

Office of Chief Counsel
Internal Revenue Service
Memorandum

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to: Michael R. Fiore
Area Counsel, 1 (Boston)
(Small Business/Self-Employed)

from: Ronald J. Goldstein
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subject: Qualified appraisal requirement for charitable contributions of cryptocurrency

This Chief Counsel Advice responds to your request for non-taxpayer specific advice regarding the applicability of section 170(f)(11)(C) of the Internal Revenue Code ("Code") to charitable contributions of cryptocurrency. This document should not be used or cited as precedent.

Issues

1. Is Taxpayer A required to obtain a qualified appraisal under section 170(f)(11)(C) of the Code for contributions of cryptocurrency for which Taxpayer A claims a charitable contribution deduction of more than \$5,000?
2. If Taxpayer A is required to obtain a qualified appraisal under section 170(f)(11)(C) of the Code and fails to do so, does the reasonable cause exception provided in section 170(f)(11)(A)(ii)(II) apply if Taxpayer A determines the value of the cryptocurrency based on the value reported by a cryptocurrency exchange on which the cryptocurrency is traded?

Conclusions

1. Yes. If Taxpayer A donates cryptocurrency for which a charitable contribution deduction of more than \$5,000 is claimed, a qualified appraisal is required under section 170(f)(11)(C) to qualify for a deduction under section 170(a).

2. No. If Taxpayer A determines the value of the donated cryptocurrency based on the value reported by a cryptocurrency exchange on which the cryptocurrency is traded rather than by obtaining a qualified appraisal, the reasonable cause exception provided in section 170(f)(11)(A)(ii)(II) will not excuse noncompliance with the qualified appraisal requirement, and Taxpayer A will not be allowed the charitable contribution deduction under section 170(a).

Facts

Taxpayer A is an individual who purchased units of Cryptocurrency B for personal investment purposes. Taxpayer A acquired units of Cryptocurrency B in a transaction on a cryptocurrency exchange. Taxpayer A later transferred all of her units of Cryptocurrency B to Charity, a charitable organization described in section 170(c). On her self-prepared Federal income tax return for the year of the donation, Taxpayer A completed Part I, Section B of Form 8283 and attached it to her return and claimed a charitable contribution deduction of \$10,000. The claimed \$10,000 deduction was based on a value listed at the cryptocurrency exchange on which Cryptocurrency B was traded at the date and time of the donation. Taxpayer A did not obtain, or attempt to obtain, a qualified appraisal for the donation, and Taxpayer A argues that no appraisal is required because Cryptocurrency B had a readily ascertainable value based on the value published by the cryptocurrency exchange.

Discussion

Digital assets are defined under section 6045(g)(3)(D) as digital representations of value that are recorded on a cryptographically secured distributed ledger.¹ Digital assets do not exist in physical form and include, but are not limited to, property the Service has previously referred to as convertible virtual currency and cryptocurrency. See Notice 2014-21, 2014-16 I.R.B. 938; Rev. Rul. 2019-24, 2019-44 I.R.B. 1004. Notice 2014-21 provides that convertible virtual currency is treated as property and that general tax principles applicable to property transactions apply to convertible virtual currency.

Cryptocurrency is a type of virtual currency that utilizes cryptography to secure transactions that are digitally recorded on a distributed ledger, such as a blockchain. Units of cryptocurrency are generally referred to as coins or tokens. Distributed ledger technology uses independent digital systems to record, share, and synchronize transactions, the details of which are recorded in multiple places at the same time with no central data store or administration functionality. See Rev. Rul. 2019-24.

¹ The Infrastructure Investment and Jobs Act ("the Act"), Pub. L. 117-58, div. H, title VI, section 80603(b)(1)(B), added new section 6045(g)(3)(D), which uses this definition of a digital asset for purposes of information reporting by brokers effective January 1, 2023. The Act provides the Secretary with the authority to further define the term "digital asset."

Section 170 of the Code generally allows a deduction for charitable contributions, as defined in section 170(c), for the taxable year the contribution is made.² A charitable contribution deduction is generally allowable only if it is verified under regulations prescribed by the Secretary. Section 170(a)(1).

To claim a charitable contribution deduction, a taxpayer must satisfy certain substantiation requirements. See, e.g., section 170(f)(8) and (f)(11). In general, for contributions of property for which a deduction of more than \$5,000 is claimed, the taxpayer must obtain a qualified appraisal of such property for the taxable year in which the contribution is claimed and provide such information regarding the property and the appraisal as the Secretary may require. Section 170(f)(11)(C).

Section 170(f)(11)(E)(i) provides that the term “qualified appraisal” means an appraisal that is (1) treated as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and (2) conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary. See also Treas. Reg. sections 1.170A-17 and 1.170A-13, as applicable.

Section 170(f)(11)(E)(ii) provides that the term “qualified appraiser” means an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary, (2) regularly performs appraisals for which the individual receives compensation, and (3) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance. See also Treas. Reg. section 1.170A-17(b).

A qualified appraisal is not required for donations of certain readily valued property specifically set forth in the Code and regulations, namely: cash, stock in trade, inventory, property primarily held for sale to customers in the ordinary course of business, publicly traded securities, intellectual property, and certain vehicles. See section 170(f)(11)(A)(ii)(I); Treas. Reg. section 1.170A-16(d)(2)(i). Section 1.170A-13(c)(7)(xi) defines the term “publicly traded securities” for purposes of section 170 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, or certificate, or other evidence of indebtedness, issued by a corporation or a government or political subdivision thereof, with interest coupons or in registered form. Cryptocurrency B is none of the items listed in section 165(g)(2), and therefore does not satisfy the definition of a security in section 165(g)(2).

² A charitable contribution of cryptocurrency is, in general, considered to be made at the date and time the cryptocurrency is transferred, as evidenced by its recording on the blockchain, or at the time legal title passes.

In this case, no exception to the qualified appraisal requirements of section 170(f)(11) applies. Cryptocurrency B is not cash, a publicly traded security, or any other type of property listed in sections 170(f)(11)(A)(ii)(I) and 1.170A-16(d)(2)(i). Accordingly, since Taxpayer A claimed a charitable contribution deduction of over \$5,000 for the donated cryptocurrency, a qualified appraisal is required.

Section 170(f)(11)(A)(ii)(II) provides that failure to meet the requirements of section 170(f)(11)(B), (C), or (D), as applicable, shall not result in denial of the deduction if it is shown that the failure to meet such requirements is due to reasonable cause and not to willful neglect. "Reasonable cause requires that the taxpayer have exercised ordinary business care and prudence as to the challenged item." See Crimi v. Commissioner, T.C. Memo. 2013-51 at *99 (citing United States v. Boyle, 469 U.S. 241 (1985)).

In Pankratz v. Commissioner, T.C. Memo. 2021-26, the taxpayer claimed charitable contribution deductions but failed to attach qualified appraisals of the donated property to his tax returns. The taxpayer claimed that he relied on the advice of professionals in preparing his return, but the Tax Court held that the reasonable cause exception would not apply because the taxpayer did not rely on qualified professionals and if he had reviewed his return, the language on the Form 8283 would have indicated to him appraisals were necessary. Id. at *27.

Taxpayer A attached a partially completed Form 8283 to her self-prepared return but like the taxpayer in Pankratz, did not obtain, or attempt to obtain, a qualified appraisal. As the Tax Court stated, "[w]e think that four mentions of 'appraisal', 'appraiser', or 'appraised' on one page of one form is pretty good notice that substantial noncash donations need to be backed up by an appraisal." Id. at *16. The 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. See, e.g., Schweizer v. Commissioner, T.C. Memo. 2022-102; Pankratz, T.C. Memo. 2021-26; Crimi, T.C. Memo. 2013-51. As such, claims that Cryptocurrency B has a readily ascertainable value because it is listed on a cryptocurrency exchange does not establish reasonable cause for failing to obtain, or attempting to obtain, a qualified appraisal.

Section 170(f)(11)(C) applies to contributions of cryptocurrency for which a charitable contribution deduction of more than \$5,000 is claimed and requires a qualified appraisal for Taxpayer A's contribution to be allowable as a charitable contribution deduction under section 170(a). Taxpayer A's use of a value reported on a cryptocurrency exchange to value the contribution does not satisfy the qualified appraisal requirement or satisfy the reasonable cause exception to that requirement; therefore, Taxpayer A's deduction must be disallowed.

If you have any questions, please contact Morgan Lawrence at (202) 317-7011.

Sincerely,

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