date of the liquidation. The Secretary is granted authority to limit the application of the special backup withholding rule for reportable payments consisting of specified illiquid digital assets.

The portion of assets required to be retained by the payor is determined by reference to the backup withholding rate prescribed under the Code, referred to in the proposal as the "applicable percentage."

Effective Date

The proposal applies to specified illiquid digital assets received after December 31, 2026.

TITLE IV—CLARIFYING THE TAX TREATMENT OF MINING AND STAKING

A. Source and Character of Mining and Staking Income

Present Law

Character of income

In general

The characterization of income or loss as ordinary or capital significantly affects the calculation of income tax liability. Whether a dollar of income is from, for example, the performance of services (*e.g.*, wages), the trading of a financial instrument (*e.g.*, stock), or the sale of an asset (*e.g.*, depreciable property) affects the rate at which the income is taxed and the amount of losses that may be taken as a current deduction.

In general, gains treated as ordinary income are taxed at the taxpayer's marginal tax rate for the year such amounts are included in income. Conversely, the amount of ordinary losses in excess of ordinary gains that can be taken into account by a taxpayer in any given year may be limited due to a taxpayer's filing status (*e.g.*, individual or corporation).[273] Capital gains, on the other hand, may be taxed at a lower rate for certain taxpayers.[274] Similar to ordinary losses, the deduction for capital losses in excess of capital gains may be limited in any given year.[275]

Capital gain treatment

Capital gains and losses result when a capital asset is sold, exchanged, or disposed. In general, a capital asset is defined as property held by a taxpayer other than: (1) inventory; (2) property subject to the allowance for depreciation, including real property;[276] (3) a copyright, a literary, musical, or artistic composition, a letter or memorandum, or similar property held by the taxpayer; (4) accounts or notes receivables acquired in the ordinary course of business (*e.g.*, for providing services or selling property); (5) a publication of the U.S. government other than that which is held for sale by the U.S. government; (6) any commodities derivative financial instrument held by a commodities dealer unless clearly identified as a capital asset; (7) any

[273] See, for example, section 469 regarding passive activity loss limitations for an individual. But also see section 165 for loss treatment of a corporation.

[274] See section 1(h) for capital gains tax rates for individuals.

[275] See section 1211 for capital loss limitations.

[276] However, section 1231 provides that to the extent gains from the sale, exchange, or involuntary conversion of property used in the taxpayer's trade or business exceeds losses from similar property, such gains and losses shall be treated as long-term capital gains and long-term capital losses. Section 1231 specifically excludes inventory and property held primarily for sale in the ordinary course from the definition of property used in the taxpayer's trade or business for purposes of this section.

hedging transaction clearly identified as such; or (8) supplies of a type regularly consumed in the taxpayer's ordinary course of business.[277]

Short-term versus long-term

Once it is determined that gain or loss from the sale of property is capital gain or loss, it is necessary to determine whether such gain or loss is short- or long-term. This is determined in reference to the holding period of the capital asset.[278] In general, short-term capital gains and losses are those related to the sale, exchange, or disposition of a capital asset held by the taxpayer for not more than one year.[279] Conversely, long-term capital gains and losses are those derived from the sale, exchange, or disposition of a capital asset held by the taxpayer for more than one year.[280] However, there are exceptions to the general rules regarding classification of capital gains and losses as short or long-term.[281]

The classification of gains and losses as short- or long-term may result in more favorable tax treatment since short and long-term gains must be netted with their respective short- or long-term losses for any given tax year.[282] Further, the tax rates for capital gains may be lower than the tax rates on ordinary income.

Capital loss limitation

To the extent capital losses exceed capital gains in any given tax year, a taxpayer's entity choice may result in limiting the amount of losses that can be claimed by the taxpayer. In general, corporations may only claim capital losses to the extent of such gains.[283] All other taxpayers may claim capital losses up to $3,000 in excess of capital gains for such taxable year.[284]

Ordinary income

Amounts not otherwise determined to be capital in nature are generally included as ordinary income and taxed at the applicable rates. This includes amounts earned by dealers,

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[277] Sec. 1221(a).

[278] Sec. 1223(a); Treas. Reg. sec. 1.1223-1(a). See also sec. 1234A.

[279] Sec. 1222(1) and (2).

[280] Sec. 1222(3) and (4).

[281] See, *e.g.*, sec. 475 (mark-to-market).

[282] See sec. 1(h).

[283] Sec. 1211(a). A corporation with net capital losses for any taxable year may be eligible to carry such losses back three years and forward 10 years. See sec. 1212(a).

[284] Sec. 1211(b). Taxpayers other than a corporation may carryover their net capital losses to future years until the loss is used. The character of the loss (as either short or long-term) also is retained. See sec. 1212(b).

interest, dividends, and amounts earned from property held by a taxpayer that is specifically excluded from the definition of a capital asset. As with the rules regarding capital treatment, there are exceptions to the general rules that dictate ordinary income treatment.[285]

Source of income

Extensive rules determine whether income is considered from U.S. sources or foreign sources.[286] Special rules are provided for certain industries (e.g., transportation, shipping, and certain space and ocean activities) and for income derived from sources partly within and partly without the United States.[287]

Sourcing of income with respect to property received for services

The source of services income generally is the place where the services giving rise to such income are performed.

Sourcing of interest income and rental income

The source of interest income is generally determined by reference to the residence of the obligor.[288] The source of rental income is generally determined by the location, or the place of use, of the property.[289]

Description of Proposal

Sourcing of income from digital asset validation supporting activities

The proposal provides that income from digital asset validation supporting activities is U.S. source if the taxpayer is a U.S. resident and foreign source if the taxpayer is a nonresident. The term "digital asset validation supporting activities" means staking, mining, or except as otherwise provided by the Secretary, similar activities in support of the validation of digital asset transactions. The term "staking," when used in connection with a digital asset, means making the asset available in support of the validation of digital asset transactions and, except as otherwise provided by the Secretary, any substantially similar activity. The term "mining," when used in connection with a digital asset, means performing computations, or making available computing power, in support of the validation of digital asset transactions, and, except as otherwise provided by the Secretary, any substantially similar activity.

Under the proposal, in the case of a U.S. person with a qualified business unit (as defined in section 989(a)) in a foreign country, income from digital asset validation supporting activities

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[285] See, *e.g.*, section 1221 (hedging transactions).

[286] Secs. 861 through 865, generally.

[287] Sec. 863.

[288] Secs. 861(a)(1) and 862(a)(1).

[289] Secs. 861(a)(4) and 862(a)(4).

that constitute business profits attributable to such qualified business unit is foreign source. Similarly, under the proposal, in the case of a person that is not a U.S. person, and that maintains an office or other fixed place of business in the United States, the income from digital asset validation supporting activities attributable to such office or other fixed place of business is U.S. source.

The proposal provides that the Secretary may issue regulations or other guidance as determined to be necessary or appropriate for purposes of determining the amount of business profits attributable to a qualified business unit or office or other fixed place of business, and that in the case of a partnership, except as otherwise provided by the Secretary in regulations or other guidance, the sourcing rules for income from digital asset validation supporting activities apply at the partner level.

Character of income from digital asset validation supporting activities

Income from digital asset validation supporting activities is treated as ordinary income.

Effective Date

The proposal applies to taxable years beginning after the date of enactment.

B. Investment Trusts Engaged in Digital Asset Staking

Present Law

Generally, an arrangement is treated as a trust if the purpose of the arrangement is to vest in trustees the responsibility to protect or conserve property for beneficiaries who cannot share in the discharge of this responsibility and therefore are not associates in a joint enterprise for the conduct of business for profit.[290]

U.S. investment funds holding digital assets that qualify as exchange-traded products ("ETPs") often are classified for Federal income tax purposes as investment trusts treated as grantor trusts. To qualify as an investment trust, a trust generally must have a single class of ownership interests, representing undivided beneficial interests in the assets of the trust, and the trust agreement must convey no power to vary the investments of the investors in the trust.[291] In the case of investment trusts that are treated as grantor trusts, investors in the trust are treated as if they were the direct owners of their *pro rata* interests in trust assets for Federal income tax purposes and may be eligible for simplified information reporting.[292] A trust that fails to meet the requirements for investment trust status may be treated as a partnership or corporation for Federal income tax purposes, depending on the applicable facts and circumstances, and would then be subject to the applicable reporting rules.

Revenue Procedure 2025-31 provides a safe harbor that permits certain exchange-traded products that are classified as investment trusts treated as grantor trusts to stake their digital assets without jeopardizing their tax status as investment trusts and grantor trusts.[293] To qualify for the safe harbor, a trust must meet certain requirements, including the following:

- The trust must be traded on a national securities exchange and comply with Securities and Exchange Commission rules and regulations;
- The trust may only hold units of a single digital asset, transactions for which are carried out on a network that uses a proof-of-stake consensus mechanism;
- The trust's digital assets must be held by a qualified custodian on behalf of the trust, at digital asset addresses controlled by the custodian;
- The trust's staking of the digital assets must protect and conserve the value of the trust property by mitigating the risk that another party could control a majority of the total staked digital assets of the same type and engage in transactions that could reduce the value of the trust's digital assets;

[290] Treas. Reg. sec. 301.7701-4(a).

[291] Treas. Reg. sec. 301.7701-4(c)(1).

[292] See secs. 671-679 (grantor trust rules); see also The White House, *Strengthening American Leadership in Digital Financial Technology*, January 23, 2025, available at https://www.whitehouse.gov/wp-content/uploads/2025/07/digital-Assets-Report-EO14178.pdf.

[293] Rev. Proc. 2025-31, 2025-48 I.R.B. 743.

- The trust must direct staking of its digital assets through one or more custodians who facilitate the staking of the digital assets on the trust's behalf with one or more staking providers, with the trust and sponsor being unrelated to the staking provider; and
- All of the digital assets of the trust must be made available to the staking provider to be staked at all times, except in limited circumstances.

The revenue procedure also provides that an existing trust may amend its trust agreement to authorize staking at any time during the nine-month period beginning on November 10, 2025, and may qualify for the safe harbor if the requirements of the revenue procedure are satisfied.

Description of Proposal

Under the proposal, an entity or arrangement does not fail to be treated as a trust for purposes of the Code solely by reason of the power of the trustee of the entity or arrangement to (1) engage in staking digital assets held by the trust, (2) retain or distribute digital assets received in connection with staking, (3) determine which digital assets held by the trust to use in staking, (4) to the extent any digital assets held by the trust are committed to staking, take necessary or appropriate measures to ensure that the trust has sufficient liquidity to make distributions in redemption of interests in the trust, including by borrowing or entering into agreements to borrow money or digital assets to make the distributions, and (5) perform acts related to the exercise of the powers described in (1)-(4). However, the proposal does not apply in the case of an entity or arrangement engaged in the active conduct of a trade or business of validating digital asset transactions.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. The term "validate," and any derivative the term (including "validation"), when used in connection with a digital asset transaction, includes the processes of proposing transactions for validation and verifying the validation of transactions. The term "staking," when used in connection with a digital asset, means making the asset available in support the validation of digital asset transactions and, except as otherwise provided by the Secretary, any substantially similar activity. The term "digital asset transaction" means any transfer of a digital asset recorded on the cryptographically secured digital ledger (or similar technology).

Effective Date

The proposal applies to taxable years ending after the date of enactment.

TITLE V—ENSURING THAT OWNERS AND USERS OF DIGITAL ASSETS FACE AN APPROPRIATE TAX COMPLIANCE BURDEN

A. Broker Requirements

Present Law

Third-party information reporting by payors and brokers is required in a broad category of payments to taxpayers, including wages and salaries, dividends, interest, share sales, real estate sales. The use of reliable and objective third-party verification of income increases the probability of detecting tax evasion and the cost of evasion to the taxpayer.

In 2021, Congress amended the Code to clarify that broker information reporting includes reporting with respect to transactions involving digital assets[294] by adding digital assets to the definition of covered security, except as provided by the Secretary of the Treasury (the "Secretary").[295] As a result, brokers are generally required to report proceeds of sales as well as adequate information to determine character of gain or loss from sales and to compute basis.[296] Generally, adjusted basis is determined without regard to the wash sale rule under section 1091 unless the transactions occur in the same account with respect to identical securities.[297] Similar basis reporting is required with respect to broker-to-broker transactions. A broker is defined to include "any person who (for consideration) is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person."[298]

July 2024 regulations on reporting gross proceeds and basis

Regulatory guidance to implement the reporting requirement was proposed in 2023,[299] and finalized in a Treasury Decision published in July 2024 titled "Gross Proceeds and Basis Reporting by Brokers and Determination of Amount Realized and Basis for Digital Asset Transactions" (hereinafter, "July 2024 Regulations").[300] The July 2024 Regulations address the general rules for gross proceeds and basis reporting for persons within scope of the regulations. The guidance also provides rules for determining the amount realized from the sale, exchange, or

[294] Pub. L. No. 117-58, sec. 80603, November 15, 2021 (Information reporting for brokers and digital assets); secs. 6045(c)(1)(D) and 6045A(d). For a more detailed description, see Joint Committee on Taxation, *Technical Explanation of Section 80603, "Information Reporting for Brokers and Digital Assets," of the Infrastructure Investment and Jobs Act,* Cong. Record 167: daily ed., August 3, 2021, p. S5702.

[295] Sec. 6045(g)(3)(D).

[296] Sec. 6045(g)(2).

[297] Sec. 6045(g)(2)(B)(ii); Treas. Reg. sec. 1.6045-1(d)(6) (rules for determining adjusted basis of certain specified securities, including adjustments for wash sales).

[298] Sec. 6045(c)(1)(D).

[299] 88 Fed. Reg. 59576, August 29, 2023.

[300] T.D. 10000, 89 Fed. R. 56480, July 9, 2024.

disposition of digital assets by persons subject to the broker reporting rules, and rules for determining the basis in assets in such transactions, including adjustments for wash sales with respect to certain tokenized securities that are treated as stock or securities within the meaning of section 1091.[301]

In defining the class of persons within scope of the reporting rules, the regulations introduce the terms "U.S. digital asset broker," "customer," and "digital asset middleman." A U.S. digital asset broker is defined as "a person that effects sales of digital assets on behalf of others and that is…a U.S. payor or U.S. middleman"[302] and is required to report with respect to each sale by a customer if, in the ordinary course of business in which "the broker stands ready to effect sales to be made by others, the broker effects the sale or closes the short position opened by the sale."[303] A customer, with respect to a sale effected by a broker, is defined as the person (other than such broker) that makes the sale if the broker acts as (1) an agent for such person in the sale; (2) a principal in the sale; (3) the participant in the sale responsible for paying to such person or crediting to such person's account the gross proceeds of the sale; or (4) a digital asset middleman that effects the sale of a digital asset for such person.[304] A digital asset middleman is defined as any person who provides certain facilitative services with respect to a sale of digital assets.[305]

In the preamble to the July 2024 Regulations (the "Preamble"), Treasury distinguished between custodial and non-custodial industry participants. Custodial industry participants, such as custodial digital asset trading platforms and certain digital asset hosted wallet providers, generally act as principals or agents to effect digital asset transactions on behalf of their customers. In contrast, non-custodial industry participants are described as participants that do not take possession of a customer's digital assets, such as operators of non-custodial digital asset trading platforms (sometimes referred to as decentralized finance or, colloquially, "DeFi"). As explained in the Preamble, the decentralized finance industry offers services that allow for transactions that use automatically executing software (sometimes referred to as "smart contracts") that do not require taking custody of a digital asset customer's private access code (or "private key") needed to access such customer's digital account.

As discussed above, the regulations defined a digital asset middleman as any person who provides certain facilitative services with respect to the sale of digital assets. The Secretary finalized the definition of digital asset middleman as applied to custodial industry participants by specifying certain facilitative services, such as acceptance or processing of digital assets as payment for property of a type which when sold would constitute a sale by a broker that is in the

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[301] Treas. Reg. sec. 1.6045-1(d)(6)(iii) (adjustments for wash sales).

[302] Treas. Reg. sec. 1.6045-1(g)(4)(i)(A) (defines U.S. digital asset broker). The term "U.S. middleman" is defined in regulations under rules on interest reporting and intermediaries. Treas. Reg. secs. 1.6049-5(c)(5)(i) (defining U.S. middleman).

[303] Treas. Reg. sec. 1.6045-1(c)(2).

[304] Treas. Reg. sec. 1.6045-1(a)(2)(i).

[305] Former Treas. Reg. sec. 1.6045-1(a)(21).

business of effecting sales of such property. However, Treasury reserved on and did not finalize the definition of digital asset middleman as applied to non-custodial industry participants, noting that such rules would be provided in a separate set of final regulations. The July 2024 Regulations are otherwise in effect and generally require gross proceeds reporting for sales of digital assets occurring on and after January 1, 2025, and basis reporting for certain sales occurring on and after January 1, 2026.[306]

Decentralized finance regulations

The regulations finalized in December 2024, titled "Gross Proceeds Reporting by Brokers That Regularly Provide Services Effectuating Digital Asset Sales" (the "December 2024 Regulations") address only a revised definition of digital asset middleman to encompass certain persons who participate in effectuating decentralized financial transactions (non-custodial industry participants).[307] In the definition of digital asset middleman, the December 2024 regulations replace "facilitative services" with "effectuating services" and provide that an "effectuating service" includes both the previously-defined "facilitative services" (as included in the July 2024 Regulations) as well as trading front-end services where the nature of the service arrangement is such that the person providing that service ordinarily would know or be in a position to know that the nature of the transaction potentially gives rise to gross proceeds from the sale of digital assets.[308] Trading front-end services generally facilitate trading for customers who may otherwise need to write software code in order to communicate, and thus transact, with other decentralized finance participants.

Prior to the effective date of the December 2024 Regulations, a joint resolution disapproving of the December 2024 Regulations under the Congressional Review Act (the "CRA")[309] was enacted.[310] Because they had never gone into effect prior to that joint resolution, those regulations will not take effect. In addition, under the CRA, the December 2024 Regulations may not be reissued in substantially the same form, and new rules that are substantially the same as disapproved rules may not be issued absent a change in law.[311]

Description of Proposal

The proposal narrows the instances in which the additional broker reporting is required under section 6045 with respect to basis of digital assets. Certain stablecoins are excluded from the scope of the digital assets for which reporting is required. A *de minimis* threshold is

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306 Treas. Reg. sec. 1.6045-1(q).

307 T.D. 10021, 89 Fed. Reg. 106928, December 30, 2024.

308 Treas. Reg. sec. 1.6045-1(a)(21).

309 5 U.S.C. secs. 801-808.

310 Pub. Law 119-5, April 10, 2025.

311 5 U.S.C. sec. 801(b)(2).

established for reporting fees that are satisfied by dispositions of digital assets. An election to use a streamlined accounting for widely traded digital assets is also permitted.

<u>Change to scope of digital assets subject to basis reporting</u>

First, the proposal carves out certain stablecoins from the scope of covered securities with respect to which brokers must report. It does so by replacing the defined term "digital assets" treated as a covered security with a new defined term "specified digital asset." A specified digital asset is any digital asset other than a qualified U.S. dollar stablecoin as defined in section 7701(p) as amended in this proposal, in which the customer's basis is at least 99.5 percent of the redemption value of such coin, within the meaning of section 1063(c), as added by this proposal.

The term "qualified U.S. dollar stablecoin" means any U.S. dollar stablecoin which is issued by (i) a permitted payment stablecoin issuer[312] or (ii) a foreign payment stablecoin issuer[313] that is registered with the Office of the Comptroller of the Currency under the GENIUS Act (as in effect on the date of enactment). The term "U.S. dollar stablecoin" means (1) a payment stablecoin as defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment, applied by substituting "dollars" for "monetary value" each place it appears in such section, and (2) to the extent provided by the Secretary to prevent abuse, any stablecoin similar to a payment stablecoin described in (1). The Secretary must, to the extent feasible, regularly publish a list of qualified U.S. dollar stablecoins. The Secretary may issue regulations or guidance as may be necessary or appropriate (except as otherwise expressly provided in the Code) to treat qualified U.S. dollar stablecoins as dollars and treat payment stablecoins[314] other than qualified U.S. dollar stablecoins as currency if the treatment is expected to increase net Federal revenues.

The proposal provides transition rules applicable to the interaction of new section 1063 and 6045(g). The Secretary may provide temporary safe harbors for periods ending before the date that is 18 months after the issuance of final regulations or other guidance under section 1063(e). For stablecoins acquired before that date, the Secretary may provide that a customer's basis in a qualified U.S. dollar stablecoin at the time of acquisition is equal to its redemption value under section 1063(d), provided that the taxpayer's adjusted basis in the stablecoin is 99.5 percent of such redemption value as of the later of December 31, 2026 or the date the stablecoin first becomes a qualified U.S. dollar stablecoin.

Conforming amendments are made throughout section 6045 to change "digital asset" to "specified digital asset," and to remove a cross reference to digital assets in section 6050I.

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[312] As defined in section 2(23) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[313] As defined in section 2(12) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

[314] As defined in section 2(22) of the GENIUS Act, as in effect on the date of enactment. See GENIUS Act, Pub. L. No. 119-27, July 18, 2025.

Transaction fee reporting

The disposition of digital assets to satisfy *de minimis* digital asset fees is not subject to reporting transaction-by-transaction if the gain or loss from the transaction is not recognized by reason of new section 1044(a).[315] A digital asset fee is *de minimis* if the aggregate of such fees is $10 or less. In determining whether the exception to reporting applies to a transaction, a broker may generally rely upon information provided by the taxpayer or the IRS that the taxpayer is entitled to an exception from reporting by reason of an exception under section 1044(e)(1)(B). Such reliance is not permitted when the broker has knowledge that the taxpayer engaged in more than 5,000 such transactions during any of the five preceding calendar years without the taxpayer renewing a claim of an exception; the taxpayer or IRS inform the taxpayer that the exception is inapplicable; or the broker knows or has reason to know that the exception is inapplicable. When the exception is applicable, the broker is required to report aggregate information about such dispositions of digital assets as the Secretary determines is appropriate. Among the uses for such aggregate reporting is verification of the taxpayer's basis in digital assets held by the broker.

Simplified accounting election reporting

A taxpayer who elects under new section 1051 to use simplified accounting with respect to a designated type of widely traded digital assets avoids transaction-by-transaction reporting with respect to those assets. A broker may consider an election to be in effect only if the taxpayer or Secretary notifies the broker of such election or the broker knows or has reason to know of such election. If an election is in effect, aggregate reporting as to each designated type of digital asset[316] is required except to the extent the Secretary provides otherwise. The aggregate information to be reported for each designated type of asset includes all sales, transactions or acquisitions; fair market value of assets held at beginning and end of the reporting period; and such other information as the Secretary determines is needed to administer section 1051.

The term "widely traded digital asset" means, with respect to any taxpayer for any taxable year and except as otherwise provided by the Secretary to prevent abuse, any traded digital asset if (i) quotations for the asset were readily available on an exchange for the entire calendar year which ends in or with the taxable year preceding such taxable year, (ii) the market capitalization of the asset exceeded $500 million (adjusted for inflation) at substantially all times during such calendar year, and (iii) not more than 10 percent of the units of the asset were owned, directly or indirectly, by the taxpayer under section 267(b) (applied without regard to section 267(c)(3)) or section 707(b)(1) at any time during such taxable year or such preceding year. In the case of any wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse, the asset is treated as a widely traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a widely traded digital asset with respect

[315] For a description of the treatment of *de minimis* digital asset fees, see Title I.A, above.

[316] A "designated type of digital asset" means, with respect to any taxpayer and taxable year, any type of widely traded digital asset for which the taxpayer elects to apply the alternative method for recognizing gain and loss. For a description of simplified accounting for gain or loss of widely traded digital assets, see Title I.B, above.

to the taxpayer. The term "traded digital asset" means, except as otherwise provided by the Secretary to prevent abuse, any digital asset if (1) the asset is fungible, (2) quotations of the asset are readily available on an exchange (or, in the case of an exchange that does not provide quotations, such quotations are readily ascertainable), and (3) the asset is not a tokenized digital asset. In the case of a wrapped digital asset, except as otherwise provided by the Secretary to prevent abuse,[317] the asset is treated as a traded digital asset if, and only if, the reference digital asset with respect to the wrapped digital asset is a traded digital asset.

The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

Effective Date

The proposal is effective for returns required to be filed, and statements required to be furnished, after December 31, 2027.[318]

[317] The term "prevent abuse" includes the exclusion of assets that lack reliable price discovery or that the Secretary determines are at risk of price manipulation.

[318] A transition rule on the applicability of changes to section 1091, made by section 301 of the bill, provides that for purposes of broker reporting rules under section 6045, in the case of a sale or other disposition before January 1, 2028, of a digital asset to which section 1091 would not have applied but for the amendments made by section 301, the customer's adjusted basis is determined without regard to section 1091. For a description of the wash sale proposal, see the discussion in Title III.A.

B. Establishment of Digital Asset Voluntary Disclosure Program

Present Law

The Federal income tax system relies upon self-reporting and assessment. A taxpayer is expected to prepare a report of his or her liability[319] and submit it to the IRS with any payment due. The Code encourages compliance with a number of tools, such as (1) third-party information reporting to ensure taxpayers have information necessary to comply and prevent underreporting and (2) withholding at the source.[320] Post-filing enforcement measures include examinations, determination of additional tax due and possibly penalties. The Code provides general authority for the IRS to assess all taxes shown on returns.[321] Taxpayers may amend returns to correct errors and the IRS, if it determines that the assessment was materially incorrect, may assess additional tax within the limitations period.[322]

Overview of penalties

The Code provides for both civil and criminal penalties to ensure complete and accurate reporting of tax liability and to discourage fraudulent attempts to defeat or evade tax. The majority of delinquent taxes and penalties are collected through the civil process. Most civil penalties are provided in Chapter 68 of the Code (sections 6651-6751) and are categorized into two types: additions to the tax and additional amounts (herein "additions to tax"), and assessable penalties. The assessable penalties are generally imposed for failure to pay over collected taxes and to file information returns and can be assessed without the restrictions applicable in deficiency cases, while the additions to tax are generally subject to deficiency proceedings. The penalties that require notice of deficiencies include delinquency penalties (section 6651), failure by individuals to pay estimated income tax (section 6654), failure by corporations to pay estimated income tax (section 6655), failure to make deposit of taxes (section 6656), accuracy-related penalties (sections 6662 and 6662A), and the fraud penalty (section 6663). Some of these penalties may be waived under certain circumstances, including a showing of reasonable cause under section 6664.

Settlement authority

The Code provides that "[t]he Secretary may compromise any civil or criminal case arising under the internal revenue laws prior to reference to the Department of Justice for

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[319] Secs. 6011 and 6012.

[320] For a more extensive overview of the enforcement measures in the Code, see Joint Committee on Taxation, *Tax Gap*: *Overview of Federal Tax Provisions and Analysis of Selected Issues* (JCX-30-21), June 7, 2021. This document can be found on the Joint Committee on Taxation website at www.jct.gov.

[321] See section 6201(a) (authorizing assessment of tax computed by the taxpayer as well as amounts computed by the IRS at the election of the taxpayer, under section 6014).

[322] Sec. 6204.

prosecution or defense; and the Attorney General or his delegate may compromise any such case after reference to the Department of Justice for prosecution or defense."[323]

The IRS administers a voluntary disclosure program to encourage persons who may otherwise be subject to criminal exposure, with a resolution of civil liabilities and related penalties, but assurance that the noncompliance resolved in that case would not be the basis for a referral to criminal investigation.[324] Broad voluntary disclosure programs were conducted with respect to specific issues believed to be high in error rate and revenue impact, such as failure to disclose offshore accounts or report income related to such accounts described below.

A series of various voluntary disclosure programs targeted persons holding offshore financial assets in order to bring into compliance persons who had not been in compliance with their obligations under either the Bank Secrecy Act[325] or the Code with regard to offshore financial accounts.[326] The noncompliant taxpayers who were not yet known to the IRS were encouraged to come forward, disclose prior noncompliance, and in doing so, receive resolution involving full or partial relief from certain penalties that would otherwise have been applied under either the Bank Secrecy Act[327] or the Code. The details varied as successive iterations were introduced, including streamlined procedures. Although the specific voluntary disclosure program related to foreign financial accounts ended, the streamlined procedures remain available to taxpayers who seek to remedy noncompliance that they certify was not willful.[328] Efforts to challenge the program as violative of due process were rejected, because the difference in treatment had a rational basis.[329]

Description of Proposal

The proposal directs the Secretary to establish and conduct a voluntary disclosure program ("the program") specifically to provide a means by which individuals who engaged in a digital assets violation may remedy their noncompliance with results less onerous than they would otherwise receive. The program is required to be established within one year of date of enactment. The program includes standards for eligibility for the program, measures that a

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[323] Sec. 7122(a).

[324] Internal Revenue Manual, 9.5.11 *Voluntary Disclosure Practice* (November 19, 2025).

[325] 31 U.S.C. sec. 5311, *et. seq.*

[326] Offshore Voluntary Disclosure Program, 2009 – through September 28, 2018.

[327] 31 U.S.C. sec. 5311, *et. seq.*

[328] For details of that program, see IRS, Streamlined filling compliance procedures, available at https://www.irs.gov/individuals/international-taxpayers/streamlined-filing-compliance-procedures (last accessed September 8, 2026).

[329] *Dewees v. United States*, No. 17-5274 (D.C. Cir. Apr 9, 2019) (When the IRS assessed penalties after taxpayer withdrew from the offshore voluntary compliance program ("OVCP") claiming he was denied equal protection due to the different penalty structures in the OVCP of 2009 and later streamlined procedures published in 2011. The district court dismissed for lack of standing; the DC Circuit disagreed as to standing but nonetheless dismissed the claim.).

participant in the program must take to complete the program satisfactorily, and the resulting tax relief extended to the participant.

For purposes of the program, "digital asset violation" means a failure to comply with a requirement of the Code that is related to ownership of, or transactions with, digital assets and results in an error in properly reporting any tax item for any applicable period. The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary. An "applicable period" is the period beginning with the later of the first taxable year affected by the digital asset violation or the first year for which a return was filed within the six-year period immediately prior to date of enactment and ending with the last taxable year prior to date of enactment.

Eligible taxpayers

Persons who may participate in the program are either certified or uncertified eligible taxpayers. Certified eligible taxpayers are those who have committed a digital assets violation as described and certify under penalties of perjury that no such violation was willful or fraudulent, either on an addendum to an amended return or in such other form as the Secretary may require. Taxpayers who are under examination for any of the three preceding taxable years are generally not eligible unless the Secretary consents.

The uncertified eligible taxpayers are all others who have digital assets violations for prior taxable years but did not certify the lack of willful or fraudulent actions. Uncertified eligible taxpayers who wish to participate must submit a formal application to participate and may be subject to a user fee under section 7528. Those who are under examination or criminal investigation by the IRS may participate only if the Secretary issues a waiver permitting their participation.

Remedial actions required of program participants

All eligible taxpayers who wish to participate must, in the time and manner determined by the Secretary, file the appropriate amended tax returns within 24 months of the date that the program is established to rectify their digital assets violations and supply information as the Secretary deems appropriate. They are required to pay aggregated tax deficiencies with interest and a digital assets violation penalty.

The digital assets violation penalty depends on the type of taxpayer (whether certified eligible or not), the amount of deficiencies in tax attributable to the digital assets violation, and whether the amended returns were filed within the first 12 months of the program, as shown in the table below. The Secretary is authorized to waive the civil penalties upon determination that such waiver is in the interests of justice and proper tax administration, including findings of reasonable cause for the digital assets violations.

Deficiencies attributable to such violations, additional tax or additional amounts, as well as the digital assets violation penalty are required to be assessed, collected and paid as taxes within the meaning of section 6665(a), without regard to limitations in section 6501, or restrictions on assessment under section 6213.

Digital Assets Violations Penalty Rates

<table>
<tr><th rowspan="2">Aggregate Deficiencies</th><th colspan="2">Certified Eligible Taxpayers</th><th colspan="2">Uncertified Eligible Taxpayers</th></tr>
<tr><th>Amended returns filed within 12 months</th><th>Amended returns filed after 12 months</th><th>Amended returns filed within 12 months</th><th>Amended returns filed after 12 months</th></tr>
<tr><td>$25,000 or less</td><td>-0-</td><td rowspan="2">5 percent</td><td>25 percent</td><td>40 percent</td></tr>
<tr><td>Over $25,000 up to $100,000</td><td>5 percent</td><td>40 percent</td><td>50 percent</td></tr>
<tr><td>Over $100,000</td><td>5 percent</td><td>10 percent</td><td>40 percent</td><td>50 percent</td></tr>
</table>

Benefits of participation including reduced penalties

If all required remedial actions are completed satisfactorily, the participants are eligible for civil penalty relief. For certified eligible taxpayers, the benefit is the digital assets violation penalty in lieu of the applicable accuracy-related penalties under section 6662 attributable to digital assets violations disclosed in the program. The uncertified eligible taxpayers receive similar relief from the otherwise applicable civil penalties under section 6662 (generally accuracy-related) and section 6663 (fraud).

The proposal also limits the Secretary's authority to use information about digital assets violations disclosed by an uncertified eligible taxpayer in the program. Such information cannot be used as a basis for referring the taxpayer for criminal investigation or prosecution with respect to the digital assets violations for tax evasion under section 7201, willful failure to file under section 7203, or making false or fraudulent statements under section 7206 (other than for aiding and abetting false statements as described in paragraph 2 of that section).

The proposal grants the Secretary the authority to prescribe necessary and appropriate guidance in order to carry out the purposes of the program.

Effective Date

The proposal is effective upon date of enactment.

C. Treasury Study and Report

Present Law

The IRS depends upon third-party information reporting and withholding tax at the source to encourage voluntary compliance. With respect to digital asset transactions, the information reporting consists of third-party information reporting by a broker on gross proceeds and basis. It does not extend to transactions that occur on non-custodial digital asset trading platforms (or decentralized finance ("DeFi")), regardless of whether there is a middleman intermediary facilitating the transaction.[330] In general, brokers making certain reportable payments are required to deduct and withhold tax (backup withholding) if the recipient fails to provide a taxpayer identification number or otherwise fails to meet information reporting requirements,[331] but the application of such rules to dispositions of digital assets is not explicitly addressed in the Code.

The DeFi industry also offers services that do not require any middleman intermediary and instead allow transactions that use automatically executing software (sometimes referred to as "smart contracts") that do not require taking custody of a digital asset customer's private access code (or "private key") needed to access such customer's digital account. For example, if a U.S. customer sells a digital asset to a foreign counterparty, there need not be a third party intermediary to collect and report information on such transaction to the IRS. Instead, the smart contract that handles the transaction uses a built-in reporting mechanism that automatically validates the necessary information, but the U.S. seller identifying information need not be shared with the counterparty.

Description of Proposal

The proposal requires the Secretary of Treasury ("Secretary") to study and report to Congress on the feasibility of using digital technologies, including smart contracts, zero-knowledge proofs and other blockchain or distributed ledger technologies, to increase compliance, efficiency and data protection related to information reporting, withholding tax, and taxpayer compliance regarding digital assets. The term "digital asset" means, except as otherwise provided by the Secretary, any digital representation of value which is recorded on a cryptographically secured distributed ledger or any similar technology as specified by the Secretary.

The study has three requirements. First, the investigation must evaluate various technologies based on their potential to reduce compliance costs and burdens on withholding agents on cross-border digital asset transactions, to replace traditional information or financial reporting on digital asset transactions with comparable credible information, and to improve tax administration while reducing compliance costs and improving data security. Second, the study must investigate whether the technologies can improve data security and individual privacy,

[330] For a more complete description of existing requirements under sections 6045 and 6045A, see the present law description of broker requirements in Title V.A.

[331] Sec. 3406.

reduce risk of identity theft when data is shared among the parties to digital asset transactions. Last, the views and information available from stakeholders on these subjects must be solicited and considered. Stakeholders include technology developers, industry leaders as well as consumer protection experts.

The final study is to culminate in a written report to Congress no later than September 28, 2028, in which the Secretary reports all findings of the study and makes recommendations on whether to adopt the digital technologies studied. In support of such recommendations, the Secretary is to identify legislative actions and additional resources needed to implement the recommendations and to estimate the time required to do so.

Effective Date

The proposal is effective upon date of enactment.

TITLE VII—FULL HOUSE ACT

A. Reinstatement of Rules for Wagering Losses

Present Law

Losses sustained during the taxable year on wagering transactions are allowed as a deduction equal to the lesser of (1) 90 percent of such losses, or (2) the gains from wagering transactions in the taxable year.[332] The term "losses from wagering transactions" as used in section 165(d) includes any deduction otherwise allowable under chapter 1 of the Code incurred in carrying on any wagering transaction. Thus, the limitation on losses from wagering transactions applies not only to the direct outlays for losing wagers but also to other expenses incurred in connection with gambling activity (for instance, the otherwise deductible costs of travel to and from a casino for taxpayers for whom gambling is a trade or business).

Description of Proposal

The proposal eliminates the 90-percent limitation, enacted by Public Law 119-21, on the deduction for losses from wagering transactions. Accordingly, for taxable years beginning after December 31, 2025, losses sustained during the taxable year on wagering transactions (including otherwise allowable deductions incurred in carrying on such transactions) are allowed as a deduction to the full extent of the gains during the taxable year from such transactions.

Effective Date

The proposal is effective for taxable years beginning after December 31, 2025.

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[332] Sec. 165(d).