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Ways & Means Subpanel Holds Cryptocurrency Hearing

During the July 16 House Ways and Means Oversight Subcommittee hearing on “Making America the Crypto Capital of the World: Ensuring Digital Asset Policy Built for the 21st Century,” industry representatives provided a wish list of issues that should be addressed regarding the taxation of cryptocurrency, including a de minimis rule to exempt digital asset transactions under a certain threshold. Other issues addressed at the hearing included staking – described as the activity of validating and recording transactions, which involves pledging native digital assets to the protocol – international competition, and barriers to innovation.

Chairman Dave Schweikert (R-AZ) said of his policy goal for cryptocurrency, “We’re the tax-writing committee. We’re going to try to figure out now as the committees with the regulatory oversight – Financial Services, the Senate companion – make the rules, we now have to figure out how it fits into the tax structure.” Ranking Member Terri Sewell (D-AL) argued for tougher rules. “As digital assets take a larger role on the world stage, it is important that we protect consumers, we remove bad actors and that we ensure fair tax treatment for all. We must work to strengthen, rather than weaken the guardrails in place to protect Americans,” she said.

The hearing follows the June 30 introduction by Senator Cynthia Lummis (R-WY) of digital asset tax legislation (S. 2207) that includes a \$300 de minimis rule, provides that digital asset lending agreements are generally not taxable events, revises the wash sale rules as they pertain to digital assets, provides that mining and staking income is not recognized until sale/disposition of produced assets, and says charitable contributions do not require an appraisal.

While there is no current House counterpart to the Lummis bill, multiple members, including Reps. Max Miller (R-OH) and Steven Horsford (D-NV), expressed an interest in introducing legislation on cryptocurrency tax issues. Miller said his forthcoming draft legislation seeks to:

- Ease reporting burdens for de minimis transactions
- Modernize wash sale rules and mark to market elections
- Provide clear guidance on staking, mining, and income recognition
- Improve the treatment of charitable contributions, lending, and qualified retirement plans

Witness testimony

Summer Mersinger of the Blockchain Association made recommendations including:

- Exempt de minimis gains and losses from taxation
- Clarify the character, source, and timing of income for mining and staking rewards
- Clarify that certain digital asset transactions are nonrecognition events, including “wrapping” and “unwrapping” a digital asset
- Extend the mark-to-market accounting method, currently used by commodities dealers and traders, to digital assets



Sarah Reilly of Fidelity Investments said under current IRS guidance, digital assets are treated as property for Federal income tax purposes, meaning that any transfer, exchange, or other disposition of digital assets can trigger taxable income. She also said the tax code has not been updated to address the important tax issues implicated by staking. Reilly said tax rules must keep pace with innovation, and clear and administrable tax rules for cryptocurrency are urgently needed. She said areas lacking current rules include:

- Whether stablecoin should be treated differently than digital assets under Section 6045
- Tax treatment of digital asset loans
- The safe harbor for non-U.S. persons trading in securities or commodities does not expressly include digital assets
- The existing mark-to-market regime does not expressly include digital assets
- Charitable contributions of digital assets

Alison Mangiero of the Crypto Council for Innovation said staking rewards should be treated like all other created property – taxed at the time of sale and not at the time of creation – such as under the Providing Tax Clarity for Digital Assets Act in the last Congress. “At the time of disposition, the character of income realized should be determined according to longstanding tax principles and rules governing the sale of assets,” she said. “Congress should act to clarify the tax code, to ensure a clear, straightforward framework that encourages compliance.”

Jason Somensatto of Coin Center called for an exemption from the requirements of Section 6050I – which requires that any person engaged in a trade or business that receives cash in excess of \$10,000 in a single transaction or in related transactions file Form 8300, Report of Cash Payments Over \$10,000 Received in a Trade or Business – for digital peer-to-peer transactions, suggesting that it compels warrantless disclosures of associational and transactional data.

Corey Frayer of the Consumer Federation of America said, “Financial regulators should be technology neutral in their treatment of financial instruments and financial intermediaries.”

Q&A

Full Committee Chairman Jason Smith (R-MO) asked how the tax treatment of cryptocurrency affects the industry and its customers. Mersinger said there is a need to modernize the tax code so we can level the playing field for digital assets, reduce unnecessary burdens, and unlock innovation and growth.

Chairman Smith further asked whether there are any lessons to be learned from other nations to meet President Trump’s goal of making the US the crypto capital of the world. Mangiero said in the early days of the Internet, we couldn’t imagine the universe of activities and business it would involve, and the US created the regulatory framework, tax and otherwise, and other nations followed. “What I don’t want to see happen here is something like chips, where we used to dominate, we didn’t have the right framework, that business left, and now we’re spending billions of dollars to lure it back,” she said. Smith said Congress can create a healthy digital asset marketplace by ensuring the laws and regulations aren’t overly burdensome.



Subcommittee Ranking Member Sewell asked what type of tax regulations would be helpful. Reilly said the concern is with protecting investors and one of the issues is the lack of certainty and consistency, which makes compliance difficult for every investor who is struggling to understand the tax consequences of holding a digital asset, and exchange-traded products are how many investors may have exposure. "We have a big task ahead of us, not only for the regulatory framework, but also for the tax framework," Rep. Sewell said.

Rep. Michelle Fischbach (R-MN) asked how to think about rewards from mining and staking from a tax perspective. Somensatto said supporting networks are validators, validating transactions and getting rewarded. The rules allow validators to create currency, which shouldn't be considered income at the time that it's received but, instead, considered property, he said.

"If you don't treat these things like created property and you treat them as ordinary income at the time of receipt, in terms of actual administrability, this could mean that a taxpayer could have a taxable event every day, or according to some blockchains, every six seconds," Mangiero said.

Mersinger said it is akin to "taxing the farmer for their crops before they sell them. They wouldn't have the money to pay that tax until they sell their crops. So, taxing it at the point of the crop coming out of the ground or the crop being harvested just doesn't work. And it's the same idea here: the reward is not a taxable event; it is a creation of property for the individual validator."

Rep. Nathaniel Moran (R-TX) said staking allows users to hold and preserve assets for a certain period of time and asked how staking should be addressed. Reilly said the biggest issue is sourcing, particularly if we are looking to keep more business onshore. "There's no guidance on how staking is sourced, which is requiring advisors to look at things like, where are the servers? Where are the people working on them? These are easily manipulatable factors." Mangiero said staking rewards should be taxed at sale or disposition. "We want this to be treated to same tax treatment as all newly created property," she said.

In response to Rep. Horsford's question about issues innovators face, Mersinger said staking, in that the way tax treats the staking of assets – because it is taxed at that exact moment – you have innovators who may hold off because they don't have the money. "It does keep people out of certain functions if they have to pay a tax at the moment of creation versus at disposition of the assets when they would have the funds to pay those taxes," she said.

Rep. Beth Van Duyne (R-TX) said the current system is a patchwork of rules and unless Congress provides clarity, we risk pushing the ecosystem overseas, as other countries like Switzerland and Singapore are establishing themselves as digital-friendly. Mersinger said one of the main risks is losing jobs overseas, and the other is slow adoption of digital assets in the US. She said there is a need for a de minimis rule: If every transaction is taxed, it is difficult for a consumer to use cryptocurrency as a medium for everyday economic activity, and it burdens taxpayers with compliance requirements. "We have to modernize the tax code so that we have some fairness, so that we're lowering the burdens, and we can allow the US to be the crypto capital of the world," she said.



Rep. Aaron Bean (R-FL) asked whether 1099-DA reporting for stablecoins and NFTs is the best way to go moving forward. Mersinger said it is not the most efficient approach, is a burden on consumers and IRS, and every dollar spent on tax compliance is one less dollar that can be invested in the company. Reilly said there is a question of whether stablecoin should be carved out from broker reporting entirely.

Testimony is at <https://waysandmeans.house.gov/event/oversight-subcommittee-hearing-on-making-america-the-crypto-capital-of-the-world-ensuring-digital-asset-policy-built-for-the-21st-century/>

A Lummis release is at <https://www.lummis.senate.gov/press-releases/lummis-unveils-digital-asset-tax-legislation/>