



Current Federal Tax Developments

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Kaplan Financial Education



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This Week We Look At:

IRS rules cryptocurrency staking rewards are taxable when taxpayer obtains dominion and control

Interim guidance issued for home energy audit tax credit under IRC §25C added by IRA 2022

Proposed regulations issued to add monetized installment sales to listed transactions

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IRS Rules That Cryptocurrency Staking Rewards Are Taxable When Dominion and Control Gained



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- Revenue Ruling 2023-14, July 31, 2023
 - In Notice 2014-21 the IRS had ruled that cryptocurrency received from mining was taxable when received by the miner
 - Mining is the term for a “proof of work” method of updating the related blockchain and being rewarded with coin for being the first to do so
 - However, due to scaling and energy concerns, staking has become a more popular method for validating additions to the various blockchains

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<https://www.currentfederaltaxdevelopments.com/blog/2023/7/31/irs-holds-that-cryptocurrency-received-for-staking-is-taxable>

IRS Rules That Cryptocurrency Staking Rewards Are Taxable When Dominion and Control Gained



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- Revenue Ruling 2023-14, July 31, 2023
 - In staking (proof-of-stake), pledge coins to allow validator to attempt to properly confirm transactions to the blockchain and will receive coins in exchange
 - While most assumed the IRS would take the same position as with mining, the IRS had avoided specifically ruling on this
 - In fact, a case is in progress that tried to force the issue to court (Jarrett v. United States, now at CA6)

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Facts for the Ruling

Transactions in M, a cryptocurrency, are validated by a proof-of-stake consensus mechanism.

On Date 1, Taxpayer A, a cash-method taxpayer, owns 300 units of M. A stakes 200 of the units of M and validates a new block of transactions on the M blockchain, receiving 2 units of M as validation rewards.

Pursuant to the M protocol, during a brief period ending on Date 2, A lacks the ability to sell, exchange, or otherwise dispose of any interest in the 2 units of M in any manner.

The following day, on Date 3, A has the ability to sell, exchange, or otherwise dispose of the 2 units of M.

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IRS Rules That Cryptocurrency Staking Rewards Are Taxable When Dominion and Control Gained



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- Revenue Ruling 2023-14, July 31, 2023
 - Includible in income in the year the taxpayer obtains *dominion and control* over the validation rewards
 - In the example, that would be the year containing *Date 3*
 - FMV determined based on the value of the coin at the time on Date 3 when *dominion and control* obtained

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IRS Rules That Cryptocurrency Staking Rewards Are Taxable When Dominion and Control Gained



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- Revenue Ruling 2023-14, July 31, 2023
 - Limits of the ruling
 - Only applies to cash basis taxpayers
 - Did not cover gas or transaction fees
 - Does not address other IRC areas, such as IRC §83
 - Presumably we will see challenges to this position in court

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Interim Guidance Issued for Home Energy Audit Tax Credit



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- Notice 2023-59, August 4, 2023
 - Energy efficient home improvement credit is 30% of qualified expenditures subject to various limits
 - Home energy audit credit is one such expense
 - Maximum credit for home energy audit is \$150
 - Certain qualifications must be met
 - Must also maintain certain substantiation

<https://www.currentfederaltaxdevelopments.com/blog/2023/8/4/interim-guidance-issued-for-home-energy-audit-tax-credit>



Interim Guidance Issued for Home Energy Audit Tax Credit



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- Notice 2023-59, August 4, 2023
 - Notice meant to provide interim guidance until regulations are issued
 - Home energy audit defined
 - Identifies the most significant and cost-effective energy efficiency improvements with respect to such dwelling unit, including an estimate of the energy and cost savings with respect to each such improvement,

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Interim Guidance Issued for Home Energy Audit Tax Credit



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- Notice 2023-59, August 4, 2023
 - Home energy audit defined
 - Conducted either by a Qualified Home Energy Auditor or under the supervision of a Qualified Home Energy Auditor
 - Written report is prepared and signed by a Qualified Home Energy Auditor, and
 - Audit is consistent with the most recent Department of Energy (DOE)-led and industry-validated Jobs Task Analysis

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Interim Guidance Issued for Home Energy Audit Tax Credit



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- Notice 2023-59, August 4, 2023
- Qualified Home Energy Auditor is certified by a Qualified Certification Program at the time of the Home Energy Audit
 - Contains detailed definition of what will be considered a Qualified Certification Program
 - Transition rule delays this requirement until the beginning of 2024 (for audits completed on or after January 1, 2024)

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IRS Issues Proposed Regulations to Add Monetized Installment Sales to Listed Transactions



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- REG-109348-22, Proposed Reg. 1.6011-13, August 4, 2023
 - Reportable listed transaction rules
 - Reportable (including listed) transaction reporting under Reg. §1.6011-4
 - Substantially similar transaction issue
 - Participation for any year a return reflects tax consequences of the transaction
 - Form 8886, *Reportable Transaction Disclosure Statement* must be filed for each

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IRS Issues Proposed Regulations to Add Monetized Installment Sales to Listed Transactions



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- REG-109348-22, Proposed Reg. 1.6011-13, August 4, 2023
- Consequences of failure to disclose
 - 75% of tax benefit for each year
 - Minimum penalty \$5,000 individual, \$10,000 other
 - Maximum penalty \$100,000 individual, \$200,000 other

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- REG-109348-22, Proposed Reg. 1.6011-13, August 4, 2023
- Accuracy related penalty for reportable transaction
 - 20% if properly disclosed
 - 30% if not
- Statute does not begin to run until disclosure form is filed

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- REG-109348-22, Proposed Reg. 1.6011-13, August 4, 2023
 - Transaction proposed to be added
 - Seller has asset to sell at major gain to an identified buyer
 - Intermediary steps in, buys the asset and issues installment note
 - Intermediary immediately sells to the ultimate buyer for cash

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- REG-109348-22, Proposed Reg. 1.6011-13, August 4, 2023
 - Transaction proposed to be added
 - Promoter refers seller to a 3rd party who enters into a “purported” loan agreement with seller
 - Intermediary transfers the cash, less fees, to the 3rd party
 - 3rd party loans the money to the seller

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- REG-109348-22, Proposed Reg. 1.6011-13, August 4, 2023
 - Transaction proposed to be added
 - Loans arranged so that all interest offsets for each payment and loans are offset against each other at balloon payment date
 - Promoter claims seller won't pay any tax until the balloon payment date years later but gets cash now (less fees that presumably are less than the present value benefit of the deferral)

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- REG-109348-22, Proposed Reg. 1.6011-13, August 4, 2023
 - IRS objections to the transaction
 - Intermediary is not a bona fide purchaser of the property - sale is a done deal before intermediary is brought in
 - Intermediary never is truly the owner of the property - no benefits or burdens transfer to owner
 - Buyer should be treated as receiving payment on date cash is received

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- REG-109348-22, Proposed Reg. 1.6011-13, August 4, 2023
 - IRS objections to the transaction
 - Violates the economic substance provisions of IRC §7701(o) - there is no economic substance to the sale or loan
 - IRS suggests those who have entered into such transactions revise the prior returns
 - Note retroactive disclosure will be required when the regulations go final

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