

Congress of the United States
Washington, DC 20515

December 20, 2019

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Ave NW
Washington, DC 20224

Dear Commissioner Rettig:

Cryptocurrencies and the open blockchain networks they power embody a true technological revolution that promises greater efficiencies, vibrant innovation, and financial inclusion. We wrote in April of this year urging the issuance of guidance for taxpayers who use cryptocurrencies and we are pleased to see that you have issued guidance and addressed many questions we posed. We are, however, concerned that this recent guidance creates many new questions related to the topics it seeks to address, namely forks and airdrops. Moreover, the guidance appears inequitable as it comes almost two years after the Bitcoin and Bitcoin Cash fork and three years after the Ethereum fork.

The hypothetical fact patterns concerning forks and airdrops offered in this guidance do not appear to bear a close resemblance to actual forks or airdrops as they have occurred in the cryptocurrency ecosystem. Without clear and accurate hypotheticals for taxpayers to measure against, it is difficult to interpret IRS policy as it relates to actual events.

In addition to the difficulties with the hypotheticals, the IRS appears to adopt as a standard “dominion and control” over forked or airdropped assets in order to determine when a taxable event occurs. The characterization of this standard in the guidance appears to diverge from established rules in other areas such as the receipt of unsolicited prizes or samples. The guidance appears to suggest that taxpayers may have dominion and control, and thus be taxed on forked or airdropped assets when the fork or airdrop occurs, even if the taxpayer has no knowledge, and even if the taxpayer takes no affirmative step, or manifests any intention to claim or access those forked or airdropped tokens. This creates potentially unwarranted tax liability and administrative burdens for users of these important new technologies and would create inequitable results. We do not expect this is the intended effect of the guidance, and we urge the IRS to clarify the matter.

The guidance also does not contemplate the vast variety of products offered in the cryptocurrency market: futures, retirement accounts invested in crypto assets, and interest paid on crypto deposits, to name just a few. The IRS needs to provide guidance to taxpayers as to how income related to all crypto transactions will be treated for tax purposes.

In addition, the IRS has failed to provide any clarity for withholding and tax information reporting purposes. Taxpayers rely on forms like 1099 to help complete their income taxes, and the IRS relies on them to enforce compliance. Since many are either not reporting 1099s at all or are reporting incorrect or incomplete information, it is imperative that the IRS publish clear information in further guidance.

Further, we are concerned that the form of the guidance appears to indicate that this is “established” law. We would hope that the IRS recognizes this area as new and developing and will allow for reasonable interpretations in advance of the issuance of the most recent guidance. While we commend the IRS for attempting to issue guidance, we suggest increased work with the industry into the future.

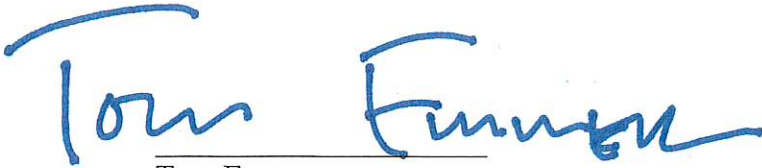
As you are likely aware, legislation has been introduced in this Congress to insulate taxpayers from liabilities for forked and airdropped assets until the IRS has provided clarity. We strongly believe that the best path to ensuring tax compliance in the cryptocurrency space is affording users of these technologies what all taxpayers need and deserve: clear statements of the law and thoughtful consideration of the types of enforcement actions that are taken in advance of that clarity. Please provide our offices answers to the following questions to the best of your ability:

1. Does the IRS intend to clarify its airdrop and fork hypotheticals to better match the actual nature of these events within the cryptocurrency ecosystem? When does the IRS anticipate issuing that clarification?
2. Does the IRS intend to clarify its standard for finding dominion and control over forked assets wherein some level of knowledge and actual affirmative steps taken are necessary to find that the taxpayer has dominion and control?
3. Does the IRS intend to apply the current guidance or any future guidance retroactively, or will the IRS issue proposed guidance that is subject to notice and comment?

These questions, in particular the first, require clarification as soon as possible. In spite of the recent guidance, cryptocurrency users continue to lack any meaningful clarity about their tax obligations with respect to forks and airdrops. Ambiguity impedes appropriate tax compliance and unfairly targets taxpayers who may not have the ability to understand the positions the IRS has taken in these matters but who have taken a reasonable position. We hope that the IRS will act consistent with decades-long standards for finding dominion and control in the context of forked assets and require knowledge and affirmative steps to exercise such dominion and control. Lastly, until there is clear guidance that is prospective in nature, we urge the IRS to use its authority for penalty relief in those instances in which taxpayers made a good faith effort to comply.

We eagerly await your response and thank you for your careful consideration.

Sincerely,



Tom Emmer
Member of Congress



Bill Foster
Member of Congress



David Schweikert
Member of Congress



Darren Soto
Member of Congress



Lance Gooden
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