NAVIGATING THE COMPLEXITIES OF CRYPTOCURRENCY TAXATION

JAIDEN POKOSKI*

INTRODUCTION

In recent years, the once-new technology of cryptocurrency has developed from something completely unheard of into a mainstream method of digital payment. Cryptocurrencies and other digital asset technologies have evolved and diverged, creating a multitude of uses: from an alternative to government-issued currency to an investment-driven digital asset in and of itself. The creation and development of these technologies have presented significant challenges for the Internal Revenue Service's ("IRS") enforcement of tax compliance. As it stands, the IRS views these cryptocurrency technologies as property and taxes them as such.[1] This approach has allowed exploitation and tax avoidance to occur, and it needs a major overhaul.[2] New technologies continue to emerge every day, and regulatory bodies must be able and willing to evolve with them, or they will become obsolete. Without

* J.D., Florida State University College of Law, 2024; M.S., The University of Alabama, 2021; B.S., The University of Alabama, 2021.

1. *See infra* Section II.B.1.

2. Amy Q. Nguyen, *The Mysteries of NFT Taxation and the Problem of Crypto Asset Tax Evasion*, 25 SMU SCI. & TECH. L. REV. 323, 341 (2022).

some sort of modernization, agencies like the IRS and the Securities and Exchange Commission ("SEC") will continue to fall short in their attempts to accurately and effectively tax or regulate these technologies. Though evolution takes time, these agencies must start now by working together to create consistent regulation.

Part I reviews the history of cryptocurrency, securities, and taxation. Part II discusses the taxation and regulatory framework traditionally used by the IRS and SEC. Part III discusses these agencies' views on cryptocurrencies and their application of existing laws. Finally, Part IV analyzes the pitfalls associated with applying old laws to new technologies and offers some potential solutions that would allow for a more effective taxation framework that was not necessary before the emergence of digital assets like cryptocurrencies.

I. BACKGROUND

This Part begins by explaining cryptocurrencies and how they came to be so popular. It then explains the taxation treatment of securities, such as stocks, and how they developed over time. Explaining the history of the tax code along with cryptocurrencies and the unique traits they possess allows for a more thorough understanding of the issues faced when attempting to craft new laws for the current, and very old, U.S. tax framework.

A. History of Cryptocurrency

The first cryptocurrency, Bitcoin, began in 2009 when it was published by someone under the name of Satoshi Nakamoto.[3] Bitcoin revolutionized online money transfers: before its existence, a third-party intermediary, like PayPal or another credit card processor, was needed to transfer money through the internet.[4] These intermediaries were necessary for their transaction ledgers, which kept track of the money's location from account to account so that it could not be spent more than once or that transactions could not be altered after the fact.[5] Bitcoin revolutionized this practice by utilizing what is known as a blockchain and provided users with a peer-to-peer payment network.[6] This blockchain is a digital ledger that tracks economic transactions, ensuring digital money cannot be spent twice, nor can balances be changed retroactively.[7]

---

3. Lawrence J. Trautman, *Bitcoin, Virtual Currencies, and the Struggle of Law and Regulation to Keep Pace*, 102 MARQ. L. REV. 447, 453 (2018).

4. Judith Lee et al., *Bitcoin Basics: A Primer on Virtual Currencies*, 16 BUS. L. INT'L 21, 22 (2015).

5. *Id.*

6. Trautman, *supra* note 3, at 453-54; *see also* Lital Helman & Ofer Tur-Sinai, *Bracing Scarcity: Can NFTs Save Digital Art?*, 51 FLA. ST. U. L. REV. 183, 191 (2023).

7. Trautman, *supra* note 3, at 455.

The creation of Bitcoin, and the various cryptocurrencies that followed, led many people to wonder what the difference was between "normal" currency and cryptocurrency. At its essence, cryptocurrency is a form of currency that is digital and decentralized, allowing anyone to make direct payments to other individuals.[8] This is made possible by the use of cryptography, which eliminates the need for a third-party intermediary.[9] Instead of regulation oversight from a central government, cryptocurrencies are decentralized and utilize blockchain technology to manage issuance and transactions for the virtual currency.[10] These transactions are carried out by a network of users that verify the transactions through "mining," which is a way for many people to contribute and produce a singular product.[11] Blockchain creates its value by providing a system of distributed trust due to the ledger being a public product.[12] The mining process allows users to solve complex mathematical equations that are then checked against the public ledger to verify the transactions; this process not only places a validity check on the transactions, but it also creates an added level of privacy because no one person or entity has access to all the information of the transaction.[13]

The U.S. Government Accountability Office ("GAO") stated that these virtual currencies are considered to be a "digital unit of exchange that is not backed by a government-issued legal tender."[14] Essentially, even though cryptocurrency is legal in the United States and is deemed a taxable investment property, it is not considered to be legal tender.[15] Early on, cryptocurrencies were very seldom used outside of the gaming industry.[16] However, cryptocurrencies quickly gained traction and popularity; now, they are used to purchase various goods and services in real life.[17] As of 2024, there were over 2.4 million different cryptocurrencies with a combined market cap of over $2.6 trillion.[18] The differences between cryptocurrency and other fiat currencies pose problems when applying tax laws to cryptocurrencies. These issues

---

8. *Id.* at 452.

9. *See id.* at 455.

10. Aaron Hsieh, *The Faceless Coin: Achieving a Modern Tax Policy in the Changing Landscape of Cryptocurrency*, 2019 U. ILL. L. REV. 1079, 1084 (2019).

11. *Id.* at 1085.

12. *Id.*

13. *Id.* at 1086.

14. TREASURY INSPECTOR GEN. FOR TAX ADMIN., AS THE USE OF VIRTUAL CURRENCIES IN TAXABLE TRANSACTIONS BECOMES MORE COMMON, ADDITIONAL ACTIONS ARE NEEDED TO ENSURE TAXPAYER COMPLIANCE 1 (2016), https://www.tigta.gov/sites/default/files/audit-reports/2016reports/201630083fr.pdf [https://perma.cc/D44M-ZWCH].

15. *Id.* at 1-2.

16. *Id.* at 1.

17. *Id.*

18. *All Cryptocurrencies*, COINMARKETCAP, https://coinmarketcap.com/all/views/all/ [https://perma.cc/ULT9-SQTC] (last visited Apr. 10, 2024).

must be addressed soon to avoid widespread consequences, especially since cryptocurrency is continuing to grow so rapidly. These issues are also accentuated by the fact that Bitcoin, and many other cryptocurrencies, were created with the goals of decentralization, deregulation, and anonymity.[19]

B. History of Securities Taxation

In 1913, Congress passed the Sixteenth Amendment, giving itself the "power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."[20] This original tax system was simply the foundation of our modern system and left many details up for debate, leading to uncertainties.[21] One of the income tax's architects, Congressman Cordell Hull, believed "it [would] be necessary for the people to become acquainted with the proposed law and for it to become adjusted to the country before extending its classifications, abatements, deductions, exemptions, and so forth."[22] Hull, along with many others, wanted to defer creating distinctions for different types of incomes.

Congress greatly expanded upon the original tax code during World War I.[23] Many Americans began to invest in financial securities due to the bond drives that took place during the war.[24] Even though the tax code implemented these changes, there was still no preference for capital gains.[25] One of the first examples of a capital gains tax came in the Supreme Court's 1921 decision in *Merchants' Loan & Trust Co. v. Smietanka*.[26] There, the Court held that there was taxable income on the gains derived from the one-time sale of the property.[27] Justice Clarke opined that the interpretation of taxable income historically in-

---

19. Trautman, *supra* note 3, at 454; *see also* Sidney Edgar, Note, *Navigating the "Wild West" of Cryptocurrency: Creating a Clear Path Towards Regulation*, 51 FLA. ST. U. L. REV. 229 (2023).

20. U.S. CONST. amend. XVI.

21. The 1913 income tax established general parameters, but lawmakers were cautious with creating too many complicated distinctions. *See* Ajay K. Mehrotra & Julia C. Ott, *The Curious Beginnings of the Capital Gains Tax Preference*, 84 FORDHAM L. REV. 2517, 2523 (2016). Some of these uncertainties concerned what tax classifications would be created and what would qualify for abatements, deductions, and exemptions. *Id.* For a critique of the income tax, see Jay A. Soled & Kathleen DeLaney Thomas, *Predictive Analytics and the Tax Code*, 51 FLA. ST. U. L. REV. 597 (2024).

22. 50 CONG. REC. 499, 508 (1913) (statement of Rep. Cordell Hull).

23. *See* War Revenue Act of 1917, ch. 63, § 2, 40 Stat. 300, 301.

24. Mehrotra & Ott, *supra* note 21, at 2524 (citing JULIA C. OTT, WHEN WALL STREET MET MAIN STREET: THE QUEST FOR AN INVESTORS' DEMOCRACY 2 (2011)).

25. *Id.* (citing STEVEN A. BANK ET AL., WAR AND TAXES 49-82 (2008)).

26. 255 U.S. 509 (1921).

27. *Id.* at 520-21.

cluded gains from the sale of investment property or capital assets.[28] He believed that the recently adopted Sixteenth Amendment to the U.S. Constitution ratified this interpretation.[29]

Later in 1921, Congress passed the 1921 Revenue Act which taxed capital gains at substantially lower rates than ordinary income.[30] These lower rates gave capital gains preferential treatment, and they continue to receive preferential treatment throughout the Revenue Code.[31] Nowadays, these preferred capital rates apply to capital assets, which are defined as "property held by the taxpayer" and include things like land, stocks, buildings, and machinery.[32] There is no question that capital assets will continue to receive preferential treatment; there is only the question of whether modern asset variations, like cryptocurrencies and other virtual commodities, can be adequately taxed within the current capital asset provisions.

II. Current Taxation and Regulatory Framework

This Part initially discusses the SEC and its role in regulating the securities market. It explains the *Howey* test, how it is applied to determine whether an instrument is a security, and how the SEC views cryptocurrencies. Next, it discusses the IRS's treatment of cryptocurrencies. It explains the IRS's view on cryptocurrencies and their current tax treatment.

A. SEC

The Securities and Exchange Commission is an independent agency created by the U.S. Government to create and enforce laws that protect investors against market manipulation and to maintain a fair and orderly function of the securities market.[33] The SEC was established by the Securities and Exchange Act of 1934.[34] The SEC's classification of securities helps determine what regulatory requirements

---

28. *Id.* at 519.

29. *Id.*

30. *See* Revenue Act of 1921, ch. 136, § 206(b), 42 Stat. 227, 233.

31. The current Internal Revenue Code taxes individual "net long-term capital gain" at a lower rate than "ordinary income" or "net short-term capital gain." *See* I.R.C. §§ 1(h), 1221, 1222.

32. *Id.* § 1221.

33. *About the SEC*, U.S. Sec. & Exch. Comm'n, https://www.sec.gov/strategic-plan/about [https://perma.cc/YZ9B-3JHC] (last updated Apr. 6, 2023).

34. *Id.*

need to be met by those wishing to sell investment contracts to the public.[35] For a transaction to be considered an "investment contract," it must pass what is known as the *Howey* test.[36]

1. Howey *Test*

In the 1946 case *SEC v. W.J. Howey Co.*, the Supreme Court created a test to determine whether an investment contract was formed; this became known as the *Howey* test.[37] The Court noted that Congress defined "security" broadly to embody a "flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."[38] The Supreme Court formulated the criteria for an investment contract, stating:

> [A]n investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party, it being immaterial whether the shares in the enterprise are evidenced by formal certificates or by nominal interests in the physical assets employed in the enterprise.
>
> . . . .
>
> . . . The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others. If that test be satisfied, it is immaterial whether the enterprise is speculative or non-speculative or whether there is a sale of property with or without intrinsic value.[39]

Four elements need to be met for an investment contract to exist.[40] First, there must be an investment of money.[41] Second, the investment must be in a common enterprise.[42] Third, this investment must be made with the expectation of profit.[43] Fourth, the potential profits must be derived from the efforts of others.[44] If these elements are all met, a transaction will be considered an investment contract.[45] Strict

35. *The Laws That Govern the Securities Industry*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/about/about-securities-laws [https://perma.cc/37CR-LW4T] (last updated Oct. 1, 2013).

36. *See* Alfredo Dally et al., *A Call for Regulation: The SEC Should Oversee Crypto with Its Ever-Growing Similarities in Risk and Opportunity to Securities*, 76 U. MIAMI L. REV. CAVEAT 24, 27 (2022).

37. *See* 328 U.S. 293, 301 (1946).

38. *Id.* at 299.

39. *Id.* at 298-99, 301.

40. *See id.* at 298-99.

41. *Id.*

42. *Id.* at 299.

43. *Id.*

44. *Id.*

45. *Id.* at 298-99.

application of the *Howey* test to cryptocurrency may alter its classification as a security. The IRS would create unfavorable tax implications if it were to discontinue treating cryptocurrencies as capital assets by deciding cryptocurrencies need to be taxed differently than traditional securities due to the inapplicability of the *Howey* test.

2. *SEC View on Cryptocurrency*

Currently, the SEC holds the position that cryptocurrencies may fall under the definition of securities provided by the *Howey* test.[46] The first prong is almost always satisfied in the sale of a cryptocurrency token since the "digital asset is purchased or otherwise acquired in exchange for value, whether in the form of real (or fiat) currency, another digital asset, or other type of consideration."[47] Regarding the second prong, the SEC states in its *Framework for "Investment Contract" Analysis of Digital Assets* that "[i]n evaluating digital assets, we have found that a 'common enterprise' typically exists."[48] For the third and fourth prongs, the SEC believes there must be an objective inquiry "focused on the transaction itself and the manner in which the digital asset is offered and sold."[49] When making this inquiry, the SEC must look at the "economic reality" of the transaction and "what character the instrument is given in commerce by the terms of the offer, the plan of distribution, and the economic inducements held out to the prospect."[50]

B. IRS

The IRS was formed in 1862 and established an internal tax system; Congress then established the Office of the Commissioner of Internal Revenue, which fell under the Department of the Treasury.[51] Essentially, the IRS is the entity responsible for overseeing the U.S. tax system and enforcing taxpayer compliance.[52] Federal tax law is enacted in the Internal Revenue Code,[53] which is codified in Title 26 of

---

46. *See Cryptocurrency/ICOs*, U.S. SEC. & EXCH. COMM'N, https://www.sec.gov/securities-topics/ICO [https://perma.cc/JP8Q-2JBG] (last updated Mar. 8, 2024).

47. STRATEGIC HUB FOR INNOVATION & FIN. TECH., U.S. SEC. & EXCH. COMM'N, FRAMEWORK FOR "INVESTMENT CONTRACT" ANALYSIS OF DIGITAL ASSETS 2 (2019), https://www.sec.gov/files/dlt-framework.pdf [https://perma.cc/LCA5-NAYU].

48. *Id.*

49. *Id.* at 3.

50. *Id.*

51. INTERNAL REVENUE SERV., IRS HISTORY TIMELINE 7 (2019).

52. *The Agency, Its Mission and Statutory Authority*, INTERNAL REVENUE SERV., https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority [https://perma.cc/E595-4TAD] (last updated Feb. 27, 2024).

53. *Tax Code, Regulations, and Official Guidance*, INTERNAL REVENUE SERV., https://www.irs.gov/privacy-disclosure/tax-code-regulations-and-official-guidance [https://perma.cc/T9ZL-RPXK] (last updated Nov. 15, 2023).

the United States Code.[54] However, there is one major issue with the Internal Revenue Code: it has not been given a major update since 1986.[55] This makes it difficult for the IRS to treat these technologies fairly and accurately for taxation purposes. Unless it modernizes these rules and regulations, the IRS will continue to face an uphill battle when trying to tax cryptocurrencies.

1. IRS View on Cryptocurrency

In 2014, the IRS issued Notice 2014-21, which helped describe "how existing general tax principles apply to transactions using virtual currency."[56] Neither Congress nor the IRS felt that there was a need to develop new, specialized tax rules for cryptocurrencies.[57] This may seem absurd now, but at that time, Bitcoin (the largest cryptocurrency) had a market cap of around $6 billion.[58] Now, cryptocurrencies exceed $3 billion in transactions every single day.[59] The IRS notice stated that cryptocurrencies and other virtual currencies are "treated as property" for federal income tax purposes, and it further stated that cryptocurrency transactions could result in either a capital gain or loss.[60] The IRS noted that though Bitcoin did not—and still does not—have legal tender status in any U.S. jurisdiction, it understands that cryptocurrencies can operate like real currency and are used to purchase goods and services.[61]

Due to the IRS's classification of cryptocurrencies as property, reporting cryptocurrency transactions on tax returns required further clarifications, which were outlined in IRS Notice 2014-21 and Publications 525, 544, and 551.[62] Simply purchasing a unit, coin, or token of cryptocurrency does not lead to a reportable transaction.[63] This is because an initial purchase does not fall under the scope of "gross income" as defined by section 61 of the Internal Revenue Code.[64] Though a purchase of cryptocurrency is not gross income in the eyes of the IRS,

54. *Id.*

55. *See id.*

56. I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

57. Deidre A. Liedel, *The Taxation of Bitcoin: How the IRS Views Cryptocurrencies*, 66 DRAKE L. REV. 107, 116 (2018).

58. *Historical Snapshot—20 April 2014*, COINMARKETCAP, https://coinmarketcap.com/historical/20140420/ [https://perma.cc/W834-GKBU] (last visited Apr. 10, 2024).

59. Liedel, *supra* note 57, at 116-17. For a discussion about how the digital economy at large has exposed weaknesses in the U.S. tax regime, see Orly Mazur & Adam B. Thimmesch, *Cooperative Federalism and the Digital Tax Impasse*, 51 FLA. ST. U. L. REV. 647 (2024).

60. I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

61. *Id.*

62. Liedel, *supra* note 57, at 117.

63. *Id.*

64. I.R.C. § 61(a) (defining gross income as "all *income* from whatever source derived" (emphasis added)).

gross income would result in a situation where one were to receive cryptocurrency in exchange for goods or services or exchange cryptocurrency in a transaction that involves receipt of products or services.[65]

III. CURRENT APPLICATION OF TAX LAWS TO CRYPTOCURRENCY

This Part explains how tax laws are currently applied to cryptocurrency transactions. It discusses some problems stemming from the IRS and SEC having differing views on whether cryptocurrency constitutes a security or property. It then addresses the issues that arise when trying to adapt old tax rules to new technologies like cryptocurrencies. Finally, it analyzes some difficulties with applying these tax laws due to the numerous types of taxable events involving cryptocurrencies.

A. *Differing Classifications*

As discussed above, the SEC and the IRS have differing views on the classification of cryptocurrencies. The difference in how these digital assets are treated creates various problems and loopholes that can be exploited. The SEC views most cryptocurrencies as a security, even though some of them, like Bitcoin, likely do not pass the *Howey* test.[66] There are thousands of cryptocurrencies, and the SEC has not, and feasibly cannot, apply the *Howey* test to every single one of them.

When applying the *Howey* test, cryptocurrencies may meet the first prong of the *Howey* test if users purchase cryptocurrency as an investment.[67] To satisfy the second prong, the investment must occur in a common enterprise.[68] However, unless a cryptocurrency has an initial coin offering ("ICO"), it likely will not meet the third and fourth prongs of the test;[69] this is especially true for the last prong's requirement that the expectation of profit be derived from others.[70] Failing this test technically means that these cryptocurrencies are not securities, yet many

65. *See generally id.*

66. Justin Henning, *The* Howey *Test: Are Crypto-Assets Investment Contracts?*, 27 U. MIAMI BUS. L. REV. 51, 71 (2018).

67. *See id.* at 65. Many consider buying Bitcoin or Ethereum (the two largest cryptocurrencies) an investment, but there may be situations where this is not the case. *Id.* For this discussion, we will be assuming the purchase was made for investment reasons and is not a situation where the purchase was made for another purpose.

68. SEC v. W.J. Howey Co., 328 U.S. 293, 299 (1946).

69. *See* Kate Rooney, *SEC Chief Says Agency Won't Change Securities Laws to Cater to Cryptocurrencies*, CNBC, https://www.cnbc.com/2018/06/06/sec-chairman-clayton-says-agency-wont-change-definition-of-a-security.html [https://perma.cc/EB9N-3RAJ] (June 11, 2018, 9:35 AM).

70. *See* Henning, *supra* note 66, at 70. Both of the largest cryptocurrencies, Bitcoin and Ethereum, are unlikely to satisfy this factor. *Id.* This is because it is possible to profit without any managerial efforts or outside influence. *Id.*

are still regulated as if they were.[71] Despite this, as it stands, the SEC views most, if not all, cryptocurrencies as securities—but the IRS taxes them like property.

The conflicting treatment of cryptocurrencies not only creates confusion for investors and users, but also hurts both the IRS and SEC in trying to strictly regulate cryptocurrencies as property or securities. When other government agencies have a different view on how cryptocurrencies should be treated,[72] it creates difficulties since Congress and other regulators must choose one way to treat them. If these agencies were to create some consistency in their treatment of cryptocurrencies, it would greatly increase Congress's ability to pass laws that could accurately regulate cryptocurrencies. For example, certain federal tax provisions that prevent a taxpayer from taking a loss on a security do not apply to cryptocurrencies, leading to billions of dollars in lost tax revenue each year.[73]

1. *Wash Sales*

One such rule that applies to securities like stocks, but not cryptocurrency, is the wash sale rule.[74] The wash sale rule is set forth in section 1091 of the Internal Revenue Code.[75] In relevant part, it states:

> (a) Disallowance of loss deduction
>
> In the case of any loss claimed to have been sustained from any sale or other disposition of shares of stock or securities where it appears that, within a period beginning 30 days before the date of such sale or disposition and ending 30 days after such date, the taxpayer has acquired (by purchase or by an exchange on which the entire amount of gain or loss was recognized by law), or has entered into a contract or option so to acquire, substantially identical stock or securities, then no deduction shall be allowed under section 165 unless the taxpayer is a dealer in stock or securities and the loss is sustained in a transaction

---

71. *See* Wayne Duggan, *How Does the SEC Regulate Crypto?*, FORBES: ADVISOR (June 30, 2023, 9:41 AM), https://www.forbes.com/advisor/investing/cryptocurrency/sec-crypto-regulation/ [https://perma.cc/J5J4-5D4K].

72. *See generally* Liedel, *supra* note 57, 123-29 (explaining the differing cryptocurrency classifications of various federal regulators).

73. Scott Chipolina, *IRS Commissioner Concerned NFTs May Be Used for Tax Evasion*, DECRYPT (Apr. 15, 2021), https://decrypt.co/66589/irs-commissioner-concerned-nfts-may-be-used-for-tax-evasion [https://perma.cc/QLK5-2WF4]. IRS Commissioner Charles Rettig addressed concerns regarding tax evasion and cryptocurrency. Rettig told the Senate Finance Committee that the IRS fails to collect over $1 trillion in taxes each year, and this is partly due to the difficulty regulating and taxing cryptocurrencies, which have become much more popular in recent years. *Id.*

74. Cheyenne DeVon, *This Loophole Could Help Crypto Investors Lower Their Tax Bill—But Don't Abuse It, Says CPA*, CNBC, https://www.cnbc.com/2023/02/01/crypto-tax-loss-harvesting-expert-tips.html [https://perma.cc/LA4Z-V2XL] (Feb. 2, 2023, 3:00 PM).

75. *See* I.R.C. § 1091.

> made in the ordinary course of such business. For purposes of this section, the term "stock or securities" shall, except as provided in regulations, include contracts or options to acquire or sell stock or securities.[76]

This rule prohibits an investor from selling a stock at a loss and recognizing that loss on their taxes if the investor bought the same stock—or a substantially similar stock—within thirty days of the sale.[77] However, the IRS position that cryptocurrency is property and not a security[78] means this rule does not apply to cryptocurrencies, even if they are being traded like a stock. Since this rule does not apply to cryptocurrency, investors can sell at a loss and buy the cryptocurrency back within thirty days, yet still recognize the loss on their income statement and reduce their tax liability.

Not only are cryptocurrencies receiving capital gains treatment, which allows the gains to be taxed at a substantially lower rate than ordinary income, but they are also able to offset some of those gains with losses that may not actually exist. Though the loss exists on paper, if an investor buys back the same cryptocurrency, they have not truly recognized the loss: their money is still tied up in their investment and may regain its value in the future. The application of this rule, or rather the lack thereof, is one reason that the IRS is losing money due to cryptocurrencies.

B. Various Types of Taxable Events

Several taxable events involve cryptocurrency. Due to their versatility, cryptocurrencies can be used in many different types of transactions that result in tax consequences unique to whichever taxable event they stem from. Issues with taxing cryptocurrencies are the result of their many different utilities and applications.

One example of a taxable event is when someone sells cryptocurrency; the gross income they receive from the transaction would be reported based on the cryptocurrency's fair market value at the time the transaction took place.[79] If the cryptocurrency was purchased as an investment, it would receive capital treatment, which could create a benefit for the taxpayer.[80] However, if a taxpayer sells cryptocurrency they received in exchange for goods or services, the sale proceeds would be considered ordinary income and would be taxed at ordinary rates, resulting in a much higher tax liability.[81] Issues may arise when a taxpayer receives cryptocurrency as payment for ordinary income but

76. *Id.* § 1091(a).

77. *Id.*

78. I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

79. Nguyen, *supra* note 2, at 329.

80. *Id.* at 328-29; INTERNAL REVENUE SERV., PUBLICATION 544: SALES AND OTHER DISPOSITIONS OF ASSETS 4 (2017).

81. I.R.S. Notice 2014-21, 2014-16 I.R.B. 938; Liedel, *supra* note 57, at 121.

then holds on to the cryptocurrency for investment purposes. There is yet to be clarification on how these gains would be treated, and it would be difficult to determine when the cryptocurrency converted from ordinary income to investment income.

A different taxable event occurs when cryptocurrency is sold for fiat currencies like the yen, U.S. dollar, or euro.[82] When a cryptocurrency is traded by an exchange for one of these fiat currencies, there is a determination of the cost basis of the cryptocurrency.[83] This cost basis of the cryptocurrency is determined by how much money and fees the exchange paid, and then the cost basis is subtracted from the cryptocurrency's fair market value to determine whether there is a capital gain or loss.[84]

Swapping or trading cryptocurrency is another taxable event, with complications.[85] "When a trade or exchange of cryptocurrencies [results] in a gain, the cryptocurrency owners must report that gain in U.S. dollars."[86] This becomes difficult because the taxpayer must accurately track their gains and losses and quantify them in U.S. dollars to report them to the IRS.[87] Since this type of transaction is typically made for investment purposes, it could receive capital gains treatment which benefits the taxpayer since capital rates are lower than ordinary rates.

Another taxable event occurs when cryptocurrency miners are compensated for verifying transactions and adding them to the blockchain.[88] Instead of receiving capital gains treatment, this compensation is taxed at ordinary income rates.[89] It can be personal income or business income if the mining is part of a business enterprise.[90] If mining is part of a business, the miners will report this as business income, and they are permitted to subtract the incurred expenses as part of their business expenses, lowering tax liability.[91]

One of the most challenging taxable events occurs when a cryptocurrency is used to pay for goods or services.[92] Traditionally, recording the financial effects of a purchase of a product or service is straightforward. However, adding cryptocurrency to the transaction introduces

---

82. *See* Erin Fennimore, *Understanding the Cryptocurrency Tax Rate*, TAXBIT (May 14, 2021), https://taxbit.com/blog/understanding-the-cryptocurrency-tax-rate [https://perma.cc/7A8V-754W].

83. Nguyen, *supra* note 2, at 330.

84. *Id.*

85. Fennimore, *supra* note 82.

86. Nguyen, *supra* note 2, at 330.

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. Fennimore, *supra* note 82.

an additional layer of complexity. Cryptocurrencies have many different utilities and purposes, which makes it difficult to tax cryptocurrency singly. The IRS issued *Publication 525, Taxable and Non-Taxable Income* to help clarify when a transaction that does not involve currency may result in taxable income for one or both of the involved parties.[93] This statement supports that since cryptocurrency has been classified as property, a transaction involving cryptocurrency would be considered a bartering arrangement, which is an exchange of property or services.[94] For bartering arrangements, the impact of cryptocurrency involvement must be viewed from the perspectives of the buyer and the seller.

From the seller's perspective, a transaction that results in the receipt of cryptocurrency in exchange for selling a good or service has very few differences from a traditional transaction that involves exchanging money for goods or services. The seller must still recognize revenue for the sale of a good or service.[95] Difficulties arise because a cryptocurrency user must decide which fiat currency was used to purchase the specific good or service; then, they must record the currency's price basis and fair market value at the time the good or service was purchased.[96] Additionally, this method only works if the coin is sold for a profit and not a loss.[97] "A transaction cannot be classified as a loss if the trader buys a cryptocurrency for a certain amount and only uses a portion of the currency to buy a good or service when the currency is worth less than the original value."[98] If there was a valuation of the goods or services before the barter transaction took place, that value can be used as the fair market value of the product or service sold.[99]

If the seller immediately converts the received cryptocurrency into U.S. dollars, the seller will minimize the risk of incurring a gain or loss on the transaction.[100] However, holding on to the cryptocurrency will likely result in gain or loss implications on future transactions.[101] Since the cryptocurrency was received as compensation for a good or service, it will not be treated as a capital asset.[102] Ordinary gains are taxed at higher rates than capital gains, which increases tax liability.

---

93. INTERNAL REVENUE SERV., PUBLICATION 525: TAXABLE AND NONTAXABLE INCOME 19 (2017).

94. *See id.*

95. *See* I.R.C. § 61.

96. Nguyen, *supra* note 2, at 330.

97. *Id.*

98. *Id.*

99. INTERNAL REVENUE SERV., *supra* note 93, at 19.

100. Liedel, *supra* note 57, at 119.

101. *Id.*

102. I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

These various taxable events are made even more complex due to the price volatility of cryptocurrency.[103] Strategies have emerged that allow taxpayers to reduce the tax they pay on the sale or exchange of crypto assets.[104] This makes the job of the IRS that much harder, especially as cryptocurrency grows in popularity and complexity. These are some of the many reasons why the IRS needs to create specialized tax rules that accurately address the different types of cryptocurrency transactions and tax them accordingly. These problems are exacerbated when other regulatory bodies, including the SEC, have differing views on whether cryptocurrency constitutes a security, property, or something else entirely. Without special rules and regulations, the IRS will continue to lose billions of dollars because of inaccurate taxation methods that allow cryptocurrency users to reduce, or even completely avoid, paying taxes on their transactions.

IV. Analysis and Potential Solutions

This Part analyzes how cryptocurrencies are currently treated for taxation purposes. It discusses some of the shortcomings of current IRS taxation policies when applied to cryptocurrencies. It analyzes problems including tax havens, taxing different types of cryptocurrency transactions, and the inapplicability of certain rules like the wash sale rule. Then, it offers potential solutions to some of these problems. Specialized cryptocurrency laws are necessary for the IRS to overcome some of the hurdles they currently face when trying to adequately tax cryptocurrencies and related transactions, regardless of which kind.

One of the primary issues of cryptocurrency taxation is the lack of specialized tax rules strictly applicable to cryptocurrencies.[105] The IRS currently views cryptocurrency as property, which conflicts with many other agencies' positions on how it should be treated.[106] For example, the SEC views many cryptocurrencies as securities, but some rules that apply to securities, such as the wash sale rule, do not apply to cryptocurrencies.[107] The discrepancies in the application of these rules allow for cryptocurrencies to create tax loopholes for investors.[108] Without an adjustment to current taxation methods, the IRS will continue to lose billions of dollars from cryptocurrency transactions.[109]

103. Fennimore, *supra* note 82.

104. *Id.*

105. Liedel, *supra* note 57, at 116.

106. I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

107. DeVon, *supra* note 74.

108. *Id.*

109. *See* Chipolina, *supra* note 73.

A. Wash Sales

One problem faced by the IRS's current tax treatment of cryptocurrency is that its classification as property allows for rules, like the wash sale rule, to be inapplicable.[110] The inapplicability stems from the IRS classifying cryptocurrency as property rather than a security.[111] This leaves a loophole for cryptocurrency investors to reap the benefits of recognizing a loss on their tax returns without suffering the effects of the loss itself.[112] The simplest solution would be for the IRS to put out a notice that it will apply the wash sale rule to cryptocurrency. This would remove the loophole that cryptocurrency investors can abuse by disallowing loss recognition if another similar cryptocurrency was purchased within thirty days of the sale. However, this solution could be problematic if cryptocurrency users push back on the fact that the wash sale rule applies to cryptocurrency but not to other types of property.

This is where the conflicting views start to cause problems. An argument can be made that the SEC's view on cryptocurrency is correct and that the IRS should follow suit. If the IRS were to adopt the SEC's view, it may be able to apply the wash sale rule to cryptocurrency and eliminate the loophole that currently exists. However, if the IRS were to do so, it may face issues with the *Howey* test. Many of the existing cryptocurrencies do not pass the *Howey* test.[113] If the IRS were to defer to the SEC on whether cryptocurrency truly constitutes a security, there would likely be pushback, possibly resulting in unfavorable consequences when many of these cryptocurrencies inevitably fail the *Howey* test.

Another argument may be that the IRS's view is correct. Many investors and users believe a cryptocurrency is truly property rather than a security.[114] This too could lead to many problems since the SEC may lose its power to regulate cryptocurrency. Following the IRS's view would mean that cryptocurrency is not considered a security. This would lead to the possibility that cryptocurrencies would not be subject to the SEC's stringent filing requirements. Though this problem seems

---

110. DeVon, *supra* note 74.

111. I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

112. *See* Miles Brooks, *Crypto Wash Sale Rule: Tax Savings 2024*, COINLEDGER, https://coinledger.io/blog/crypto-wash-sale-rule [https://perma.cc/CU76-N7SY] (last visited Apr. 10, 2024); Dhiraj Nallapaneni, *6 Crypto Tax Loopholes in 2024 (Save Thousands)*, COINLEDGER, https://coinledger.io/blog/crypto-tax-loopholes [https://perma.cc/772A-JWNP] (last visited Apr. 10, 2024).

113. Henning, *supra* note 66, at 71.

114. *See* Gabriela Kennedy & Joshua T.K. Woo, *Trust in the Crypto-Verse: Cryptocurrencies as a Type of Property in Hong Kong*, MAYER BROWN (June 1, 2023), https://www.mayerbrown.com/en/insights/publications/2023/06/trust-in-the-crypto-verse-cryptocurrencies-as-a-type-of-property-in-hong-kong [https://perma.cc/LT7X-3VPD]. *See generally* Timothy Chan, *The Nature of Property in Cryptoassets*, 43 LEGAL STUD. 480 (2023).

minor, without SEC oversight, there would be a greater possibility that cryptocurrencies would be used in unlawful ways since they would not be subject to SEC enforcement. Without the power of the SEC to protect cryptocurrency investors, the public will run the risk of being defrauded.[115] There have already been instances where a cryptocurrency platform, such as FTX, operated without proper oversight and resulted in billions of dollars going missing.[116]

One solution to address both sides of these arguments is for the IRS to change its classification of cryptocurrency as a whole by creating a hybrid regime. Instead of viewing cryptocurrency as property or a security, it would have to make a new classification specific to digital assets like cryptocurrency and NFTs. The IRS would not have to worry about treating these digital assets differently than how they treat strict property or strict securities. This "quasi-security" classification would allow the IRS to customize a regime for taxing these quasi-securities without having to strictly adhere to the tax treatment created for property or securities. Under this classification, the IRS could allow for capital treatment on the gains associated with the sale of a cryptocurrency-like property. The IRS would also be able to apply the wash sale rule to this classification of assets, allowing them to adequately apply the types of limitations that securities receive. This point speaks to the need for the IRS to customize special rules that apply to cryptocurrencies because without them, they will continue their struggle for proper regulation and taxation.

Creating a unique class of assets specific to digital technologies like cryptocurrency would allow the IRS to tax them in a special way that would increase compliance and eliminate existing loopholes. This would also help address arguments on both sides, regardless of whether people believe either the SEC or the IRS is correct in their classification. Additionally, the SEC would also be able to retain their oversight power over these quasi-securities. It would be able to enforce compliance with their filing requirements to protect investors while being consistent with the views set forth by the IRS. This would not only create consistency but would also allow for better customization of the laws applicable to cryptocurrency.

B. Taxable Events

Another problem the IRS faces is taxing cryptocurrencies differently based on what type of transaction occurred. As it stands, a gain on the sale of cryptocurrency will be taxed at different rates depending

115. *See, e.g.*, Press Release, U.S. Sec. & Exch. Comm'n, SEC Charges Samuel Bankman-Fried with Defrauding Investors in Crypto Trading Platform FTX (Dec. 13, 2022), https://www.sec.gov/news/press-release/2022-219 [https://perma.cc/6MTZ-8T8P].

116. *Id.*

on how that cryptocurrency was acquired.[117] If the cryptocurrency was purchased for investment purposes, it would be considered a capital asset, and the associated gains from its disposition would result in a capital gain or loss.[118] This treatment benefits the taxpayer since capital gains are taxed at much lower rates than ordinary income.[119] However, if the cryptocurrency was received in an exchange for products or services, it would constitute ordinary income, which is taxed at higher rates.[120] Though this seems straightforward, an issue could arise when a cryptocurrency is received in exchange for a product or service, but the recipient holds off on selling the cryptocurrency for investment purposes. While the IRS would "lose" tax revenue by giving capital treatment to the gain that later arose during the sale of the cryptocurrency, it would also be unfair to the taxpayer to pay ordinary rates on the increased value of the cryptocurrency which occurred during the investment-oriented holding period.

One proposal to help remedy this situation is for the IRS to create a rule that allows the cryptocurrency to be converted into a capital asset after holding on to it for more than a year. This would also help encourage transparency when recording a cryptocurrency transaction; the taxpayer now has an incentive to report the transaction accurately so that they can benefit from its conversion to a capital asset at a later date. The one-year mark would be a reasonable time frame as that is also the period that determines whether a capital gain is long-term or short-term.[121] This would eliminate the possibility of any short-term capital gains on cryptocurrencies received in exchange for a product or service. The IRS would tax the original value of the cryptocurrency in the year it was received by the party who provided the product or service as ordinary income. The gain received by the disposition of the asset (after holding it for a year) would then be given long-term capital treatment. This method promotes fairness because the receipt of the cryptocurrency was in fact ordinary income at the time of the original transaction. However, by holding on to the asset for more than a year, the conversion to a capital asset would allow the gain associated with the sale of the cryptocurrency to be given capital treatment. Requiring the taxpayer to hold on to the cryptocurrency for over a year would also eliminate any need to determine whether the cryptocurrency was actually held for investment purposes or was simply ordinary income that was yet to be sold for a fiat currency.

One issue with this approach is that the IRS usually does not allow taxpayers to freely convert their assets to receive capital treatment.

---

117. *See* I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

118. INTERNAL REVENUE SERV., *supra* note 80, at 22.

119. *See supra* Section I.B.

120. I.R.S. Notice 2014-21, 2014-16 I.R.B. 938.

121. *See* INTERNAL REVENUE SERV., *supra* note 80, at 37.

When an asset is converted for tax purposes, the conversion is involuntary.[122] This approach would allow a taxpayer to save money by holding on to their cryptocurrencies voluntarily. Many would argue that this is not consistent with the IRS's requirements for all other types of converted property. Though this is true with conversion, it is not completely inconsistent. The IRS gives long-term capital gains treatment to certain assets held for more than a year.[123] These long-term tax rates are significantly lower than the rates on assets held less than a year.[124] Though the taxpayer is not truly converting the asset to a whole different classification, the taxpayer is receiving tax benefits by voluntarily holding on to the asset for a specified period of time. Taxing cryptocurrencies will never be completely consistent with other types of non-digital assets. However, the uniqueness of cryptocurrencies all but forces the IRS to have a unique approach to their taxation. This method would allow the IRS to take a different approach to taxing cryptocurrencies while still adhering to some of the current timing requirements for beneficial tax treatment.

C. *Tax Havens*

In May of 2021, the Treasury Department issued a Tax Compliance Agenda that identified cryptocurrencies as the main concern when it comes to illicit activities—including tax evasion.[125] Tax evaders who previously relied on using offshore bank accounts to avoid tax obligations have begun taking advantage of unregulated crypto assets to avoid being detected by tax authorities.[126] One problem is the fact that cryptocurrencies were designed to be free from government regulation and were aimed to promote privacy.[127] Therefore, those participating in cryptocurrency transactions remain anonymous, and no one specific jurisdiction controls the transaction and exposes it to taxation.[128] This brings up the issue of whether the IRS can even tax a transaction if it cannot see the transaction or the participants. Cryptocurrencies are exchanged in a peer-to-peer transaction system.[129] Since cryptocurrencies are classified as intangible property, they are held in online accounts called "wallets."[130] Since these wallets are not located in any

---

122. *Id.* at 6.

123. *Id.* at 37.

124. James Royal, *What is the Long-Term Capital Gains Tax*, YAHOO! FIN. (Mar. 13, 2024), https://finance.yahoo.com/news/long-term-capital-gains-tax-185900739.html [https://perma.cc/MQN5-7RAH].

125. Nguyen, *supra* note 2, at 341.

126. *Id.*

127. Lee et al., *supra* note 4, at 22.

128. *See id.*

129. *Id.*

130. *Id.* at 24, 37.

single jurisdiction, no regulatory bodies oversee them.[131] The anonymous nature of these wallets and the related transactions leave the federal government blind to most of these transactions.[132] This means the government must rely on the taxpayer to abide by the reporting requirements, which are very lax in most circumstances.[133] This leads to tax haven, or even tax evasion, opportunities that result in a loss of revenue for the IRS from taxpayer funds.[134]

For the IRS to have any chance at solving the tax haven issue, it must develop some mechanism for enforcement that will allow it to accurately track cryptocurrency transactions along with the associated gains or losses.[135] For the IRS to do this effectively, it must first tackle the problem of anonymity.[136] Completely anonymous cryptocurrency transactions prohibit regulatory bodies from accurately monitoring these transactions, allowing many of them to go undetected.[137] The anonymity allows for tax evasion to occur because regulatory bodies cannot see the parties involved in the cryptocurrency transaction.[138] One way to solve this problem is by banning the anonymity of these transactions, though this may require a regulatory body other than the IRS to step in. While this may appear to be unfeasible, the European Union has announced a plan to ban cryptocurrency anonymity completely.[139] "The ban on the anonymity of crypto assets would require the discontinuation of anonymous crypt asset wallets, and service providers like crypto exchanges will be tasked with doing their due diligence on their users and be responsible for recording their users' identities too."[140] The IRS could adopt a variation of this ban and require the removal of some of the anonymous elements in a cryptocurrency transaction. This could be something as simple as requiring exchange platforms to record the parties who are participating in the transaction.

---

131. Nguyen, *supra* note 2, at 343.

132. *Id.*; *supra* Section I.A.

133. Nguyen, *supra* note 2, at 343.

134. Greg Iacurci, *Cryptocurrency Poses a Significant Risk of Tax Evasion*, CNBC (May 31, 2021, 8:30 AM), https://www.cnbc.com/2021/05/31/cryptocurrency-poses-a-significant-risk-of-tax-evasion.html [https://perma.cc/PR8C-BUTY].

135. Omri Marian, *Are Cryptocurrencies* Super *Tax Havens?*, 112 MICH. L. REV. FIRST IMPRESSIONS 38, 45 (2013).

136. *Id.* at 39.

137. ROBBY HOUBEN & ALEXANDER SNYERS, POL'Y DEP'T FOR ECON., SCI. & QUALITY OF LIFE POL'YS, CRYPTOCURRENCIES AND BLOCKCHAIN: LEGAL CONTEXT AND IMPLICATIONS FOR FINANCIAL CRIME, MONEY LAUNDERING AND TAX EVASION 53 (2018), https://www.europarl.europa.eu/cmsdata/150761/TAX3%20Study%20on%20cryptocurrencies%20and%20blockchain.pdf [https://perma.cc/PLQ6-ZZUH].

138. *Id.*

139. Tom Bateman, *EU Will Make Bitcoin Traceable and Ban Anonymous Crypto Wallets in Anti-Money Laundering Drive*, EURONEWS NEXT (July 21, 2021, 12:57 PM), https://www.euronews.com/next/2021/07/21/eu-will-make-bitcoin-traceable-and-ban-anonymous-crypto-wallets-in-anti-money-laundering-d [https://perma.cc/Y6AU-4SYU].

140. Nguyen, *supra* note 2, at 346.

D. Foreign Currency

One solution that the IRS could also use to remedy many of the problems discussed above is to tax cryptocurrency as a foreign currency. Section 988 of the Internal Revenue Code addresses the taxation model for foreign currencies.[141] If the IRS treated cryptocurrency as a foreign currency, instead of as property or securities, it would not be characterized as a capital asset.[142] This means cryptocurrency would lose capital treatment and would instead be taxed at ordinary income rates.[143] Though this treatment benefits the IRS, it would hurt many cryptocurrency investors since their tax liability would become much higher than it currently is. However, section 988 of the Code provides an exception for personal transactions of foreign currency.[144] It states that when a nonfunctional currency is disposed of by an individual in a personal transaction, no gain shall be recognized for changes in exchange rates that occurred between the time of possession and disposal. However, this exception only applies if the gain is less than $200.[145] In other words, gains on foreign currency amounting to less than $200 are tax-free so long as the foreign currency is not held for investment or used for business purposes.[146] Gains from transactions that fall outside of this exception would be treated as ordinary income.[147] Though this would hurt users who use cryptocurrency for investment purposes, it would help promote the use of cryptocurrency as a valid payment method for buying and selling products or services.[148] The increased use of cryptocurrency for everyday transactions would then allow the IRS to collect more tax revenue due to the treatment of cryptocurrencies as ordinary income.

Essentially, the IRS will be unable to tax cryptocurrencies as foreign currency without the help of Congress. One problem with this solution is that it appears Congress is unwilling to classify cryptocurrency as a foreign currency.[149] Congress has traditionally viewed foreign currency as currency issued and backed by a sovereign power.[150] However, cryptocurrency is not backed by any governmental body, which increases the economic risk associated with them.[151] The vola-

141. I.R.C. § 988(a)(1)(A).
142. Hsieh, *supra* note 10, at 1095.
143. *Id.*
144. *See* I.R.C. § 988(e)(2)-(3).
145. *Id.*
146. *Id.*
147. Hsieh, *supra* note 10, at 1096.
148. *Id.*
149. *Id.* at 1110.
150. *Id.*
151. *Id.*

tility of cryptocurrencies, along with their anonymity, creates an economic risk that Congress does not want to take.[152] This makes it unlikely that Congress would be willing to expand its definition of foreign currency to include cryptocurrency,[153] even though it would benefit the IRS. Cryptocurrency's decentralized nature makes it highly unlikely it will be backed by a sovereign power.[154] Additionally, the IRS and Congress have concerns that cryptocurrency is too speculative to constitute a foreign currency.[155] This makes the foreign currency approach appear highly unlikely unless Congress dramatically deviates from its current standards. Without Congress's approval, the IRS will be unable to take this approach and codify foreign treatment of cryptocurrencies.

CONCLUSION

The IRS needs to revamp the current tax system. Using a system last updated in 1986 leaves gaps that cannot address the many different technologies created since the last amendments. The current framework could not have foreseen something like cryptocurrency emerging, and it is not suited to tax these types of assets. This is because these new technologies do not fit into any one box that is currently codified; newer laws that are more flexible and versatile are needed since cryptocurrencies are more flexible, versatile, and have greater utility than the traditional assets that existed at the time these laws were last updated.

The common solution for all of the problems discussed boils down to one main point. The IRS has no choice but to create special tax laws for cryptocurrency. If the IRS wants to effectively tax cryptocurrency—and other emerging digital assets—it must update the tax code to be applicable to these new-age technologies. No matter what approach the IRS takes, whether it is creating a new quasi-security classification or providing foreign currency treatment for cryptocurrency, it will likely cost a significant amount of money. However, if it uses this money to create a more effective taxation regime, it will likely be able to recoup these costs in a matter of years.

Furthermore, there will never be a perfect way to tax cryptocurrencies, and there likely never will be, as problems will always exist. Regardless of how the IRS approaches these issues, someone will be left unhappy. The IRS can acknowledge that its approach is far from perfect while still making progress toward laws that accurately encom-

152. *Id.*

153. *Id.*

154. *Id.*

155. Nika Antonikova, *Real Taxes on Virtual Currencies: What Does the I.R.S. Say?*, 34 VA. TAX REV. 433, 447 (2015).

pass these new technologies. Without a tax system designed to solve some of the current problems, cryptocurrency users will continue to abuse the loopholes created by the current system and cause issues with the IRS's ability to collect tax revenue.