Do You Need an Opinion Letter?

A quick self-check for crypto, scam loss, business, and international tax positions

A tax opinion letter is a written legal analysis, prepared and signed by a tax attorney, that applies the law to your facts and states a conclusion at a defined confidence level. Most taxpayers never need one. Use this checklist to see whether your situation is one of the exceptions.

1. Signs an opinion letter may be worth it

Check every statement that applies to you.

- ☐ **Unaddressed crypto transactions.** You plan to treat wrapping tokens, bridging between chains, or depositing into liquidity pools as non-taxable, and the amounts are significant. The IRS has not clearly addressed these.
- ☐ **A crypto scam, hack, or theft loss.** You want to deduct a significant loss. Based on IRS Chief Counsel guidance, investment-motivated scams (such as pig butchering or a drained investment account) may be deductible under Section 165(c)(2); romance and fake-kidnapping scams generally are not.
- ☐ **A business deal.** You are buying, selling, or restructuring a business, and a buyer, seller, or lender requires a tax opinion before closing.
- ☐ **A large or one-time judgment call.** Capital vs. ordinary income on a large gain, worthless securities, a bad debt deduction, an unusual charitable contribution, or when to report income.
- ☐ **An international position.** A tax treaty, how a foreign entity is classified, or whether a foreign account or asset must be reported (Forms 5471, 8865, 8938, 5472, or 3520).
- ☐ **Fixing past non-compliance.** You are weighing the Streamlined procedures and would have to certify, under penalties of perjury, that your conduct was non-willful.
- ☐ **Your preparer asked for one.** Your CPA or preparer will not sign a return with an uncertain position without written legal support.
- ☐ **A token launch or exchange listing.** An exchange or investors want a legal opinion on whether a token is likely a security.

2. Signs you probably do not need one

If these describe your situation, another option is likely a better fit.

- ☐ **The rules are already clear.** Ordinary crypto sales, standard deductions, and routine business expenses. A properly prepared return is usually enough.
- ☐ **The tax at stake is small.** The cost may outweigh the benefit. Disclosure on Form 8275 or a short memo from your preparer may be more practical.
- ☐ **You already filed and the IRS is asking questions.** An opinion obtained after filing generally cannot show you relied on advice when you filed. You likely need representation instead.
- ☐ **The position is not legally supportable.** An opinion cannot make an improper position legitimate. A transaction lacking economic substance gets no reasonable cause defense, even with an opinion.

3. Timing and readiness

- ☐ **You have not filed the return or closed the transaction yet.** An opinion is most useful when you obtain it beforehand and rely on it when you act.
- ☐ **You can provide complete, accurate records.** Transaction records, wallet and exchange histories, contracts, and prior returns. The analysis relies on them.
- ☐ **You have a few weeks.** Most opinions take a few weeks once all documents are in.

Reading your results

One or more boxes in Section 1, none in Section 2, and the boxes in Section 3 checked: an opinion letter is worth discussing with a tax attorney.

Boxes in Section 1 and Section 2: talk it through. A scoping call can tell you whether a full opinion, a lighter review, or representation fits.

Mostly Section 2: you probably do not need an opinion letter.

What an opinion letter does, and does not do

It may help you defend against certain penalties. If the IRS challenges a position, an accuracy-related penalty of 20% of the underpayment can apply, and 40% in certain cases. Good-faith reliance on qualified professional advice may help establish reasonable cause, if the advice was based on all relevant facts and reasonable assumptions.

It does not guarantee the outcome or bind the IRS. An opinion is an attorney's analysis, not IRS approval. The main way to get an answer binding on the IRS before filing is a private letter ruling, which the IRS does not issue for every question. You generally keep the letter with your records rather than filing it with your return.

Confidence levels

Each opinion states a conclusion at a recognized level.

Level	Approx. likelihood of prevailing
Will	90%+
Should	About 70% to 75%
More likely than not	Over 50%
Substantial authority	About 35% to 40%
Reasonable basis	About 20% to 30%

These percentages are practitioner conventions, not numbers set by law. "More likely than not," "substantial authority," and "reasonable basis" are standards used in the tax code and regulations; "will" and "should" are not.

How the process works

1. **Scoping call.** We discuss the tax question, the amounts involved, and the confidence level your facts may support, and whether a formal opinion is the right approach. The scoping call is a paid consultation ($495).
2. **Facts.** You provide the records needed to evaluate your situation, such as transaction records, wallet and exchange histories, contracts, and prior returns.
3. **Analysis.** Our attorneys apply the Code, regulations, case law, and IRS guidance to your facts, including potential challenges to your position.
4. **Signed opinion letter.** You review a draft to confirm the facts, then receive the signed letter to keep with your records and share with your preparer or other permitted recipients.

What it costs. Tax and crypto transaction opinions start at $10,000, depending on what the opinion covers and how complex the issue is; we confirm your fee during scoping, before work begins. Scam and theft loss opinions are generally for losses over $100,000 in cost basis and range from $10,000 to $40,000 or more, set by the size of the loss. That fee includes amended return preparation.

Talk to a tax attorney about an opinion letter

Schedule a confidential consultation at **gordonlaw.com/opinion-letters** or call **(847) 580-1279**.

This checklist is for general information only and is not legal advice. Reading it does not create an attorney-client relationship. Results depend on the facts of each matter and are not a prediction of the outcome in your case. This material may be considered an attorney advertisement. Source: Gordon Law Group, "What Is a Tax Opinion Letter?" (gordonlaw.com/learn/tax-opinion-letter).