X. Taxing Cryptocurrencies: The Applicability of Like-Kind Exchange Tax Deferral

A. Introduction

The Internal Revenue Service (IRS) is cracking down on widespread tax evasion in the digital cryptocurrency investment community.[1] In November 2016, the IRS served summons on a John Doe,[2] demanding identifying information about U.S. taxpayers who participated in one or more cryptocurrency exchange transactions valued in excess of $20,000 between 2013 and 2015 regarding Coinbase, a cryptocurrency exchange platform.[3] According to the motion granting the summons, the purpose of the investigation was based on the wide discrepancy between the amount of users on Coinbase and the amount of taxpayers who reported cryptocurrency gains from their Coinbase transactions.[4] Coinbase had 5.9 million users who had traded a volume of cryptocurrencies totaling $6 billion, yet fewer than 900 U.S. taxpayers reported taxable gains from cryptocurrency transactions annually during the referenced years.[5]

Much of the tax evasion of cryptocurrency-related income identified by the IRS is likely due to uncertainty and ignorance about

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[1] Robert Atler, *The Taxation of Crypto Virtual Currencies: IRS Enforcement Initiative,* LAW.COM: N.J.L.J. (Dec. 25, 2017), https://www.law.com/njlawjournal/sites/njlawjournal/2017/12/25/the-taxation-of-crypto-virtual-currencies-irs-enforcement-initiative/?slreturn=20180027131818 (last visited Jan. 27, 2018) (reporting the IRS is addressing "what appears to be widespread tax noncompliance").

[2] A John Doe summons is an administrative summons demanding information from third parties regarding taxpayers whose identities are unknown. I.R.C. § 7602 (1976).

[3] Press Release, Dep't of Justice, Court Authorizes Service of John Doe Summons Seeking the Identities of U.S. Taxpayers Who Have Used Virtual Currency (Nov. 30, 2016); Peter D. Hardy & Alicia M. Went, *Court Enforces —Partially—IRS "John Doe" Summons Served on Virtual Currency Exchanger*, NAT. L. R. (Dec. 6, 2017) https://www.natlawreview.com/article/court-enforces-partially-irs-john-doe-summons-served-virtual-currency-exchanger (last visited Feb. 9, 2018).

[4] United States v. Coinbase, Inc., No. 17-CV-01431-JSC, 2017 WL 5890052, at *5 (N.D. Cal. Nov. 28, 2017).

[5] *Id*.

the appropriate way to report such income.[6] Many believed some transactions, such as trading one type of cryptocurrency for another, were not taxable events.[7] Some cryptocurrency traders articulated support for this line of thought by arguing that the I.R.C. section 1031 "loophole"—a tax code provision allowing a taxpayer to defer recognition of any income gains from the exchange of certain property for other property of "like kind"—applied to cryptocurrency exchanges.[8] Under this argument, investors on Coinbase could trade units of Bitcoin for Ethereum or Litecoin or one of the thousands of other "altcoins" available without having to recognize any taxable gains.[9] Only when a user converts their volume of cryptocurrency to a currency, like USD, or some other asset not of "like kind" would they have to report the gain made when holding those cryptocurrencies.[10] Although Section 1031 merely serves to defer rather than exclude tax treatment, this interpretation enabled investors to capitalize on the time value of money, and ultimately, pay less taxes.[11]

Many tax lawyers and accountants expressed reservations about using Section 1031 as a means to defer cryptocurrency-derived

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[6] *See, e.g.*, Robert A. Green, *Cryptocurrency Traders Risk IRS Trouble with Like-Kind Exchanges*, FORBES (Aug. 15, 2017, 11:28 AM), https://www.forbes.com/sites/greatspeculations/2017/08/15/cryptocurrency-traders-risk-irs-trouble-with-like-kind-exchanges/#17580a8326a8 [https://perma.cc/SDF9-38XP] (hypothesizing "most people who don't report exchanges between various cryptocurrencies don't think of it as a like-kind exchange . . . . They just do it, and later when they don't receive a Form 1099, they forget about reporting it.").

[7] *See, e.g.*, Kyle Torpey, *Former Facebook Executive: 'Bitcoin IRS Ruling Is Actually Good News,'* CCN (Apr. 3, 2014, 1:00 PM), https://www.ccn.com/former-facebook-executive-bitcoin-irs-ruling-good-news/ [https://perma.cc/QQ6J-9XJ6] (reporting a "well-respected former Facebook executive" stated that bitcoin exchanges can be applied in the like-kind exchange "tax loophole").

[8] I.R.C. § 1031 (1988); Torpey, *supra* note 7.

[9] *See* Robert W. Wood, *Tax Bills Doom Tax-Free 1031 Exchanges of Cryptocurrency*, FORBES (Nov. 27, 2017, 8:51 AM), https://www.forbes.com/sites/robertwood/2017/11/27/tax-bills-doom-tax-free-1031-exchanges-of-crypto currency/#1eaf3ebff58f [https://perma.cc/4BFU-TB38].

[10] *See id*. (implying that as soon as the asset is exchanged for another asset that is not like-kind, the transaction would be taxable).

[11] *See* Elizabeth Weintraub, *How to Do 1031 Exchanges to Defer Taxes*, BALANCE (May 13, 2017), https://www.thebalance.com/how-to-do-1031-exchanges-1798717 [https://perma.cc/HN6D-K2DC] (claiming Section 1031 is "the most powerful wealth-building tool" available to investors).

taxes.[12] Regardless if the Section 1031 deferral "loophole" argument has merit or not, the recent enactment of the Tax Cuts and Jobs Act of 2017 (TCJA or the Act) firmly foreclosed that possibility by deeming only "real property" eligible for the provision's deferred tax treatment.[13] Now, for example, if a cryptocurrency investor traded his stock of Bitcoin for Ethereum on an exchange platform, he is legally required to report any gains from that transaction.

B. Historical Tax Treatment of Cryptocurrencies

Bitcoin was introduced in 2009 as a virtual currency based on an open source distributed ledger technology.[14] Unlike a real currency, Bitcoin lacks legal tender status in any jurisdiction, and no sovereign or commodity controls its value.[15] As a result, its value is "determined solely by public perception, trust, and adoption," subjecting it to a fair amount of volatility.[16] Bitcoin can be acquired a few different ways, most notably by exchange platforms such as Coinbase, or in a process called "mining."[17]

1. Exchanges, Altcoins, and Forks Develop

In 2011, Litecoin was released as the first prominent alternative cryptocurrency, or "altcoin," to Bitcoin.[18] Not long after, other cryptocurrencies were developed that sought to rival Bitcoin, including

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[12] *See, e.g.*, Green, *supra* note 6 ("With a lack of IRS guidance, using Section 1031 on cryptocurrency trades is uncertain, and I suggest wrong in almost all facts and circumstances.").

[13] Tax Cut and Jobs Act of 2017, Pub. L. No. 115-97 (2017) (narrowing the application of the § 1031 like-kind provision).

[14] Matthew Kien-Meng Ly, *Coining Bitcoin's Legal-Bits: Examining the Regulatory Framework for Bitcoin and Virtual Currencies*, 27 HARV. J. L. & TECH. 587, 590 (2014) (discussing the development of Bitcoin within the existing legal framework).

[15] *Id*. at 589.

[16] *Id*. at 590.

[17] *Id*. at 591–92 ("Bitcoin mining is a process wherein users provide computing power to process Bitcoin transactions.").

[18] Paul Vigna, *Which Digital Currency Will Be the Next Bitcoin?*, WALL ST. J. (Dec. 19, 2017 4:13 PM), https://www.wsj.com/articles/which-digital-currency-will-be-the-next-bitcoin-1513679400 (explaining "the universe of cryptocurrencies" and discussing altcoins' rise in value).

Ethereum and Ripple.[19] Now, more than 1,000 exist.[20] As of the end of 2017, altcoins comprised under half of the $600 million cryptocurrency market, with Bitcoin alone maintaining $323 million of the market.[21] However, along with the proliferation of digital exchange platforms like Coinbase, cryptocurrency investors have been increasingly exposed to different types of altcoins.[22] Growing exposure to Bitcoin alternatives has led to their proliferation, and they are currently growing even faster in value than Bitcoin: while Bitcoin's value rose more than 1,200 percent over 2017, Ethereum's value rose approximately 7,600 percent and Ripple's value rose about 15,000 percent.[23]

Some altcoins are examples of "forks," or new software built on the same open-source distributed ledger technology and the same transaction history on which Bitcoin is based.[24] One such example is Bitcoin Cash.[25] Despite its similar-sounding name and the fact that it shares the same ledger of transactions up until its "fork" from Bitcoin, Bitcoin Cash operates on its own market, and as such, it has an independent value from Bitcoin.[26] Other altcoins, such as Litecoin or Ethereum, were developed by new softwares on an open-source distributed ledger technology, and they operate with different rules, algorithms, mining processing speeds, and even purposes.[27]

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[19] *See also id*. (suggesting that the reason so many altcoins exist is because of the "malleability" of the open-sourced software technology on which cryptocurrencies are based).

[20] *Id*.

[21] *Id*. ("Twenty-six of these currencies have market values above $1 billion. Before 2017, only bitcoin and Ethereum were at that level.").

[22] *Id*. (speculating that "the outsize recent gains in bitcoin are encouraging migration to several digital relatives.").

[23] Paul Vigna, *Bitcoin Cash, Litecoin, Ether, Oh My! What's with all the Bitcoin Clones?*, WALL ST. J. (Dec. 23, 2017), https://www.wsj.com/articles/bitcoin-cash-litecoin-ether-oh-my-whats-with-all-the-bitcoin-clones-1514037600 (reporting the value altcoin Bitcoin Cash rose 60 percent in one day alone, after Coinbase stated it would list the coin).

[24] *Id*.

[25] *Id*. ("Bitcoin Cash and all these other altcoins are really just versions of the bitcoin program.").

[26] *Id*. ([B]ecause it is a different market, Bitcoin Cash's price moves independent of bitcoin itself.").

[27] Prableen Bajpai, *Bitcoin vs. Ethereum: Driven by Different Purposes*, INVESTOPEDIA (Feb. 6, 2018), https://www.investopedia.com/articles/investing/031416/bitcoin-vs-ethereum-driven-different-purposes.asp [https://perma.cc/8YJV-FHVU] (discussing the various ways in which Bitcoin and Ethereum differ).

2. *Cryptocurrencies Are Property for Tax Purposes*

For a few years after Bitcoin launched, the IRS refrained from commenting on the tax treatment of Bitcoin and altcoins.[28] But in 2014, the agency released its Notice 2014-21 (the Notice), which provided guidance on "convertible" virtual currency, or "[v]irtual currency that has an equivalent value in real currency," such as Bitcoin.[29] Perhaps most notably, the Notice declared convertible virtual currencies were to be treated as property for tax purposes (like stocks, bonds, and other investment property), rather than currency.[30]

The Notice's categorization of cryptocurrencies as property is significant in a few ways. Most obviously, it will typically subject a cryptocurrency investor to a capital gains tax rate, rather than an ordinary income tax rate.[31] As long the cryptocurrency is held as a capital asset in the hands of the investor (which is true for most cryptocurrency investments), any gains deriving from the cryptocurrency are likely subject to a tax rate between 15 to 20 percent.[32] In contrast, if the IRS had ruled gains from cryptocurrency transactions are subject to ordinary income, investors of cryptocurrencies could have been subject to a marginal tax rate as high as 39.6 percent.[33]

The Notice also spelled out the tax treatment of cryptocurrencies when they are disposed of in a sale or exchange with other property.[34] Like other property-for-property exchanges or sales, the Notice stated a disposition of cryptocurrency produces a gain or loss, depending on the value realized by an investor at the time of disposi-

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[28] *See* Green, *supra* note 6 (reporting how the IRS's first issuance of tax guidance regarding cryptocurrencies in 2014 was "long-awaited").
[29] I.R.S. Notice 2014-21, 2014-16 I.R.B. 938 (Apr. 14, 2014).
[30] *Id*.
[31] Kathleen R. Semanski, *Income, from Whatever Exchange, Mine, or Fork Derived: The Basics of U.S. Cryptocurrency Taxation*, PROSKAUER ROSE LLP: PROSKAUER TAX TALKS (Dec. 6, 2017), https://www.proskauertaxtalks.com/2017/12/income-from-whatever-exchange-mine-or-fork-derived/ [https://perma.cc/58HZ-MS5Z] ("Gain on nonfunctional foreign currency exchanges . . . is generally ordinary income . . . In contrast, gain or loss on the sale of property can constitute either ordinary or capital income.").
[32] *Id*.; I.R.C. § 1221, § 1(h)(1) (1952).
[33] 26 U.S.C.A. § 1(a)–(d) (West 2013) (imposing a maximum marginal tax rate for ordinary income of 39.6 percent).
[34] I.R.S. Notice 2014-21, 2014-16 I.R.B. 938 (Apr. 14, 2014) (providing guidance to various transactions involving dispositions of cryptocurrency property).

tion compared with the investor's basis—typically the purchase price—in the cryptocurrency.[35] In a typical simple transaction, the gain or loss would thus be equal to the coin's fair market value when sold or exchanged minus the coin's fair market value when acquired.[36] For a simple illustrative example, if an investor purchased Bitcoin for $100, and then one year later decided to exchange it with another investor for $200 worth of gold, that investor would then have a taxable gain of $100.[37]

3. *The "Loophole" Argument Flourishes*

Although the Notice did not explicitly mention cryptocurrency-for-cryptocurrency exchanges, many tax experts and lawyers speculated Notice 2014-21 did not indicate the IRS was seeking to permit cryptocurrency traders to defer tax on cryptocurrency property-for-property exchanges.[38] The Section 1031 deferral provision was initially intended to encourage the alienability[39] and reinvestment of real estate property, particularly among farmers.[40] Although Section 1031 permits a wide class of real estate to qualify under its treatment—such as a rental condo in Hawaii exchanged for a vacant, undeveloped plot of land in North Dakota—it mandated a narrow

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[35] *Id*. ("If the fair market value of property received in exchange for virtual currency exceeds the taxpayer's adjusted basis of the virtual currency, the taxpayer has taxable gain.").
[36] I.R.C. § 1001(a)–(c) (1970).
[37] In this example, the investor's basis in Bitcoin is $100, the purchase price. Upon disposing the Bitcoin for gold, the investor realized $200, or the fair market value of the gold at disposition. Thus, subtracting the basis from the amount realized results in the investor's gain in the transaction: $100.
[38] *See, e.g*., Semanski *supra* note 31; Green, *supra* note 6; Wood, *supra* note 9.
[39] Alienability refers to the ability to sell or transfer a property or property right. Richard A. Epstein, *Why Restrain Alienation*, 85 COLUM. L. REV. 970, 970 (1985). Generally, it promotes economic activity and welfare by freeing up capital and allocating it to its highest use. *Id*. at 972 ("Most voluntary transactions move property from lower to higher value uses.").
[40] Alyson M. Harter, *The Proposed Repeal of Section 1031 Like-Kind Exchanges and the Impact on the Economy*, LECLAIRRYAN (Feb. 19, 2016), https://www.leclairryan.com/pubs/xprPubDetail.aspx?xpST=PubDetail&pub=1023 [https://perma.cc/P3YS-EL9S] (explaining a tax-deferred exchange provision was introduced in 1921 to provide "a land swap mechanism for farmers").

scope for other types of property assets.[41] For example, the provision could not apply to stock-for-stock exchanges, gold-for-silver exchanges, or even car-for-truck exchanges.[42] Furthermore, one accountant noted even U.S. gold coins exchanged for South African gold coins have been ruled to not count as a like-kind exchange, as "the coins have a different composition" and as a result have slight differences in respective value.[43] Based on such strict standards for personal property, it thus would have been very unlikely the IRS intended Section 1031's scope of like-kind exchanges to cover cryptocurrencies—even those between "forked" cryptocurrencies like Bitcoin and Bitcoin Cash—because each type of cryptocurrency trades on a similar but independent market from the others.[44]

Furthermore, some argued cryptocurrency exchanges failed Section 1031's requirement that the exchange be a direct two-party exchange or a qualified multi-party like-kind exchange.[45] Such commentators have noted Section 1031 and its corresponding regulations have extensive "requirements including various procedures, documentation, and reporting" regarding the use of intermediaries for like-kind exchanges, of which "[n]on-compliance leads to a failed Section 1031 transaction."[46] Cryptocurrency exchanges typically require the use of an intermediary trading platform such as Coinbase, which some have doubted is permitted under Section 1031.[47] This complication in addition to the Section 1031's narrow definition of "like kind" led many experts to deduce it was unlikely a "cross-species trade of cryptocurrency" could fit within Section 1031's narrow scope for non-real property asset swaps.[48]

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[41] INTERNAL REVENUE SERV., FACT SHEET NO. 2008-18, LIKE-KIND EXCHANGES UNDER IRC CODE SECTION 1031 (2008) ("In personal property exchanges, the rules pertaining to what qualifies as like-kind are more restrictive than the rules pertaining to real property.").

[42] *Id*.

[43] Green, *supra* note 6.

[44] *Id*. (drawing on comparisons of personal property prohibited from qualifying as like-kind to conclude the IRS may not conclude different types of cryptocurrencies are like-kind).

[45] *Id*.

[46] *Id*.

[47] *Id*. ("The IRS would likely consider the exchange [platform] a dealer. Section 1031 prohibits dealers from participating in direct two-party like-kind exchanges since dealers hold inventory in a trade or business, not capital assets.").

[48] Wood, *supra* note 9.

Nonetheless, the fact the Notice did not explicitly exclude different types of cryptocurrencies as being like-kind led some to speculate such uncertainty lent itself towards the assumption that cryptocurrency exchanges could in fact qualify under Section 1031.[49] As some journalists noted, most cryptocurrency investors chose to ignore the "legal fuzziness" surrounding Section 1031 and took the "approach that trading a stash of, say, bitcoins for litecoins, qualifies as swapping one form of property for a similar one."[50]

At this point, it is important to emphasize that even if Section 1031 did apply to cryptocurrency exchanges, it would not make the exchange tax-free, but would merely defer recognition of any tax gains and adjust the investor's basis in the asset.[51] The investor's basis would carry over to the newly exchanged asset, adjusted for the recognition of any non-property assets he or she may have received in the transaction.[52] Regardless, the provision can be extremely valuable, as its deferral mechanism provides investors the opportunity to reinvest more of their capital while taking advantage of the time value of money.[53] Such a deferral provision in effect enables investors to receive the equivalent of an interest-free loan from the government.[54]

C. Relevance

Since the IRS summoned Coinbase to disclose the personal information of individuals the IRS believed were avoiding taxes on undisclosed cryptocurrency gains, the stakes of accurately setting and enforcing a cryptocurrency tax policy are higher than ever. As of February 2017, Coinbase's user base has increased to over ten million,

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[49] *See, e.g.*, Torpey, *supra* note 7; Luke Roth, *Understanding How Your Cryptocurrency Will Be Taxed in 2018*, WES POST (Dec. 30, 2017), https://medium.com/wespostdotcom/understanding-how-your-crypto currency-will-be-taxed-in-2018-e807838bb7ae [https://perma.cc/9PXD-5533].

[50] Lynnley Browning & Camila Russo, *Tax-Free Bitcoin-to-Ether Trading in U.S. to End Under GOP Plan*, BLOOMBERG (Dec. 21, 2017, 4:00 AM), https://www.bloomberg.com/news/articles/2017-12-21/tax-free-bitcoin-to-ether-trading-in-u-s-to-end-under-gop-plan [https://perma.cc/8TNS-HVA6].

[51] I.R.C. § 1031 (1988).

[52] *Id.* at § 1031(d).

[53] *See* Weintraub, *supra* note 11.

[54] Daniel I. Halperin & Alvin C. Warren, Jr., *Understanding Income Tax Deferral*, 67 TAX L. REV. 317, 322–23 (2014).

and its cryptocurrency trading volume reaches $50 billion.[55] The IRS cannot command Coinbase to hand over the personal information of all its users.[56] Instead, the IRS would be well-advised to create clear and consistent policies to prophylactically ensure guidance in a rapidly evolving market.

Furthermore, the scope of evaded taxes relating to cryptocurrencies extends well beyond Coinbase. Bitcoin's valuation at the end of 2017 rose to a high of $20,000; just one year prior, it was only $930.[57] As mentioned earlier, altcoins are set on growth trajectories that far exceed Bitcoin.[58] Furthermore, much of the growth in cryptocurrencies can be attributed to a dramatic increase in interest of retail investors,[59] who may or may not be sophisticated enough to know how to appropriately report investment gains and losses to the IRS. One study estimates the cryptocurrency market, as of December 2017, captures the frequent investing activities of 16.3 million Americans, and "it's safe to say [it's] far from peak adoption."[60] Just as Bitcoin's valuation and trading volume has grown exponentially over the past year,[61] so too has the gap grown between the amount of taxable gains being realized in the cryptocurrency exchange community and those accurately recognized in tax returns.

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[55] COINBASE, https://www.coinbase.com [https://perma.cc/JQ28-DMLK] (providing the platform's trading and user statistics).

[56] *See* United States v. Coinbase, Inc., No. 17-CV-01431-JSC, 2017 WL 5890052, at *5 (N.D. Cal. Nov. 28, 2017) (denying the government from accessing the personal information of all U.S. Coinbase users who transacted with a cryptocurrency between the years 2013 and 2015).

[57] Stan Higgins, *From $900 to $20,000: Bitcoin's Historic 2017 Price Run Revisited*, COINDESK (Dec. 29, 2017, 1:30 PM), https://www.coindesk.com/900-20000-bitcoins-historic-2017-price-run-revisited/ [https://perma.cc/GRV7-C8J9].

[58] Vigna, *supra* note 18 (explaining certain altcoin growth has exceed Bitcoin's by thousands of percent).

[59] Atler, *supra* note 1 (reporting that the "domination" of retail investors in the cryptocurrency market "has played a significant role in pushing cryptocurrencies to record highs in 2017.").

[60] Melody Hahm, *16.3 Million Americans Buy and Sell Bitcoin Frequently*, YAHOO FIN. (Dec. 15, 2017), https://finance.yahoo.com/news/16-3-million-americans-buy-sell-bitcoin-frequently-181415210.html [https://perma.cc/QRZ5-3BBN].

[61] *Id.*

D. Response by the Tax Cut and Jobs Act

On December 22, 2017, the TCJA was signed into law.[62] With the simple provision "Section 1031(a)(1) is amended by striking 'property' each place it appears and inserting 'real property,'" the Act effectively shut down the possibility that Section 1031 applies to cryptocurrency exchanges.[63] The entire debate about what constituted like-kind property became negligible, as Congress narrowed the provision to apply only to real estate property exchanges.[64] Many journalists and cryptocurrency investors believe the provision signaled Congress intended to close the Section 1031 "loophole" previously open to cryptocurrency exchanges.[65] In this sense, such journalists view the amendment of Section 1031 as validation that cryptocurrency exchanges were in fact eligible like-kind exchanges prior to the enactment of TCJA.[66]

Others note the revision of Section 1031 was largely in part to increase tax revenues to finance other tax subsidies like a lower corporate tax rate.[67] The Joint Committee on Taxation estimated the revisions made to Section 1031 to be a source of $31 billion of revenue to the Treasury over ten years.[68] Although a complete repeal of the provision was initially considered, the backlash from the real estate investment community prompted Congress to merely revise it instead.[69] Taking all of this into consideration, the tightening of Section 1031 may simply indicate a Congressional intent to "trim the

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[62] Tax Cut and Jobs Act of 2017, Pub. L. No. 115-97 (2017).
[63] *Id*.
[64] *Id*.
[65] *See, e.g.*, Roth, *supra* note 49 (noting that "the new amendments to the tax bill are bad news for all cryptocurrency investors" because "the changes prevented cryptocurrency from falling through a loophole, and made all cryptocurrency transactions taxable.").
[66] *Id*.
[67] Harter, *supra* note 40.
[68] H. J. Comm. on Tax'n, Estimated Budget Effects of the Conference Agreement for H.R. 1, the "Tax Cuts and Jobs Act," No. JCX-67, at 3 (2017).
[69] Many investors, accountants, and lawyers argued that a complete repeal of § 1031, first suggested under the Obama Administration, would stifle real estate investment activity and have a "ripple effect on the economy as a whole" by reducing overall GDP by $8.1 billion annually. *Id*. It was argued that such a depression to the real estate investment community would result in a decreased annual federal tax revenue of $1.6 billion. *Id*.

fat" of the tax code and bring in additional revenue while returning the scope of Section 1031 more closely to its originally intended purpose.

The TCJA amendments to Section 1031 as well as the IRS's enforcement actions have caused some actors within the cryptocurrency trading community to make tax-related issues more transparent. Coinbase uploaded a "Taxes FAQ" page to their website, reminding users of their "responsibility to self-report and pay taxes on all taxable gains" and to consult an accountant or tax advisor.[70] In addition to offering resources for reporting cryptocurrency-related taxable income, Coinbase stated it would be furnishing Form 1099-Ks[71] to investors earning over $20,000 in cryptocurrency trading.[72] Coinbase further stated it would provide a separate copy to the IRS. Furthermore, Coinbase will offer a "Cost Basis for Taxes" report to aid traders track the value of cryptocurrency traded on the platform.[73]

E. Conclusion

It is uncertain exactly what the IRS or Congress intended in applying Section 1031 like-kind exchange deferrals in the context of cryptocurrency exchanges. The amendments to Section 1031 in TCJA neither condemn nor approve of cryptocurrency traders' use of the provision, and the IRS has not explicitly disapproved of such applications of the section. Regardless, the IRS clearly intends to capture previously missed revenue from cryptocurrency investing. The TCJA Section 1031 revision indicates that taxpayers can no longer rely on one excuse for underreporting cryptocurrency tax gains.

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[70] *Taxes FAQ*, COINBASE (Feb. 2, 2018), https://support.coinbase.com/customer/en/portal/articles/1496488-taxes-faq [https://perma.cc/3UX5-K86K].

[71] Form 1099-K reports the gross values of certain transactions processed on third-party payment platforms. *1099-K Tax Forms*, COINBASE (Feb. 2, 2018), https://support.coinbase.com/customer/portal/articles/2721660 [https://perma.cc/9TZ5-KAZU].

[72] *Taxes FAQ*, *supra* note 70.

[73] *Id*.

[74] Student, Boston University School of Law (J.D. 2019).