# Crypto Update

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# The One Big Beautiful (Crypto Tax) Bill

**June 11, 2025** – CahillNXT had the opportunity to review a not-yet-public digital assets legislative package slated for inclusion as an amendment to the "One Big Beautiful Bill," which now awaits a vote in the Senate. The amendment is expected to be introduced by Wyoming Republican Senator Cynthia Lummis in the coming days. The amendment is promising, but requires clarifications in some respects. Below is a summary that includes our observations.

## Mining and Staking

Gross income from "mining or staking activities" would be "deferred" until the year of sale.

It is crucial that the bill be revised to define "mining or staking activities" and to say how income is characterized in the year of sale.

First, the bill should provide that staking includes both operating a validator (either directly or through an agent) and any activity closely related thereto, to clearly include earning maximal extractable value and priority fees.

Second, the bill should provide that gain from a sale will be ordinary or capital based on traditional tax principles. Without that change, crypto exchange-traded products (ETPs) will have trouble staking their crypto. If an ETP's only income is gain from sales, the ETP can be treated as a partnership. But if its income includes "deferred" ordinary income, it might be taxed as a corporation absent another legislative change.

## Withholding on Foreigners

The bill would source income from a sale of mining or staking rewards to the residence of the seller, so non-U.S. investors would not be subject to U.S. withholding tax even if they (or the ETP they invest in) stake through a U.S. service provider.

This is a welcome change. However, non-U.S. investors continue to be at risk of being subject to U.S. income tax unless a change is made to the "income tax on foreigners" provisions of the bill discussed immediately below.

## Income Tax on Foreigners

Under the bill, U.S. asset managers can trade digital assets for foreigners without causing them to be subject to U.S. income tax.

The bill should provide that "trading" includes staking. Otherwise, U.S. staking providers will continue to have trouble serving foreigners.

Separately, the bill seems to create a loophole for tokenized U.S. real estate. Foreigners are subject to U.S. tax on sales of nontokenized U.S. real estate.

## UBIT Exclusion

Tax-exempt investors would not be subject to unrelated business income tax on "amounts received from the use of digital assets for the purpose of staking."

For clarity, the bill should replace the quoted language with "staking" (as defined above under "mining and staking").

## $600 De Minimis Rule

The bill would eliminate tax on gain from a disposition of digital assets on any transaction "the total value" of which does not exceed $600, unless the sale is an exchange for cash, cash equivalents, business property, or property held for the production of income (such as stocks, bonds, and other crypto).

The bill should be revised to exclude all gain or loss from the use of stablecoins in the same types of personal transactions, regardless of the transaction's total value. Stablecoins are likely to be the primary blockchain-based payment method for personal transactions, and taxpayers should not be required to recognize fractions of a penny of taxable gain on a grocery bill that happens to exceed the de minimis amount.

Curiously, the $600 de minimis amount is significantly higher than the $200 de minimis amount for personal transactions in foreign currency and, unlike the foreign currency de minimis amount, would be inflation-adjusted. Perhaps a stablecoin-related expansion could be paired with a reduction of the de minimis amount for other crypto to prevent the de minimis rule from being too revenue-negative for the fisc.

Digital art collectors hoping to apply the de minimis rule to their crypto-denominated NFT acquisitions will need to be able to establish that the NFTs are not investment property. That might be difficult. It also could come back to bite them: individuals cannot claim a deduction for theft losses on personal property.

## Digital Asset Loans

Loans of digital assets generally would not be taxable to the lender, even if the loans are for a fixed term.

Under current law, it is not entirely clear whether a loan of digital assets is a taxable disposition for the lender, so this is a helpful clarification.

That said, the legislation does not address the source of crypto "borrow fees." Thus, there remains a risk that borrow fees paid by a U.S. person to a non-U.S. person would be subject to U.S. withholding tax.

## Airdrops

Airdrops would not be taxed until sold, at which point they would be taxed at ordinary rates.

Upfront nontaxation of airdrops is extremely helpful. Not only does it simplify the recipients' taxes; it also might allow U.S. entities to execute airdrops without having to issue 1099s (which, in practice, requires KYC of all recipients, often an impossibility for onchain transactions).

However, ordinary income on sale creates an incentive for recipients to dump and then buy back. At the very least, the ordinary income tax should apply only up to the value of the token at the time of the airdrop.

Moreover, the bill currently does not define airdrops. A definition that is too narrow would curtail the benefits of the provision, while one that is too broad could invite tax-motivated structuring of traditional compensatory payments.

The bill also should provide a sourcing rule for airdrops.

## Mark-to-Market

Traders and dealers can elect to mark to market (MTM) actively traded digital assets each year, and pay tax at ordinary rates on any appreciation or depreciation.

The bill would should make a MTM election available to investors too. With the treatment of liquidity provisioning and other common DeFi transactions still uncertain, many retail investors would welcome a MTM election. The threshold for "trading" is too high to apply to most retail investors, even those with thousands of transactions. Moreover, because MTM taxpayers are not subject to the wash sale rules, making a MTM election available to investors would lessen the burden of the bill's overly expansive wash sale provisions (discussed immediately below).

## Wash Sales

The wash sale rules would extend to digital assets. Thus, losses on a sale of crypto generally would be disallowed if the taxpayer buys substantially identical crypto within 30 days of the sale.

The inclusion of this provision is extremely unfortunate. The wash sale rules are meant to address tax-motivated sales. Applying them broadly to crypto captures taxpayers who enter short-term DeFi transactions or programmatically buy crypto each month and use it to make purchases.

That said, under reconciliation, tax legislation needs to be scored as revenue-neutral. Expanding the wash sale rules to crypto is intended to pay for the bill's other goodies.

## Crypto Donations

U.S. taxpayers generally would not need to obtain a "qualified appraisal" to take a tax deduction on a donation of actively traded crypto. Currently, a qualified appraisal is required for crypto donations in excess of $5,000.

## What's Missing

There are a number of things missing from the bill:

a) Section 6050I should be repealed. That section empowers Treasury to require recipients of more than $10,000 of crypto in a trade or business to report the payer's identity, which is impossible when the payer is anonymous.

b) Stablecoins should explicitly be carved out of any information reporting requirements.

c) The definition of "digital assets" should be revised so that it does not refer to a "digital representation of value," which technically does not include most crypto. (Bitcoin and ether, for example, do not "represent" anything.)

## Conclusion

The bill represents an admirable effort to provide some clarity to the taxation of digital assets. It falls flat in several key areas, but hopefully industry comments over the next few days will get it in good shape.

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The CahillNXT team continues to monitor developments in crypto asset cases as they unfold, as well as pending legislation, and other relevant events. If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to contact author Jason Schwartz, your regular Cahill contacts, or publicationscommittee@cahill.com.