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Testimony of Andrew Gordon

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IRS Public Hearing on Proposed Regulations

Electronic Furnishing of Payee Statements Regarding Digital Asset Sales by Brokers

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Thank you for the opportunity to participate in today's hearing. My name is Andrew Gordon and I am the Managing Attorney of Gordon Law Group, Ltd. Since 2014, our firm has represented thousands of taxpayers with tax issues related to digital assets. We file hundreds of digital asset tax returns every year for retail and small business taxpayers, and have handled numerous amended returns, voluntary disclosures, IRS examinations, and tax controversies focused principally on digital assets. With the implementation of 1099-DA reporting still in its early stages, I welcome the opportunity to share what our firm has seen so far with respect to the 2025 filing season and how Treasury and the IRS might take this opportunity to also address other issues with 1099-DA reporting in addition to the challenges of paper statements.

Let me turn first to the electronic delivery of these statements.

We strongly support the electronic delivery of 1099-DA statements, which aligns with the nature of digital assets and complements other efforts such as the IRS's Zero Paper Initiative. Paper 1099-DAs have presented unnecessary challenges for taxpayers and practitioners alike. The more transactions a taxpayer has, the more difficulty they – and their accountants and lawyers – confront in manually re-entering the data so it can be reconciled with the taxpayer's own records, tax preparation software, and third-party software tools for tracking crypto transactions. This introduces needless expense and opportunity for errors. For the 2025 filing season, paper 1099-DAs presented a significant challenge for all parties without any clear upside.

Unfortunately, the difficulties inherent with paper 1099-DA forms are not the only challenges that the new 1099-DA regime presents, and it would be a missed opportunity to provide for electronic delivery without addressing the other issues that the 2025 filing season has revealed.

Now I want to flag the issue that concerns me most, and that is basis reporting.

The lack of basis reporting in the 1099-DA regime for 2025 has created significant problems for taxpayers. While in theory, the taxpayer can substantiate their basis through their own records, the realities of the technology and the way investors engage with crypto platforms can make this extremely difficult, especially when taxpayers used platforms that have now shut down. Because of the use of automated matching and the lack of basis reporting, taxpayers are currently being

forced to defend themselves against six- and seven-figure deficiencies, simply because basis information is not present.

Of course, the hope would be that the basis reporting requirement coming online for 2026 would remedy this issue. In practice, the assumption that basis information on 1099-DAs will now be available and accurately report a taxpayer's basis – which will often not be the case – may make matters worse. Brokers can only reasonably know basis information for assets purchased on their own platforms. Where the taxpayer has transferred the assets from another platform, a self-custodied wallet, a DeFi protocol, or any other source, the broker will not have accurate information about the customer's basis. While existing rules presume that a customer will furnish basis information, this will prove unrealistic in many cases – many individual investors will have no records or incomplete records, and may not have understood that it was their responsibility to track basis – those details would have been maintained by brokers in the case of their other investments, such as brokerage accounts. Even if the customer does provide basis information to a broker, the broker won't be able to validate that information, and unfortunately, the existing infrastructure for broker-to-broker basis transfer that exists for traditional securities is not workable in many cases for digital assets.

In the absence of meaningful changes to ensure that basis reporting will actually provide accurate information, the reporting of incomplete or otherwise inaccurate information with the presumption that it can now be expected to be authoritative and correct will do a disservice to taxpayers, practitioners, and the government alike.

Underneath all of this is a deeper problem, and that is confusion about how digital assets are taxed.

Taking a step back, a common thread through many of the substantive and reporting tax issues related to digital assets is the lack of taxpayer education. Both regulatory guidance and taxpayer education have failed to keep pace with the rapid development of the digital asset economy, along with changes in technologies and the ways taxpayers interact with them. Treasury and the IRS have made efforts to ensure that taxpayers are aware that digital assets can trigger tax liability and have used 6173/6174/6174-A letters to alert taxpayers to the possibility of understatements related to digital assets. However, alongside efforts to improve reporting and update guidance, more needs to be done to ensure that taxpayers have an understanding of their obligations and a meaningful opportunity to meet them.

The problem of widespread taxpayer misconceptions about the taxation of digital assets is escalated by the fact that once taxpayers become aware that they have erred on their returns and want to address the outstanding taxes and penalties they owe, there is not a meaningful option for these taxpayers to come forward voluntarily. I have been very pleased to see that since originally filing my comments, there have been several helpful developments related to this issue. First, Rep. Aaron Bean (R-FL) introduced the Digital Assets Voluntary Disclosure Program Act (H.R. 9174), which would create new compliance avenues for both willful and non-willful taxpayers. This legislation was a topic of a recent legislative hearing held by the

House Ways and Means Committee. Second, IRS officials have expressed interest in a new voluntary disclosure program designed to specifically address digital assets. Depending on the design of this initiative, it may only address willful taxpayers, but providing an option for non-willful taxpayers also would be a welcome approach.

With that context, I'd like to offer our broader recommendations for the 1099-DA regime

· Delay the 1099-DA cost basis reporting requirement with respect to transactions where the broker does not have validated data from their own platform until the system can be improved.

While delaying basis reporting may seem counterintuitive when there are clear concerns with adjustments that overstate gain in the absence of basis reporting, our recommendations focus on ensuring that there is a clear distinction between validated and unvalidated basis information and that the two are not treated as equally authoritative, and that it is clear when basis information was unavailable as opposed to when the taxpayer's basis was zero. This will allow data about taxpayer basis to be meaningfully interpreted, both by taxpayers and by the government, and will reduce issues created by automatic matching as well as strain on government resources from transactions where there is not actually an understatement of income.

Specifically, where there is not validated basis information, we recommend delaying the basis reporting requirement until the three following conditions are met:

1. There are standardized broker-to-broker basis-transfer rules, with clear and reasonable defaults for transferred assets where customer-furnished basis is unavailable.
2. A common, IRS-specified data format for both broker-to-customer 1099-DA delivery and broker-to-broker basis transfer exists.
3. The IRS has provided accessible, official, taxpayer-facing guidance on basic digital asset taxability and on how to provide basis information to brokers.

· Create a streamlined compliance program for non-willful taxpayers.

As discussed, there is a significant need for a program to allow taxpayers with outstanding tax obligations related to digital assets – whose noncompliance was not willful – to voluntarily come forward. The easiest way to do this would be to establish a new program similar to the Streamlined Filing Compliance Procedures for offshore accounts, which was very successful and used by thousands of taxpayers.

· Require a standardized, machine-readable format for electronically furnished 1099-DA forms.

Taxpayers – and practitioners – will derive the greatest benefit from electronic furnishing of the 1099-DA if each 1099-DA is accompanied by a machine-readable file. For the 2025 filing season, practitioners spent hours manually inputting and reconciling 1099-DA forms – many

of which can only be exported as a PDF at this point. This entire step – along with the opportunity for errors that it presents – can be eliminated if electronic furnishing includes a machine-readable file. Brokers already maintain this information in structured form and information is provided in machine-readable formats under the existing W-2 and 1099-B reporting regimes to allow the information to flow directly into tax software. With 78 percent of crypto investors relying on general tax preparation software, this small change would represent a significant improvement for those taxpayers in particular.

Finally, a few specific recommendations on how electronic furnishing should work

- Temper the "consent or terminate" framework for low-volume customers.

While there are valid concerns that underlie the "consent or terminate" framework for high-volume investors with thousands of transactions, we recommend moderating this approach for low-volume traders with fewer than 200 transactions in a taxable year. This safeguard will come at minimal cost to brokers.

- Require brokers to allow withdrawal of consent.

Existing regulations for other tax forms require brokers to allow taxpayers to withdraw their consent for electronic delivery of statements. Changes in a taxpayer's circumstances – such as an account takeover – may necessitate a temporary or permanent switch to paper statements.

- Require dual-channel primary notice where the broker offers channels other than email.

Where the broker offers an in-app push channel or contact by text message, electronic delivery of 1099-DA forms should also be offered through that channel.

- Eliminate direct transmittal by email attachment.

Customers sensitive to fraud and scams are rightly suspicious of PDF attachments that appear to be sent from a financial institution. This makes email with an attachment a poor means to delivery 1099-DAs to taxpayers.

Thank you again for the opportunity to comment further on these important issues.