

TAKE TWO: AICPA TRIES AGAIN FOR IRS GUIDANCE ON VIRTUAL CURRENCY TAXATION

Posted on June 14, 2018 by Sanford J. Boxerman



Tag: [Sandy Boxerman](#)



About two weeks ago, the American Institute of Certified Public Accountants – “the world’s largest member association representing the accounting profession,” – sent a letter to the Internal Revenue Service, along with a document entitled “[Request for Guidance Regarding Virtual Currency](#)”.

As discussed below, in its recent letter the AICPA adopted an approach which I find to be remarkable. A review of prior IRS-AICPA “dialogue” on this subject might help explain why.

Notice 2014-21

In April, 2014, the IRS issued Notice 2014-21, “[IRS Virtual Currency Guidance](#)”. This six-page document “describe how existing general tax principles apply to transactions using virtual currency.”

Most importantly, the IRS declared that it will treat virtual currency as property, and not as currency, for tax purposes.

Beyond that, the notice discussed other issues, such as:

- taxpayers who receive virtual currency as payment for goods and services must report as

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- income the fair market value of the virtual currency received;
- a taxpayer has gain or loss when exchanging virtual currency for other property;
- virtual currency “miners” have taxable income when they receive virtual currency as a result of their mining activities;
- employers who pay their employees in virtual currency must complete form W-2 for each employee and make all the required withholdings.

Many taxpayers, and their advisors, felt that Notice 2014-21 left unanswered a substantial number of important questions. This group included the AICPA.

The AICPA 2016 Letter

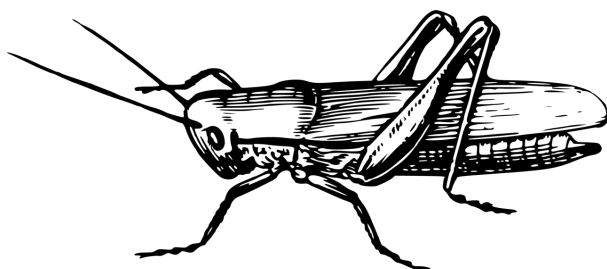
On June 10, 2016, the AICPA sent a [six-page letter to the IRS](#).

In the letter the AICPA said,

“e recognize there are a few major issues, not addressed in Notice 2014-21, that may arise as virtual currency continues to expand and gain additional popularity in the marketplace.” The letter went on to “encourage[] the IRS to release additional, much needed, guidance on virtual currency.”

The letter set forth ten specific items which the AICPA felt required further guidance.

The IRS Response



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If At First You Don't Succeed

On May 30, 2018, the AICPA tried again. This time, instead of a six-page letter, the AICPA [prepared a 21-page memorandum](#). This time, instead of 10 areas needing guidance, the AICPA identified 12 such areas, although a close comparison of the 2016 and 2018 communications shows that the AICPA is, for the most part, covering the same ground now as it did two years ago. (One topic new to the 2018 document: how to deal with “Virtual Currency Events,” such as forks and airdrops.)

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But what I find to be the most interesting difference between the 2016 and 2018 AICPA documents is that, this time, the AICPA isn't just asking the IRS some questions and hoping the IRS might provide some answers. This time, the AICPA is trying a new tactic: **providing to the IRS not just the questions, but also suggesting to the IRS what the AICPA thinks the answers should be.** The AICPA documents sets forth 27 FAQs along with 27 answers to those queries.

The AICPA's overture to the IRS seems to be (to paraphrase the old Greyhound Bus Lines slogan), **Leave the drafting to us.**

Perhaps the AICPA figures that if it does most of the work, then maybe, just maybe, the IRS might do the rest.

To my mind, the AICPA's approach demonstrates just how hungry the AICPA, and, really, all taxpayers engaged in virtual currency transactions, are for additional IRS guidance in this area.

For additional information, please read Sandy's previous blog post: **[Guidance before Compliance: Bitcoin, Taxes and IRS Notice 2014-21](#)**

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