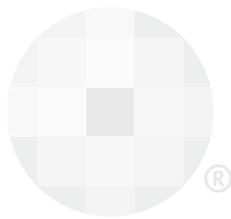


Tax Treatment of Digital Asset Staking and Liquid Staking Tokens

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Validating transactions on blockchain networks is a decentralized endeavor. By engaging with the underlying blockchain protocol of any particular network, persons across the globe are able to validate the state of the blockchain. This validation ensures the security and vitality of the blockchain network. Furthermore, through the successful validation of transactions, validators create new digital asset tokens.

Over the past few years, proof-of-stake protocols have become the norm for decentralized blockchains, because proof-of-stake protocols are an efficient¹ and secure means to validate blockchain transactions. As staking has become the norm, the demand for “liquid staking” has also increased. Liquid staking permits holders of cryptocurrency tokens both to “stake” their tokens and to transact with their tokens while they are being staked. U.S. tax law has, by and large, not yet reacted to these rapid commercial and technological developments, and as a result, there has been much confusion over the U.S. tax treatment of a participant in a liquid staking pool.

Much of this confusion arises from a misunderstanding about how staking in general, and liquid staking in particular, works. But when the facts of these new technologies and commercial arrangements are properly understood, the results become readily apparent.

Background

Staking

Consider a hypothetical blockchain network Alpha (“Alpha”) with the native token A (“A Tokens”). Alpha operates as a permissionless, open-source network that utilizes a decentralized proof-of-stake consensus mechanism to validate and settle transactions to the network. The Alpha ecosystem includes developers, validators, users, and enterprises building on the blockchain, with no central entity exerting unilateral control over the network’s development or functionality.

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Holders of A Tokens can use (or “stake”) them to confirm the cryptographic soundness, and thus the validity, of transactions on the blockchain. That is, decentralized stakers are able to verify each transaction that occurs on the Alpha blockchain, and thereby build and maintain the immutable record of such transactions (which we call the “blockchain”). Specifically, when holders of A Tokens stake tokens and validate transactions, those new transactions (comprising a “block” of transactions) are added to immutable record of validated transactions that is the Alpha blockchain. In doing so, the stakers are able to both build and maintain the blockchain.

The process of creating new blocks also creates new A Tokens. That is, as new blocks are created in the staking process, new A Tokens are also created reflecting the growth and expansion of the Alpha blockchain and ecosystem.² The stakers of the A Tokens are the first owners of the newly created A Tokens.

Instead of directly staking their A Tokens, stakers will often “delegate” the ability to stake their tokens to the operator of a computer node (such operator, a “validator”) who performs staking activities on their behalf in a “stake account.” The delegation process allows A Token holders to participate in the staking process without having to maintain computer infrastructure. First ownership of the A Tokens created with delegated A Tokens is shared between the validator and the delegator. The delegator never relinquishes beneficial ownership of the A Tokens it delegates at any time throughout the staking process.³

A Tokens delegated on the Alpha network are, as is the case with many proof-of-stake blockchains, subject to a temporary restriction on transfer. The validator does not control or take custody of the tokens during this mandated period of delegation, but the delegator temporarily loses the ability to withdraw their tokens from their stake account. Once the A Tokens are delegated, the delegator can only transfer the delegated tokens by first un-delegating the stake account.

Stake Pools

The Alpha network also allows for “stake pools,” which are staking programs offered by third parties. Stake pools, each of which is created through a generalized and publicly available software program, further decentralize the Alpha network by spreading staked A Tokens across additional validators. Third-party providers of stake pools benefit by charging a fee essentially for use of the software that operates the pool. A Token holders that participate in stake pools benefit from the ability to delegate to a diversified group of validators, rather than to one or only a few validators—limiting their risk that any single validator will fail to

perform (which could result in their tokens being slashed, or the inability to create new tokens through staking).

Holders who deposit A Tokens into a stake pool do not give up beneficial ownership of the A Tokens. The stake pool simply operates through smart contracts on-chain which diversify the validator nodes to which the A Tokens are delegated. The stake pool software cannot transfer beneficial ownership of a delegating holder’s A Tokens.

Another benefit of stake pools is that they enable “liquid staking.” As stated above, A Tokens staked on the Alpha network cannot be transferred on-chain while delegated to a stake account. But when A Tokens are deposited into a stake pool, the stake pool smart contract automatically generates a “receipt token” that evidences the depositor’s right to redeem the deposited A Tokens once un-staked. These receipt tokens are also referred to as liquid staking tokens (“LSTs”). LSTs themselves are freely transferable. As a result, an A Token holder who has transferred A Tokens to a stake pool can either redeem her LST for the underlying A Tokens from the stake pool or transfer her LST to a third party—typically at a market price that directly corresponds to the value of the underlying A Tokens.

LSTs come in two general forms that produce materially identical economic results: LSTs known as “reward-bearing” do not change in number, and the right to redeem newly created tokens attaches to a holder’s existing LSTs. LSTs known as “rebasing” change in number, reflecting a holder’s newly created tokens attributable to the tokens he deposited in the pool. The particular form of LST used does not alter the underlying economics. Under either form, when a holder redeems all her LSTs, the holder will receive the same number of underlying tokens irrespective of which form of LST she uses.

Analysis⁴

Minting/Redeeming LSTs

Code Sec. 1001 of the Tax Code provides rules for determining the amount and timing of gain or loss arising from the “sale or other disposition of property,” which we will refer to as an “exchange.” Applying these rules, the regulations thereunder, and caselaw, it follows that depositing native tokens into a staking pool and receiving LST is not an “exchange” under Code Sec. 1001. The same analysis goes for the redemption of the LST for native tokens. Furthermore, as we discuss below, even if these transactions are (erroneously) treated as exchanges, U.S. Supreme Court caselaw establishes that, nevertheless, they are not taxable events.⁵

We begin with the first question—whether there is an exchange under the principles of Code Sec. 1001. For there to be an exchange, there must be a transfer of the benefit and burdens of ownership of property. To illustrate, courts and the Internal Revenue Service (“IRS”) have long recognized that the beneficial ownership of stock—and not the mere legal title to stock—determines ownership for tax purposes.⁶ As the IRS described the basic principle in an oft-cited Revenue Ruling: “as a general rule the party to the transaction that bears the economic burdens and benefits of ownership will be considered the owner of the property for federal income tax purposes.”⁷ Courts have routinely applied the same analysis.⁸

As staking has become the norm, the demand for “liquid staking” has also increased. Liquid staking permits holders of cryptocurrency tokens both to “stake” their tokens and to transact with their tokens while they are being staked.

Applying that analysis to LSTs gives a straightforward answer—the creation or redemption of an LST is not an exchange for purposes of the Code. LSTs function like other documents showing title, such as a bill of lading, an American depositary receipt (an “ADR”), or even something as simple as a coat check ticket.⁹ Although the tax law does not expressly address the consequences of checking your coat at the door of a function, we all understand that there is no income tax levied when you check your coat at the door and receive a ticket evidencing ownership of your coat (and nobody would consider this to be a taxable “exchange” under the principles of Code Sec. 1001).

The tax consequences of ADRs operate in a materially similar manner. An ADR is a receipt issued by a custodian, usually a bank, representing rights to a deposited asset (often stock in a foreign corporation) that would be difficult for a U.S. person to hold directly. The holder of an ADR may redeem it for the underlying asset at any time, and the bank or custodian may not dispose of the underlying asset. There is IRS authority for this position, as under a long-standing IRS ruling, the holder of the

ADR is treated as the owner of the underlying asset for tax purposes.¹⁰ And thus, the IRS concludes that the issuance (or redemption) of an ADR is not an exchange under the principles Code Sec. 1001.

These fundamental principles result in the same analysis when a person converts A Tokens into LSTs or redeems LSTs for underlying A Tokens. At all times, the holder (of either the A Tokens or the corresponding LST) retains beneficial ownership of the underlying A Tokens.

However, even if we assume that an exchange occurred under the principles of Code Sec. 1001, more is necessary under U.S. tax law for that exchange to be taxable. The exchange must be of property that differs “materially either in kind or in extent.”¹¹

The U.S. Supreme Court’s seminal case expanding on this distinction is *Cottage Savings Ass’n*.¹² *Cottage Savings* holds that a realization event under Code Sec. 1001 requires an exchange of properties with “legally distinct entitlements.” In *Cottage Savings*, the Court held that there was a realization event because the property that the petitioner received in the exchange (a pool of debt instruments) had different obligors and was secured by different assets than the pool of debt instruments the taxpayer had given up. Notably, these were materially different assets, constituting legally distinct entitlements.

Following from the logic of *Cottage Savings*, we note that an LST does not represent a legally distinct entitlement from the underlying token. Much in the same way that a person can sell her coat check ticket or an ADR to a willing purchaser, so too can holders of LSTs. But that does not change the fact that what was really sold in that transaction was the underlying jacket, stock, or token. And the creation of an LST does not shift the entitlements underlying the property in any way. Thus, the conversion of A Tokens for LSTs is not of property that differs materially either in kind or extent—they represent the same legal entitlements.

Accordingly, if the LST is exchanged for the underlying token, the exact same analysis should apply. This is nothing more than redeeming the document showing title for the underlying valuable property. The benefits and burdens of owning the underlying property do not shift. That is, there is no exchange—and even if we (incorrectly) impute an exchange, the property putatively being exchanged does not embody different rights or entitlements.¹³

We note that the tax treatment of the exchange of LSTs is not contingent on which form the LST takes (“reward-bearing” or “rebasing”). The two forms of LSTs are just different methods of tracking a holder’s beneficial ownership of underlying tokens. The particular

form of LST used does not alter the underlying economics. Under either form of LST, when a holder redeems all his LSTs, the holder will receive the same number of tokens.

Staking

Before turning to staking within a liquid staking pool, we first must consider the taxability of staking itself.

In short, when a staker creates new tokens through staking, including, in our hypothetical, A Tokens on the Alpha blockchain network, the staker creates new property. And, for the reasons described below, the creation of new property does not immediately give rise to income under the Code. A staker has income with respect to the newly created tokens only when such tokens are sold or exchanged for property that is materially different (under the principles of Cottage Savings) from the newly created tokens. This straightforward answer is supported by the plain meaning of the Code itself and almost a century of caselaw defining the term “income.”

First, we turn to the Code. The Code, consistent with the Sixteenth Amendment of the U.S. Constitution, defines “gross income” as “all income from whatever source derived.” Code Sec. 61 of the Code provides a nonexclusive list of items of income. No express provision of Code Sec. 61, or any regulation promulgated thereunder, treats as gross income an item of property that is created by a person. Thus, there is no statutory basis for treating created property as income. Further, regulations under Code Sec. 61, which address the treatment of created property such as manufactured goods and crops, simply provide rules related to tax accounting. But these provisions do not create new categories of income.¹⁴

And although the Code does define “gross income” as described above, the Code does not further define the term “income.”¹⁵ It is well established that courts will interpret tax statutes by looking to the plain and literal meaning of the statute’s language.¹⁶ The first definition of “income” in the OXFORD ENGLISH DICTIONARY states, simply, that income is a “Coming in.”¹⁷ As discussed below, this is consistent with how courts interpreted the word “income” shortly after the drafting of the Sixteenth Amendment.

In *Eisner v. Macomber*,¹⁸ the U.S. Supreme Court held that for something to constitute income, it must involve a “coming in.”¹⁹ This illustrates the reason why property created by a taxpayer is not subject to taxation upon creation. Property that a taxpayer creates does not “come in” to the taxpayer; and thus, when a taxpayer creates property, the act of creation alone is not a realization event. For

example, when a manufacturer manufactures—that is, creates—products to be sold at a later time, the manufacturer does not have income unless and until its products are sold. In *Tootal Broadhurst Lee Co.*,²⁰ the Second Circuit considered whether gross profits from the sale of foreign-manufactured goods in the United States should be sourced in the United States under former Code Sec. 233(b) of the Revenue Act of 1918. In its analysis, the *Tootal* court said, “Where the same organization makes and sells, the income is earned only upon the sale, and the prior increment flowing from manufacture is not income. It is the entire sum earned which must be taxed, as the statute implies, and this can only follow logically when the sale takes place.”²¹ *Tootal* was decided in the early days of the income tax when courts established foundational principles that are now so ingrained that more modern courts treat them as axiomatic.²²

In the landmark case *Glenshaw Glass*, the U.S. Supreme Court defined “income” as: “instances of undeniable accessions to wealth, clearly realized, and over which the taxpayers have complete dominion.”²³ This test is explicitly conjunctive. Under this test—which the IRS has relied on in multiple rulings in the cryptocurrency space²⁴—all three criteria must be met for there to be income. *Glenshaw Glass* is consistent with how the Code and regulations define income—all require that an accession to wealth must be “clearly realized.”²⁵

Created property—like the A Tokens created and first owned by a staker—is not realized income under the principles of *Glenshaw Glass*: it takes the transaction of selling or disposing of such property for the creator to have income. Thus, for example, a baker who bakes bread and a writer who writes a book are not taxed when they create their bread or their book; rather, they are only taxed when they sell or exchange the property they created.

Put another way, for something to be income, it must be derived (that is, “come in”) from a source.²⁶ It is not sensible to argue that the writer derives her novel from Microsoft Word (or from those who wrote the software program). Nor could one rationally assert that the baker derives his bread from the oven or from the oven’s designers. The same principle applies to tokens created through staking.

Thus, we can draw several conclusions about A Tokens: they are property for U.S. federal income tax purposes; but for the activity of staking, the new A Tokens would not have been created; the newly created A Tokens are newly created and nobody owned them before the staker created them; and, finally that the staker is the first owner of the newly created A tokens.

Therefore, under the principles of *Eisner v. Macomber*, *Glenshaw Glass*, Code Sec. 61(a), the regulations promulgated thereunder, and additional foundational caselaw, A Tokens created through staking are not income to the staker who is the first owner of the A Tokens. There is only income when those A Tokens are sold or exchanged.²⁷

Before turning to the taxation of liquid staking, we briefly address three potential counterarguments to our position.

First, one might argue that the protocol itself created the tokens. But this argument wrongly ascribes agency to a protocol, which is just software, *i.e.*, it is just a tool. An extension of this already faulty argument is to claim that the designers of the A Tokens network created the new A Tokens. But this argument ignores the incontrovertible fact that the designers of the network do not own (and never have owned) the A Tokens that is created through another person's staking. To argue this is akin to claiming that the person who coded Microsoft Word writes the novel, or the designer of the oven is the baker of bread.

Second, one might argue that the A Tokens community, or ecosystem, is paying tokens to the stakers. The notion here centers on the misnomer that the staker is paid compensation. No doubt, the staker adds vitality to a blockchain ecosystem, and in a similar fashion, novelists and bakers enhance community life. But the tax law requires a "realization" event for there to be income. Therefore, for the novelist or the baker to derive income, they must sell or exchange what they create. The same is true for one staking A Tokens—to derive income, the property they create must be exchanged.²⁸

Third, we note that the IRS issued Rev. Rul. 2023-14, which sets forth the IRS' position as to when certain staking rewards are treated as taxable income. The Revenue Ruling concludes, based on a posited fact pattern, that certain staking rewards must be included in income during "the taxable year in which the taxpayer gains dominion and control over the validation rewards." A full discussion of the Revenue Ruling lies outside the scope of this paper,²⁹ but a few points are worth noting. First, the fact pattern posited in the Ruling is ambiguous as to the origin of the tokens "received" by the staker.³⁰ In the introductory section of the ruling, the IRS acknowledges that tokens can be "newly created" but in the facts that it rules on, the IRS does not state that the tokens were newly created.

Therefore, taken literally, all that the IRS seems to be ruling on are tokens for which the staker is not the first owner. Second, the IRS' legal analysis fails under its own framework—it expressly relies on the tripartite *Glenshaw Glass* test, but fails to note that the test is conjunctive,

and fails to evaluate or even acknowledge the "realization" prong. And third, a revenue ruling is not law—it is merely "the conclusion of the IRS on how the law is applied to a specific set of facts."³¹ When the government uses a revenue ruling to support its litigation position, the courts treat the ruling as no more than a litigation position like any other presented in a brief.³²

Liquid Staking

We turn now to the tax consequences for holders of LSTs where the staking of underlying tokens (*e.g.*, the A Tokens) results in the creation of new tokens. Because the holder of a LST continues to hold the benefits and burdens of ownership of the underlying tokens, the tax consequences of staking *via* a stake pool are no different from conventional staking (as discussed above). Thus, the holder of the LST is the first owner of the newly created A Tokens attributable to her LST (*i.e.*, the underlying staked A Tokens).

A holder of a LST should be taxed only when she recognizes income on the sale or disposition of her newly created A Tokens, whether by selling or disposing of the newly created A Tokens itself or by itself selling or disposing of the LSTs to which such newly created A Tokens are attributable.³³

Further, a generic liquid staking pool is not a partnership for U.S. federal tax purposes. Any argument to the contrary overlooks a key factual prerequisite to the finding of a tax partnership (as well as many other key factors)—a *shared intent* among a group of partners to jointly operate a business and split the profits generated therefrom.³⁴ There is no shared intent to operate a business or to split profits therefrom here.

Indeed, it is important not to ascribe a liquid staking pool more significance than it merits. As stated above, a liquid staking pool is simply a smart contract (that is, software) that permits the efficient spreading of staked tokens to different validators. Participants in a liquid staking pool simply take advantage of software and pay a fee in consideration for the use of that software. Participants in a liquid staking pool have *not* contracted with each other, have *no* legal rights or obligations *vis-à-vis* each other, and very likely have no knowledge of who the other participants (who could be anywhere in the world) are. Some participants may make profits by using the pool software, and others may incur losses. Therefore, a liquid staking pool lacks the hallmark characteristics of a tax partnership—there is no joint *intent* among the participants to conduct an enterprise and split profits, and the software that drives a liquid staking protocol is merely a tool, not a business.³⁵

Arguments that a staking pool is some other form of business entity are also far-fetched. A stake pool should not, for example, be treated as a corporation for tax purposes, which generally requires the formation of a state law corporate entity. Nor should it be treated as a trust within the meaning of Reg. §301.7701-4(a), because, among other things, it is not created by will or *inter-vivos* declaration and there is no trustee taking title to property for the purpose of protecting or conserving it.

Conclusion

Liquid staking is an innovative tool that permits a holder to both stake tokens and maintain liquidity. How liquid staking works, as explained above, lead to the straightforward conclusions that the entry into and exit from a liquid staking pool are not taxable events nor is the creation of new tokens through the staked tokens inside the pool a taxable event.

ENDNOTES

- ¹ Generally speaking, proof-of-stake blockchains do not present the same environmental concerns that are presented by proof-of-work blockchains.
- ² Note that some blockchain networks allow for the receipt of staking “rewards” that are not newly created tokens, such as transaction fees or “maximum extractable value” (MEV) rewards paid by users of the blockchain network. Such rewards are beyond the scope of this article, and as such, we only discuss the treatment of tokens that are newly created by stakers.
- ³ In some blockchain protocols, if a staker fails to validate transactions, or engages in other behavior forbidden under the rules of the protocol, the tokens that are staked may be “slashed.” Accordingly, slashing would result in the loss of beneficial ownership of those tokens by the staker, and would constitute a disposition event. A full discussion of the tax consequences of slashing lies outside the scope of this article.
- ⁴ This discussion of certain U.S. federal income tax matters is provided for informational purposes only. It is not intended to serve as tax advice and cannot be relied upon as such. Holders of LSTs and other liquid staking tokens should consult their own tax advisor regarding the matters discussed herein.
- ⁵ See *generally Cottage Savings Ass’n*, SCT, 91-1 USTC ¶50,187, 499 US 554, 111 SCT 1503.
- ⁶ See, e.g., TAM 200244009 (Nov. 1, 2002).
- ⁷ See Rev. Rul. 82-144, 1982-2 CB 34.
- ⁸ See, e.g., *Grodt & McKay Realty Inc.*, 77 TC 1221, Dec. 38,472 (1981); *H.J. Heinz Co.*, FedCl, 2007-1 USTC ¶50,517, 76 FedCl 570; *R.O. Anderson*, 92 TC 138, Dec. 45,450 (1989).
- ⁹ See, e.g., GCM 35183 (Jan. 2, 1973) (bailments).
- ¹⁰ See Rev. Rul. 65-218, 1965-2 CB 566.
- ¹¹ Reg. §1.1001-1(a).
- ¹² SCT, 91-1 USTC ¶50,187, 499 US 554, 111 SCT 1503.
- ¹³ To the extent there are fees or other amounts paid for facilitating such a conversion, that should not change this analysis. See GCM 35183. Indeed, no one would argue that checking your coat and later retrieving it becomes a taxable event because there was a fee paid for the service, or at tip paid to the coat checker.
- ¹⁴ See Reg. §1.61-3 (gross income derived from manufacturing, merchandising, and mining), Reg. §1.61-4 (gross income of farmers).
- ¹⁵ See Bittker & Lokken, *Federal Taxation of Income, Estates, and Gifts* ¶ 5.1.
- ¹⁶ See *N.E. Soliman*, SCT, 93-1 USTC ¶50,014, 506 US 168, 113 SCT 701.
- ¹⁷ Income, OXFORD ENGLISH DICTIONARY ONLINE (3d ed. 2020).
- ¹⁸ SCT, 1 USTC ¶32, 252 US 189, 40 SCT 189 (1920).
- ¹⁹ *M.H. Macomber*, SCT, 1 USTC ¶32, 252 US 189, 207 (emphasis omitted). The U.S. Supreme Court’s opinion (and the analysis provided by at least eight of the nine justices) in *Moore*, SCT, 2024-1 USTC ¶50,163, 602 US 572, did not overturn or modify the holding in *Macomber*.
- ²⁰ CA-2, 1 USTC ¶350, 30 F2d 239 (1929), *aff’g*, 9 BTA 321, Dec. 3125 (1927), *cert. denied*, SCT, 279 US 861, 49 SCT 419 (1929). See also *Barclay & Co. v. Edwards*, SCT, 1 USTC ¶120, 267 US 442, 45 SCT 135 (1925).
- ²¹ CA-2, 1 USTC ¶350, 30 F2d 239, 240-41.
- ²² See, e.g., *Intel Corp.*, 100 TC 616, Dec. 49,115 (1993), *aff’d*, CA-9, 95-2 USTC ¶50,581, 67 F3d 1445, *amended and superseded on denial of rehearing* CA-9, 98-2 USTC ¶50,687, 76 F3d 976 (analyzing the application of the Code Sec. 863 sourcing rules only after both manufacture and sale occurred).
- ²³ *Glenshaw Glass*, SCT 55-1 USTC ¶9308, 348 US 426, 431.
- ²⁴ See, e.g., Rev. Rul. 2019-24, IRB 2019-44, 1004; Rev. Rul. 2023-14, IRB 2023-33, 484. As discussed later in this article, although the IRS cites to *Glenshaw Glass* in these rulings, it does not do so correctly.
- ²⁵ Reg. §1.61-1(a).
- ²⁶ MERRIAM-WEBSTER, “Income” (last visited Apr. 23, 2025). In addition, the plain language of Code Sec. 61 makes an unbreakable link between income and its derivation from a source (“gross income means income from whatever source derived”).
- ²⁷ Note that the arguments applied here do not apply to transaction fees, or MEV rewards, which do not constitute newly created tokens but rather are amounts actually paid to stakers by a third party. We think that for the sake of orderly tax administration it would be sensible policy for all staking rewards to be treated in the same manner as newly created tokens, particularly given that the bulk of “staking rewards” constitute tokens that are newly created.
- ²⁸ Of course, if a third party were to pay the baker or the novelist an amount as an inducement to bake bread or write a novel, that amount (even if paid in bread or books) would likely be taxable income to baker or novelist. But such income would be separate and distinct from the income that the baker and novelist earn from selling bread or publishing and selling books.
- ²⁹ See David L. Forst *et al.*, *Sound and Fury, Signifying Nothing: Rev. Rul. 2023-14 and Staking*, 180 TAX NOTES 1867 (2023).
- ³⁰ The ambiguity of the government’s position with respect to the created property argument is reinforced by its actions in *Jarrett*, 3:21-cv-00419 (M.D. Tenn.). In that case the taxpayer, Joshua Jarrett, sued in the Middle District of Tennessee for a refund with respect to tokens he created through staking on the Tezos chain. The IRS refunded Jarrett’s taxes to moot the case and refused to clarify its position as to whether his newly created tokens were taxable. (The authors of this paper were counsel to Joshua Jarrett in that case).
- ³¹ Understanding IRS Guidance (May 1, 2023), perma.cc/87VF-TX6.
- ³² *Intel Corp.*, 100 TC 616, 621, Dec. 49,115.
- ³³ As noted above, transaction fees and MEV rewards received by a staker are not considered in this analysis.
- ³⁴ See *W.O. Culbertson*, SCT, 49-1 USTC ¶9323, 337 US 733, 742 (stating that a partnership exists for tax purposes when, “considering all the facts ... the parties in good faith and acting with a business purpose intend to join together in the present conduct of an enterprise.”)
- ³⁵ *Cf. Smith’s Estate*, CA-8, 63-1 USTC ¶9268, 313 F2d 724, 732 (the Eighth Circuit focused on the nature of intent, finding that certain people’s intent was only to use investment consulting services, not to enter into a partnership with each other, and despite the fact (unlike with liquid staking) that the service was marketed as a partnership). For the same reason, the business trust and investment trust rules under Reg. §§301.7701-4(b) and (c) should not apply.



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