

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE

PART 497
DIGITAL ASSET TAX ACT

Section

497.101	Definitions
497.105	Digital Assets in General
497.110	Digital Asset Business Activity
497.115	Tax Imposed
497.120	Collection of Tax
497.125	Sourcing
497.130	Registration of Digital Asset Brokers
497.135	Revocation of Certification of Registration
497.140	Return and Payment of Tax
497.145	Claims and Credit Memoranda
497.150	Disposition of Credit Memoranda by Holders Thereof
497.155	Books and Records
497.160	Violations and Penalties; Interest
497.165	Administration and Enforcement

AUTHORITY: Implementing the Digital Asset Tax Act [35 ILCS 195].

SOURCE: Added at 50 Ill. Reg. ____, effective ____.

Section 497.101 Definitions

"Act" means the Digital Asset Tax Act. [35 ILCS 195/et seq.]

"Blockchain" means a form of distributed ledger technology that uses an algorithmic computer code to create, maintain, and update information shared by participants that is encrypted by cryptography.

"Customer" means a person receiving digital asset business activity from a digital asset broker for valuable consideration. [35 ILCS 195/3-15]

"Decentralized finance" and their associated platforms, also known as "de-fi" or "DEX" platforms, means the offering of financial instruments like digital assets through smart contracts on a blockchain. They differ from centralized exchanges in that transactions are peer-to-peer, with no intermediary bank or exchange, and operate through smart contract functions.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

"Department" means the Department of Revenue. [35 ILCS 195/3-15]

"Digital asset" has the meaning set forth in Section 1-5 of the Digital Assets and Consumer Protection Act, further outlined in 86 Ill. Adm. Code 497.105(a). [35 ILCS 195/3-15]

"Digital asset business activity" means any single occurrence of exchanging, transferring, or storing a digital asset as part of a business or on behalf of a customer who has entered into an agreement with a business for the provision of those services. [35 ILCS 195/3-15]

"Digital asset broker" means any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person. A person who is engaged in the business of providing digital asset business activity to customers in this State will be considered a digital asset broker for purposes of the Digital Asset Tax Act. [35 ILCS 195/3-15 and 26 U.S.C. § 6045(c)(1)(D)]

"Digital asset broker maintaining a place of business in this State" means:

Any digital asset broker having or maintaining within this State, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating within this State under the authority of the digital asset broker or its subsidiary, irrespective of whether the place of business or agent or other representative is located here permanently or temporarily, or whether the digital asset broker or subsidiary is licensed to do business in this State.

Any digital asset broker who is headquartered outside of this State and who sells digital asset business activity to Illinois customers remotely if the digital asset broker's gross receipts from digital asset business activity sales to Illinois customers are \$100,000 or more. [35 ILCS 195/3-15]

"Exchange", when used as a verb, means to exchange, buy, sell, trade, or convert, on behalf of a customer, either of the following:

a digital asset for fiat currency or one or more forms of digital assets; and

fiat currency for one or more forms of digital assets.

"Exchange" does not include buying, selling, or trading digital assets for a person's own account in a principal capacity. [35 ILCS 195/3-15]

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

"Exchange fee" means any fees charged by exchanges and platforms for the use of their digital asset services. These include fees for trading on their platform, withdrawing digital assets and their traditional fiat equivalents, depositing digital assets and traditional currencies into platforms accounts, and other fees charged to cover operational costs of providing their services.

"Fiat currency" means a medium of exchange or unit of value issued by the United States or a foreign government that is designated as legal tender in its country of issuance. [35 ILCS 195/3-15]

"Lending" means the placing of digital assets, for a pre-determined time, by a lender on a lending platform, either centralized or decentralized, as collateral that allows end-users to borrow either the digital assets themselves or their value in fiat currency. Loans taken out must be repaid, with interest, to the lender by the pre-determined time. Lenders can claim interest and rewards for placing their owned assets on a lending platform.

"Mining" means the process of creating new digital assets as a result of validating transactions on a blockchain, through a proof-of-work consensus mechanism. This involves solving mathematical equations encrypted within the blockchain.

"Network fees", also referred to as "gas fees" or "transaction fees", means fees paid directly to the blockchain network for processing a transaction. These fees are not collected by any given exchange or other digital asset service platform. They are collected together with the transaction itself for implementation onto the blockchain, with the network fees being directly paid to the miner or validator of the specific transaction on the blockchain. Network fees incentivize miners or validators to include a transaction on the blockchain, and fluctuate based on network congestion.

"Person" means any natural individual, firm, partnership, association, corporation, limited liability company, or trust; any receiver, executor, trustee, guardian, or other representative appointed by order of any court; or any other entity. Unless expressly provided otherwise, the term "person" does not include a governmental entity or a unit or instrumentality of a government entity. [35 ILCS 195/3-15]

"Private key" means a private, alphanumeric code generated by a digital asset wallet or account that is used to authorize transactions and prove ownership of digital assets.

"Public key" means a publicly available alphanumeric code created from a private key, used as the public destination address for digital asset transactions.

"Purchase price" means the consideration paid for the purchase of digital asset business activity from a digital asset broker, valued in money, whether received in money or otherwise, including cash, gift cards, credits, and property, and shall be determined

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever. "Purchase price" includes any and all charges that the customer pays related to or incidental to the receipt of digital asset business activity. [35 ILCS 195/3-15]

"Sale" means an agreement between a digital asset broker and a customer for the broker to provide the customer with a digital asset business activity for valuable consideration. If the digital asset business activity is sold as a bundle of separate services, each service shall constitute an individual sale for the purposes of the Act. [35 ILCS 195/3-15]

"Staking" means the process of validating transactions on a blockchain through a proof-of-stake consensus mechanism, in which a person's digital asset is "staked" as collateral on the blockchain to validate a given transaction.

"Store", "storage", and "storing", except in the phrase "store of value", means to store, hold, or maintain custody or control of a digital asset on behalf of a customer by a digital asset broker. [35 ILCS 195/3-15]

"Transfer" means to transfer or transmit a digital asset on behalf of a customer, including by doing any of the following:

crediting the digital asset to the account or storage of another person;

moving the digital asset from one account or storage of a customer to another account or storage of the same customer; and

relinquishing custody or control of a digital asset to another person.
[35 ILCS 195/3-15]

"Value" means the amount, in U.S. dollars, that a digital asset is determined to hold by the digital asset broker at the time of the relevant transaction. The value of the digital asset must be determined at the time the digital asset business activity is completed. If a value cannot be provided by the digital asset broker's own exchange spot price, benchmark rates established by a regulated market data provider may be used to determine the value of an asset subject to the tax. The tax makes no exceptions for volatility and other externalities that can cause fluctuations in a digital asset's value.

"Wallet" means a device or program that is used to store a person's private keys, proof of ownership in a digital asset. Wallets can either be "hot", meaning they are connected to the Internet, or "cold", meaning they are offline from any Internet connection. Wallets can also either be "custodial", meaning they are managed by a third-party custodian, or "non-custodial", meaning they are in the person's own management and control.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.105 Digital Assets in General

- a) *Digital assets are blockchain-based digital representations of value used as a medium of exchange, unit of account, or store of value, and are not fiat currency, whether or not denominated in fiat currency.*

The following are not digital assets:

- 1) *A digital representation of value that a merchant grants as part of an affinity or rewards program and that primarily relates to such affinity or rewards program. Examples include, but are not limited to:*
 - A) Point-based rewards programs;
 - B) Cash-back and rebate rewards programs; and
 - C) Tier-based rewards programs.
- 2) *A digital representation of value that is issued by or on behalf of a game publisher and that is used primarily within online games or gaming platforms. Examples include, but are not limited to:*
 - A) Video game platform-specific currencies earned through normal gameplay, such as closed-flow currencies, used for buying items, collectibles, and other in-game products;
 - B) Video-game platform currencies purchased using real fiat currency for purchasing avatars, items, operators, skins, and other in-game products; and
 - C) Convertible, or open-flow, currencies that can be used both on video game platforms and for real-world transactions, regardless of whether the currency is blockchain-based or not.
- 3) *Other digital representations of value that have substantial value, utility, or significance beyond the asset's mere existence as a digital asset, including digital equivalents of tangible and intangible goods such as:*
 - A) tokenized securities and tokenized commodities;

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- B) *works of art, musical compositions, literary works, and similar intellectual property;*
 - C) *collectibles and merchandise; and*
 - D) *licenses, tickets, and similar rights to attend events or participate in activities.*
- 4) *A digital representation of value that is not marketed, used, promoted, offered, or sold for investment or speculation, except that this exclusion shall not apply to any digital representation of value that*
- A) *is meme-based with no intrinsic value or utility, or*
 - B) *is marketed, used, promoted, offered, or sold in a manner that intends to establish a reasonable expectation or belief among the general public that the instrument will retain a nominal value that is so stable as to render the nominal value effectively fixed. The Department of Financial and Professional Regulation may adopt rules to clarify the scope and applicability of this subsection.*
- 5) *A digital representation of value that is used as part of prepaid cards.*
[205 ILCS 731/1-5(a)]
- b) **Blockchain Requirement.**
Traditional fiat currencies are not blockchain-based digital assets in any form. Fiat currency is a physical form of currency issued and backed by a central government, with most governments issuing paper and coin currencies. The supply of fiat currency is limitless in that a central government can print fiat currency at an infinite rate and amount. The value of fiat currency is derived from its issuing government and supply and demand in the global market. Blockchain based digital assets are not in any physical form, are not backed by a centralized government, and are not issued in any physical form. Blockchain-based digital assets generally have a finite supply, and because of their lack of backing and control by a central government, can be more volatile than traditional fiat currency.
- c) **Examples of digital assets.**
The Act applies to digital asset business activity involving traditional cryptocurrency, stablecoins, memecoins, blockchain-based central bank digital currencies, and other forms of digital assets that are representative or pegged to a physical good or currency. This is not an exhaustive list but represents common digital assets that are subject to the Act.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- d) **Stablecoins.**
Stablecoins are "digital assets" as they are digital representations of value used as a medium of exchange, unit of account, or store of value, and are not fiat currency. Stablecoins meet the first portion of the exception in subsection (a)(4) as stablecoins are not marketed, used, promoted, offered, or sold for investment or speculation as they are pegged to fiat currency, commodities, or other financial instruments and represent a fixed monetary value. However, subsection (a)(4)(B) specifies that the exception does not apply to "any digital representation of value that is marketed, used, promoted, offered, or sold in a manner that intends to establish a reasonable expectation or belief among the general public that the instrument will retain a nominal value that is so stable as to render the nominal value effectively fixed."
- e) **Non-Fungible Tokens.**
The Act does not apply to any digital asset business activity involving non-fungible tokens as these digital assets constitute "digital representations of value that have substantial value, utility, or significance beyond the asset's mere existence as a digital asset, including digital equivalents of tangible and intangible goods such as: works of art, musical compositions, literary works, and similar intellectual property". As such, NFTs are specifically excepted from the definition of "digital asset".
- f) Transactions that occur over decentralized finance (de-fi or DEX) platforms are not subject to the tax of this Section, unless those transactions are done for valuable consideration. Fees such as swap fees that are directed solely to liquidity providers and network fees for miners and validators are not considered valuable consideration. Fees charged for the operation and maintenance of de-fi or DEX platforms, like protocol fees, are considered valuable consideration and their payment for digital asset business activity would subject the transaction to the tax.

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.110 Digital Asset Business Activity

- a) *"Digital asset business activity" means any single occurrence of exchanging, transferring, or storing a digital asset as part of a business or on behalf of a customer who has entered into an agreement with a business for the provision of those services. A single occurrence of exchange, transfer, or storage of a digital asset arises when the asset moves as denoted by an entry on a blockchain or internal ledger.*
- b) **Exchanges of Digital Assets.**

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- 1) The exchange of digital assets is comprised of the buying, selling, or trading of one or more digital assets for another form of digital asset or traditional currency. Examples include, but are not limited to:
 - A) Spot trading, or the buying and selling of digital assets at current market prices;
 - B) On-ramping, or exchanging traditional fiat currency into a digital asset;
 - C) Off-ramping, or exchanging digital assets into traditional fiat currency;
 - D) Physically-delivered settlement of derivatives contracts, including cash-settled derivatives if settled using stablecoins. Derivatives contracts settled via fiat currency are excluded from taxation;
 - E) Bridging, or the exchange of digital assets from one blockchain network to another.
- 2) The exchanging of digital assets does not include the *buying, selling, or trading of digital assets from a person's own account in a principal capacity*, i.e., peer-to-peer transactions without the use of intermediaries and with no valuable consideration.

- 3) Examples

EXAMPLE 1: John, an Illinois customer, agrees to purchase \$100 of MoonCoin, a popular digital asset, through a centralized exchange for a transaction, or exchange, fee. The centralized exchange would be considered a digital asset broker, and the transaction between John and the centralized exchange would be considered an exchange subject to the tax.

EXAMPLE 2: Kim, an Illinois customer, wants to convert her \$50 worth of CoinSlop, a digital asset, into U.S. dollars. Through her chosen centralized exchange, she completes this transaction for an exchange fee. This transaction would be considered an exchange subject to the tax.

EXAMPLE 3: Tom, an Illinois retailer, has started accepting digital assets as a form of payment for both his brick-and-mortar and online store. He is using a digital payment processor to manage his digital asset-based transactions. Upon his request, the digital payment processor converts his

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

earned digital assets into U.S. dollars and deposits it into his business bank account. In converting the digital assets into U.S. dollars, the digital payment processor uses their partner exchange to complete the transaction. The exchange used would be the digital asset broker, and Tom would be the customer as the digital payment processor arranged for the conversion of Tom's assets on his behalf. See 86 Ill. Adm. Code 497.115(e)(3). Because Tom is based in Illinois, that transaction would be subject to the tax.

EXAMPLE 4: Ben, an Illinois customer, wants to purchase goods from Tom's brick-and-mortar retail shop. Ben wants to pay for the goods with digital assets since Tom now accepts digital asset payment. Ben scans Tom's digital asset payment processor QR code, which directs Ben to his personal wallet managed by his preferred exchange. The exchange charges Ben an exchange fee for completing the transfer of digital assets. Ben's transaction of digital assets to Tom's business would be subject to the tax, since valuable consideration was paid for the facilitation of the digital asset transfer.

c) Transfers of Digital Assets.

- 1) A transfer of a digital asset is comprised of shifting a digital asset from one location to another as denoted by an entry on the blockchain. Examples include, but are not limited to, the following:

- A) Direct transfers from one wallet or account to a different wallet or account, regardless of the ownership of each wallet; and
- B) Transfers done by intermediaries, including, but not limited to, financial planners, wealth management services, and banking institutions, on behalf of persons with whom the intermediary has agreements to facilitate the receipt of digital asset business activities.

- 2) Examples

EXAMPLE 1: Paul, an Illinois customer, wants to transfer digital assets from a wallet managed by a centralized exchange to a self-custody wallet that he independently manages. Paul contacts the centralized exchange to request the transfer and pays an exchange fee for the transaction. Because the transfer is completed by the centralized exchange, a digital asset broker, for valuable consideration, the transfer would be subject to the tax.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

EXAMPLE 2: John, an Illinois customer, has digital assets stored in multiple custodial wallets managed by Coin Exchange. John logs into his Coin Exchange account to transfer 100 MoonCoins from his personal Coin Exchange wallet into his business Coin Exchange wallet. Coin Exchange charges an exchange fee for the transaction. Even though the transfer is between two accounts both owned by John, since there is a denotation on the blockchain indicating the transfer and the transfer was completed by a digital asset broker for valuable consideration, the transfer is subject to the tax.

EXAMPLE 3: Fred, an Illinois customer, wants to transfer his MoonCoin for Kim's CoinSlop, both popular digital assets. Fred and Kim both have personal digital asset wallets not linked to any centralized exchange or other service provider. Fred transfers to Kim his MoonCoin using her wallet address, and Kim transfers to Fred her CoinSlop using his wallet address. Since neither transfer used a digital asset broker, neither transfer is subject to the tax.

EXAMPLE 4: Jane, an Illinois resident and customer of Trust Bank, maintains a variety of assets in her Trust Bank portfolio. Jane requests a transfer of 100 MoonCoins from her account into her sister's account, both at Trust Bank. Trust Bank maintains digital assets on behalf of all of its banking customers in a common custodial wallet maintained by Coin Exchange. Trust Bank updates the balances of each account to reflect the transfer of funds. The MoonCoins, however, remain stored in Trust Bank's common custodial wallet, and no updates are made to the blockchain. Because this transaction only involved the documentation of digital assets being attributed to a customer without any movement of the digital assets as denoted by an entry on the blockchain, the transaction is not subject to the tax.

EXAMPLE 5: Cucumber Investment, an Illinois digital asset brokerage, owns a large quantity of digital assets as part of their business model. They frequently transfer to and receive digital assets from large institutional customers in the course of their business. If Cucumber Investment transfers 10,000 units of a digital asset directly to a customer, without the use of an intermediary or other digital asset broker, this would be considered a peer-to-peer transaction. This transaction would not be subject to the tax so long as there is no valuable consideration for the transaction.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

EXAMPLE 6: Coin Exchange, a digital asset broker, holds large amounts of digital assets in both their “hot wallet” and “cold wallet”, with the hot wallet holding assets in faster trading and more immediate transactions, and cold wallet acting as their treasury for long-term holdings. Like traditional financial institutions, Coin Exchange balances their wallets in the course of their business as assets flow in and out from customer use. If Coin Exchange transfers assets in or out of their wallets in the course of balancing their holdings and treasury, those transactions could be taxable if the criteria under 86 Ill. Adm. Code 497.115(a) are completely met.

- d) Storage
 - 1) The storage of digital assets is comprised of the managed custody of digital assets, for consideration, by a third-party digital asset broker for a customer.
 - 2) Generally, the storage of a digital asset occurs in conjunction with the exchange or transfer of the digital asset. For example, a customer could exchange fiat currency for a digital asset through a digital asset exchange to be stored in the customer's custodial wallet managed by the exchange, all for one transaction fee. In such a bundled sale of digital asset business activity, only one movement on the blockchain occurs. As such, the storage is incidental to the transfer or exchange which required the movement on the blockchain. In this situation, only one taxable event occurs.
 - 3) Storage is taxed whenever consideration is paid specifically for the digital asset business activity of storage. The storage of a digital asset is taxable one time regardless of the duration of the storage as no further movement of the digital asset on the blockchain has occurred. Additional payments for storage do not create a taxable event under the Act unless further movement of the asset occurs. If consideration is paid for multiple services that include storage, there will only be one taxable moment for purposes of the tax. The tax imposed on storage of digital assets will only apply again if subsequent consideration is paid for the continued storage of the digital asset and will only be imposed one time for the provision of storage separate from the bundled transaction.
 - 4) Examples include, but are not limited to, the following:
 - A) Transfer into storage for a transaction fee followed by subscription fee for storage; There is one taxable event for the initial transfer,

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

and a one-time taxable event for the next payment of consideration specifically covering storage; and

- B) Free transfers or exchanges of digital assets into a custodial wallet maintained by an exchange, with valuable consideration paid for subsequent storage.

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.115 Tax Imposed

- a) *Beginning January 1, 2027, a tax is imposed upon the privilege of receiving any digital asset business activity by a customer in this State at the rate of 0.2% of the value of the digital asset to which the digital asset business activity relates. It shall be the duty of the digital asset broker making or effectuating the sale of the digital asset business activity to collect the tax provided by Section 3-20 of the Act on each sale. [35 ILCS 195/3-20]. To be a taxable event under the Act, a transaction must:*
 - 1) involve an Illinois customer;
 - 2) include that customer's receipt of digital asset business activity;
 - 3) be in exchange for valuable consideration; and
 - 4) be conducted by a "digital asset broker".
- b) *Meaning of "customer".*
A "customer" is a person receiving digital asset business activity from a digital asset broker for valuable consideration. For purposes of sales of digital asset business activities, "customer" includes persons who arrange for the receipt of digital asset business activities through agreements with intermediaries not meeting the definition of "digital asset broker", including financial planners, wealth management services, and banking institutions.
- c) Taxable transactions under the Act must involve the receipt of "digital asset business activity" as defined in Section 497.110. The activity must be denoted by an entry on a blockchain network to be a taxable event under the Act.
- d) "Valuable consideration" is any charges and fees that are charged by digital asset brokers for the effectuating of services that allow for the exchange, transfer, or storage of digital assets. Such charges and fees include exchange fees, subscription fees, and other charges imposed by digital assets brokers for

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

maintenance of their exchange, processing transactions across their network, and other operational costs. Valuable consideration does not include gas fees, network fees, and other fees directed towards blockchain mining, staking, and validation activities, swap fees dedicated to blockchain network maintenance, and other fees that are not imposed and/or captured solely for digital asset brokers.

- e) "Digital asset broker" is any person who, for consideration, is responsible for regularly providing any service effectuating transfers of digital assets on behalf of another person.
- 1) Digital asset brokers include, but are not limited to, the following:
 - A) centralized exchanges;
 - B) decentralized finance exchanges that collect protocol fees or other fees imposed and collected for the exchange itself; and
 - C) custodians, broker-dealers, digital payment processors, and other entities who manage and directly keep custody of digital assets on behalf of their customer in dedicated wallets.
 - 2) Digital asset brokers do not include the following:
 - A) decentralized finance exchanges and other peer-to-peer platforms that collect swap fees dedicated solely to liquidity pools;
 - B) entities and persons that offer digital asset business activity services who themselves have no digital asset business activity service capabilities, and offer those services strictly through the use of a third party; and
 - C) issuers of digital assets, who only have the function of creating newly minted digital asset stock and have no additional digital asset business activity capabilities.
 - 3) Retailers in Illinois who accept digital assets as a form of payment for their goods and services are not considered digital asset brokers for purposes of this tax and shall not charge this tax to their retail customers. Retailers are the recipient of digital assets in both of the relevant transactions regarding their retail business; the transaction involving themselves and their retail customers (the transfer of digital assets from customer to retailer), and the transaction between themselves and their

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

digital asset payment processor (the exchange of digital assets for the retailer's local fiat currency).

- f) The tax is imposed *at the rate of 0.2% of the value of the digital asset* being exchanged, transferred, or stored. The value of the digital asset must be determined at the time the digital asset business activity is completed. Benchmark rates established by a regulated market data provider may be used to determine the value of an asset subject to the tax.
- g) *The tax imposed in Section 3-20 of the Act shall be in addition to all other occupation or privilege taxes imposed by the State of Illinois or by any municipal corporation or political subdivision thereof. [35 ILCS 195/3-20]*
- h) *The tax imposed in Section 3-20 of the Act is not imposed upon the privilege of engaging in any business in Interstate Commerce or otherwise, which business may not, under the Constitution and Statutes of the United States, be made the subject of taxation by this State. [35 ILCS 195/3-20].*
- i) *The tax imposed in Section 3-20 of the Act is not imposed on the providing of services to the United States or any agency or instrumentality thereof. [35 ILCS 195/3-20].*

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.120 Collection of Tax

- a) *Any digital asset broker maintaining a place of business in this State shall collect the tax imposed by the Act from the customer at the rate stated in Section 3-20 for the privilege of receiving digital asset business activity in this State and shall remit the tax to the Department as provided in Section 3-40 of the Act. Any such digital asset broker shall be liable for the tax whether or not the tax has been collected by the digital asset broker. To the extent that a digital asset broker that is required to collect the tax imposed by the Act has actually collected that tax, such tax is held in trust for the benefit of the Department. [35 ILCS 195/3-35]*
- b) *All digital asset business activities provided to a customer that are subject to tax under the Act are presumed subject to tax collection. Digital asset brokers shall collect the tax from customers by adding the tax to the amount of the purchase price received from the customer for the digital asset business activity subject to tax under the Act. The tax imposed by the Act shall, when collected, be stated as a distinct item separate and apart from the purchase price of the digital asset business activity subject to tax under the Act. [35 ILCS 195/3-35]*

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- c) *Every digital asset broker shall, when collecting the tax as provided in Section 3-20 of the Act from the customer, give to the customer, if demanded by the customer, a receipt for the tax paid. The receipt shall be sufficient to relieve the customer from further liability for the tax to which the receipt may refer. [35 ILCS 195/3-35]*
- d) *The tax imposed by the Act shall constitute a debt of the customer to the digital asset broker who provides such taxable activity until paid, and, if unpaid, is recoverable at law in the same manner as the original charge for such taxable activity. [35 ILCS 195/3-35]*
- e) *If any digital asset broker erroneously collects tax or collects more from the customer than the customer's liability for the sale, the customer shall have a legal right to claim a refund of such amount from such digital asset broker. However, if such amount is not refunded to the customer for any reason, the digital asset broker is liable to pay such amount to the Department. [35 ILCS 195/3-35]*
- f) *Any person purchasing a digital asset business activity subject to tax under the Act as to which there has been no charge made to the customer of the tax imposed by Section 3-20 shall make payment of the tax imposed by Section 3-20 in the form and manner provided by the Department not later than the 20th day of the month following the month of payment for the digital asset business activity. [35 ILCS 195/3-35]*

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.125 Sourcing

- a) As used in Section 3-25 of the Act, the term "in this State" means at a physical location within this State for a sale occurring in person. For a sale occurring electronically or by phone, there shall be a rebuttable presumption that the customer requesting digital asset business activity is located in this State if the customer's contact information associated with a device or account on record with or available to a digital asset broker indicates:
 - 1) an Illinois home or business address;
 - 2) an Illinois mailing address;
 - 3) an Illinois internet protocol address; or

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- 4) data showing a "place of primary use" in Illinois, with place of primary use meaning the street address representative of where the customer's digital asset business activity primarily occurs.
- b) In determining the sourcing of a digital asset business activity transaction, the transaction should be sourced to the customer requesting the digital asset business activity from a digital asset broker. In the case of a person requesting digital asset-related business activity from an intermediary acting as an agent on the customer's behalf, even though the intermediary ultimately interfaces with a digital asset broker for digital asset business activity the transaction is sourced to the intermediary's customer for purposes of the tax.
- c) Documentation required by federal agencies in their regulation, enforcement, and oversight of digital asset brokers that indicates validated digital asset business activity customer location information may be used by digital asset brokers in this State showing that a customer is or is not located in this State for purposes of the tax.
- d) Examples

EXAMPLE 1: An Illinois customer makes an account through CoinHome, a centralized exchange that offers a suite of digital asset services and products. As part of onboarding and due to "know-your-customer" federal requirements, CoinHome must collect a W-9 IRS Form from their Illinois customer indicating their identity and primary address. For purposes of this tax, using the W-9 Form to determine whether the customer is an Illinois customer or not would satisfy the requirements of this Section.

EXAMPLE 2: Central Community Bank, a bank headquartered and conducting business out-of-state, decides to offer digital asset services and products to its customers. An Illinois bank customer requests to obtain \$200 in BitDollar, a popular digital asset. Central Community Bank, on behalf of their customer, furnishes the BitDollar from centralized exchange CoinHome, with CoinHome managing and having custody of the digital assets on behalf of Central Community Bank. Central Community Bank's Illinois customer would be the customer for the purpose of this transaction because Central Community Bank is acting as an agent for its Illinois customer.

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.130 Registration of Digital Asset Brokers

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- a) *It shall be unlawful for any person to engage in business as a digital asset broker in this State without a certificate of registration from the Department. A digital asset broker shall register with the Department, and application for a certificate of registration shall be made to the Department by electronic means. [35 ILCS 195/3-30]*
- b) Any person who engages in such business is required to apply to the Department for a Certificate of Registration. The application to register must be made on a form prescribed and furnished by the Department for that purpose. Applications to register may be found and must be submitted electronically on the Department's website at www.tax.illinois.gov.
- c) Each application shall be signed and verified and shall state:
 - 1) the name and employer identification number or social security number of the applicant;
 - 2) the address of the digital asset broker's principal place of business;
 - 3) the address of the place of business from which the digital asset broker engages in digital asset business activity in this State and the addresses of all other places of business, if any (enumerating such addresses, if any, in a separate list attached to and made a part of the application) from which the digital asset broker engages in digital asset business activity in this State;
 - 4) the name, address, and social security number of the person or persons who will be responsible for filing returns and payment of taxes due under the Act;
 - 5) in the case of a publicly traded corporation, the name and title of the Chief Financial Officer, Chief Operating Officer, and any other officer or employee with responsibility for preparing Tax returns; and, in the case of all other corporations, the name, title, and social security number of each corporate officer;
 - 6) in the case of a limited liability company, the name, social security number, and FEIN of each manager and member;
 - 7) in the case of a partnership, the name, social security number, and FEIN of each partner;

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- 8) in the case of a sole proprietorship, the name and social security number of the natural person; and
- 9) any other information as the Department may reasonably require.
- d) Upon completion, in proper form, of the application for certificate of registration, the Department will issue to the applicant a certificate of registration that shall permit the person to whom it is issued to engage in digital asset business activities in this State. If an applicant engages in digital asset business activities at another location in this State, the Department will furnish them with a sub-certificate of registration for that place of business, and the applicant shall display the appropriate sub-certificate of registration at that place of business. The sub-certificate of registration will bear the same registration number as that appearing upon the certificate of registration to which the sub-certificate relates.
- e) Certificates of registration are valid for one year after issuance, unless the Department revokes, cancels, or suspends the certificate of registration. A certificate of registration shall automatically be renewed, subject to revocation as provided by Section 497.135, for an additional one year from the date of its expiration, unless otherwise notified by the Department as provided by this Section.
- f) Certificates of registration shall not be issued to any person in default to the State of Illinois for money due under the Act or any other tax administered by the Department. When a taxpayer to whom a certificate of registration is issued under the Act is in default to the State of Illinois for delinquent returns or for moneys due under the Act or any other State tax law or municipal or county ordinance administered or enforced by the Department, the Department shall, not less than 60 days before the expiration of the certificate of registration, give notice to the taxpayer to whom the certificate was issued:
 - 1) of the account period of the delinquent returns;
 - 2) of the amount of tax, interest, and penalty due and owing from the taxpayer; and
 - 3) that the certificate of registration shall not be automatically renewed upon its expiration date unless the taxpayer, on or before the date of expiration, has filed and paid the delinquent returns or paid the defaulted amount in full.
- g) The Department may, in its discretion, approve renewal by a taxpayer who is in default if, at the time of renewal, the taxpayer files all of the delinquent returns or

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

pays to the Department the percentage of the defaulted amount as may be determined by the Department and agrees in writing to a payment plan for paying the balance of the defaulted amount.

- h) The Department may refuse to issue, reissue, or renew a certificate of registration to any applicant or certificate holder if a person who is named as the owner, a partner, a corporate officer, or, in the case of a limited liability company, a manager or member, of the applicant on the application for the certificate of registration is or has been named as the owner, a partner, a corporate officer, or in the case of a limited liability company, a manager or member, on the application for the certificate of registration of a person that:
 - 1) is in default for moneys due under the Act or
 - 2) fails to file any return, on or before the due date prescribed for filing that return (including any extensions of time granted by the Department), that the person is required to file under the Act or any other tax or fee Act administered by the Department. [35 ILCS 195/3-30(c) and 20 ILCS 2505/2505-380]
- i) *Any person aggrieved by any decision of the Department under this Section may, within 30 days after notice of the decision, protest and request a hearing. After receipt of the request for a hearing, the Department will give notice to the person of the time and place fixed for the hearing, will hold a hearing, and will issue its final administrative decision in the matter to the person. In the absence of a protest within 30 days, the Department's decision will become final without any further determination being made or notice given. [35 ILCS 195/3-30]*

(Added at 50 Ill. Reg. ____, effective _____)

Section 497.135 Revocation of Certification of Registration

- a) The Department may, after notice and a hearing as provided in the Act, revoke the certificate of registration of any person who commits any of the following:
 - 1) violates any of the provisions of the Act or the rules promulgated under this Part 497;
 - 2) fails to file a return;
 - 3) Fails to pay the tax, fee, penalty, or interest shown in a filed return; or

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- 4) Fails to pay any final assessment of tax, fee, penalty, or interest, as required by the Act or any other tax or fee Act administered by the Department. [20 ILCS 2505/2505-380(a)]
- b) Before revocation of a certificate of registration the Department shall, within 90 days after non-compliance and at least 7 days prior to the date of the hearing, give the person so accused notice in writing of the proposed revocation, and on the date designated shall conduct a hearing upon this matter. The lapse of the 90-day period shall not preclude the Department from conducting revocation proceedings at a later date if necessary.
- c) A person permitted by Section 497.130 to operate as a digital asset broker under a certificate of registration issued pursuant to the Act must cease engaging in digital asset business activity if the certificate of registration is revoked unless and until the digital asset broker obtains a certificate of registration issued pursuant to the Act.

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.140 Return and Payment of Tax

- a) *Each digital asset broker shall make a return to the Department on or before the 20th day of each month for the preceding calendar month stating the following:*
 - 1) *the digital asset broker's name;*
 - 2) *the address of the digital asset broker's principal place of business;*
 - 3) *the digital asset broker's registration number;*
 - 4) *the amount of digital asset business sales made by the digital asset broker during the preceding calendar month;*
 - 5) *the amount of any credits;*
 - 6) *the amount of tax due, computed as set forth in this Act;*
 - 7) *the signature of the digital asset broker; and*
 - 8) *such other information as the Department may reasonably require.* [35 ILCS 195/3-40]

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- b) *All returns required to be filed and payments required to be made under the Act shall be by electronic means in the form and manner authorized by the Department. [35 ILCS 195/3-40]*
- c) *Any amount that is required to be shown or reported on any return or other document under the Act shall, if such amount is not a whole-dollar amount, be increased to the nearest whole-dollar amount if the fractional part of a dollar is \$0.50 or more and decreased to the nearest whole-dollar amount if the fractional part of a dollar is less than \$0.50. If a total amount of less than \$1 is payable, refundable, or creditable, such amount shall be disregarded if it is less than \$0.50 and shall be increased to \$1 if it is \$0.50 or more. [35 ILCS 195/3-40]*
- d) *Final Return. A digital asset broker who ceases to engage in the kind of business which makes the person responsible for filing returns under the Act shall file a final return under the Act with the Department not more than one month after discontinuing such business. [35 ILCS 195/3-40]*
- e) *Returns must be signed by the broker. If a digital asset broker fails to sign a return within 30 days after the proper notice and demand for signature by the Department is received by the digital asset broker, the return shall be considered valid, and any amount shown to be due on the return shall be deemed assessed. [35 ILCS 195/3-40]*

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.145 Claims and Credit Memoranda

- a) *If any payment provided for in Section 3-40 of the Act exceeds the digital asset broker's liabilities under the Act, as shown on an original monthly return, the Department shall, if requested by the digital asset broker, issue to the digital asset broker a credit memorandum no later than 30 days after the date of the request. The credit evidenced by such credit memorandum may be assigned by the digital asset broker to a similar digital asset broker under the Act, in accordance with reasonable rules and regulations to be prescribed by the Department. If no such request is made, the digital asset broker may credit such excess payment against tax liability subsequently to be remitted to the Department under the Act, in accordance with reasonable rules and regulations prescribed by the Department. If the Department subsequently determines that all or any part of the credit taken was not actually due to the digital asset broker, that digital asset broker shall be liable for penalties and interest on such difference. [35 ILCS 195/3-40]*
- b) **Filing of Claims**

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- 1) Claims for credit shall be prepared and filed electronically upon forms provided by the Department and available at www.tax.illinois.gov. Each claim shall state:
 - A) the name and principal business address of the claimant;
 - B) the period covered by the claim;
 - C) the total amount of credit claimed, giving in detail the amount of digital assets on which the tax was imposed and the corresponding digital asset business activities reported as the basis for filing returns in the period covered by the claim;
 - D) the total amount of tax paid for each return period;
 - E) digital assets upon which tax liability is admitted for each return period;
 - F) the tax due for each return period as corrected;
 - G) the amount of credit claimed for each return period;
 - H) reason or reasons why the amount, for which the claim is filed, is alleged to have been paid in error;
 - I) a list of the evidence (documentary or otherwise) which the claimant has available to establish it has borne the burden of the tax for which the claimant seeks credit) payments or parts thereof (if any) included in the claim and paid by the claimant under protest;
 - J) sufficient information to identify any suit which involves the Act, and to which the claimant is a party; and
 - K) such other information as the Department may reasonably require.
- 2) Where the claimant is a corporation, the claim filed on behalf of such corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of such corporation. Where the claimant is a limited liability company, the claim filed must be signed by a member, managing member or properly accredited agent of the limited liability company. Where the claimant is a partnership, the claim filed must be signed by a partner or properly accredited agent of the

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

partnership. Where the claimant is a sole proprietor, the claim filed must be signed by the sole proprietor or properly accredited agent of the sole proprietorship.

- 3) A claim for credit shall be considered to have been filed with the Department on the date upon which it is received by the Department by electronic submission.
 - 4) Upon receipt of any claim for credit filed under the Act, any officer or employee of the Department, authorized in writing by the Director of Revenue to acknowledge receipt of such claims on behalf of the Department, shall execute on behalf of the Department, and shall deliver electronically to the claimant or its duly authorized agent, a written receipt, acknowledging that the claim has been filed with the Department, describing the claim in sufficient detail to identify it and stating the date upon which the claim was received by the Department.
 - 5) Such written receipt shall be prima facie evidence that the Department received the claim described in such receipt and shall be prima facie evidence of the date when such claim was received by the Department.
 - 6) In the absence of such a written receipt, the records of the Department as to when the claim was received by the Department, or as to whether or not the claim was received at all by the Department, shall be deemed to be prima facie correct upon these questions in the event of any dispute between the claimant (or its legal representative) and the Department concerning these questions.
- c) Verified credit – explanation – no interest paid. A verified credit is an amount of tax overpaid in a prior period that may be rolled over and applied to subsequent tax liabilities without the need to comply with the formalities involved in submitting a claim for credit. Since the taxpayer has the immediate use of the verified credit to apply against its liability without the need to file a claim for credit and prove the overpayment, interest is not paid on verified credits. (See also, 86 Ill. Adm. Code 700.230(a)(2)). Verified credits appear on a taxpayer's Statement of Account.
- d) Verified credit – How used. A verified credit may be used by a taxpayer in only three ways:
- 1) It can be used to offset liability of the taxpayer that arises under the Act subsequent to the origination of the verified credit;

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- 2) It can be converted to a credit memorandum no later than 30 days after the date of overpayment, by making a request to the Department using forms prescribed by the Department and available at the Department's website. Interest is not paid on verified credits that are converted to credit memoranda in accordance with this subsection (d)(2); and
- 3) It can be converted to a credit memorandum at any time, starting 30 days after the date of overpayment, by making a request to the Department using forms prescribed by the Department and available the Department's website. Interest is not paid on verified credits that are converted to credit memoranda in accordance with this subsection (d)(3).
- e) A verified credit that is converted to a credit memorandum under this Section may be assigned to another taxpayer in the same manner as other credit memoranda issued to taxpayers by the Department.

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.150 Disposition of Credit Memoranda by Holders Thereof

- a) Assignment of Credit Memoranda
 - 1) Credit Memoranda issued in accordance with the provisions of Section 497.145 of this Part may be assigned or transferred only after a request for that purpose is filed with the Department upon forms prescribed and furnished by it, and subject to the following conditions:
 - A) that the assignment is made to a person who is subject to the Digital Asset Tax Act;
 - B) that there is no proceeding pending to assess tax, interest, or penalty against the assignor pursuant to notice given of the Department's proposal to assess tax, penalty, or interest against the assignor under the Act; and
 - C) that there is no established tax, interest, or penalty that is due from the assignor under the Act.
 - 2) If there is a tax, interest, or penalty due from the assignor under the Act, the amount of the credit must first be applied, to the extent necessary,

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

against the tax, interest, or penalty that is due. Notice shall be given to the claimant-assignor by the Department.

- 3) If there are no tax, penalties, or interest due from the claimant-assignor, and there are no pending proceedings to establish tax, penalty or interest due against the claimant-assignor, provided that the contemplated assignee is a person who is subject to the Act, the request for leave to assign shall be approved, the original credit memorandum shall be cancelled, and a new credit memorandum shall be issued to the assignee in the amount shown on the canceled memorandum. Where the credit balance is in an amount less than \$10, the Department may issue a refund to the claimant-assignor in lieu of approving the assignment and issuing of a credit memorandum to the assignee.
 - 4) If there is tax, interest, or penalty due from the assignee under the Act, the amount of the credit shall be applied, to the extent necessary, to any tax liability, interest, or penalty due from the assignee under the Act. A credit memorandum for the balance of the credit, if any, shall then be issued to the assignee, provided there are no proceedings pending against the assignee to establish tax, interest, or penalty due against the assignee under the Act. Where the balance of the credit is less than \$10, a refund may be issued to the assignee in lieu of a credit memorandum.
 - 5) If a proceeding is pending to establish tax, interest, or penalty due under the Act against the assignee, the assignment of credit memorandum or refund shall be held by the Department until such proceeding culminates in a final disposition. If such proceeding results in the issuance of a final disposition ordering an assessment of tax, penalty or interest, the credit or refund shall be applied by the Department, to the extent necessary, to any tax, interest, or penalty due as a result of the proceeding, and any remaining balance of the credit or refund, shall be issued in the form of a new credit memorandum or refund and delivered to the assignor for transmittal to the assignee.
- b) Submission of Credit Memoranda With Tax Returns
- 1) Credit memoranda, in the hands either of the original claimant or of the claimant's assignee, may be submitted to the Department, along with tax returns, in payment of any tax, penalty, or interest under the Digital Asset Tax Act, incurred by the holder of such credit memoranda.

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- 2) If, after applying a credit memorandum against the tax shown to be due by the tax return with which the credit memorandum is submitted, there is a remaining credit balance, the Department shall cancel the credit memorandum submitted with the return and issue to the taxpayer a new credit memorandum for such balance. This process will be followed until the credit, to which such taxpayer is entitled, is exhausted, except that in the event the credit balance drops to an amount less than \$10, the Department may issue a refund of the credit balance to the taxpayer in lieu of a credit memorandum.
- 3) However, any new credit memorandum or refund, which is issued for a balance of credit due the taxpayer after applying the amount of a credit memorandum to the payment of current taxes, is subject to the satisfaction of prior tax, interest, or penalty due to the Department to the same extent that such satisfaction of prior tax, interest, or penalty due takes precedence when a credit memorandum is first issued (see Section 497.145 of this Part) or when leave to assign a credit memorandum is requested (see subsection (a)).

(Source: Added at 50 Ill. Reg. ____, effective ____)

Section 497.155 Books and Records

- a) *Every digital asset broker required to file a return under the Act shall keep books, records, papers, and other documents that adequately reflect digital asset business activity sold in this State, including the information used in calculating the amount of tax due. Digital asset brokers are required to maintain records as needed to determine the location of a sale of digital asset business activity pursuant to Section 3-25 of the Act. [35 ILCS 195/3-45] Documentation must contain the following information:*
 - 1) The amount of each digital asset subject to tax under the Act and the corresponding digital asset business activity pertaining to that asset;
 - 2) The amount of consideration paid for each digital asset business activity;
 - 3) Account information sufficient to show the movement of digital assets including private keys;
 - 4) Information to determine the place of primary use of a digital asset business activity customer, including:

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- a) Physical address on file with the digital asset broker;
 - b) IP address used in the purchase of digital asset business activity;
 - c) IRS Form W-9 signed by the digital asset business activity customer.
- b) *Books, records, papers, and documents that are required by Section 3-45 of the Act to be kept shall, at all times during the usual business hours of the day, be subject to inspection by the Department or its duly authorized agents and employees. The books, records, papers, and documents for any period with respect to which the Department is authorized to issue a notice of tax liability shall be preserved until the expiration of that period. [35 ILCS 195/3-45]*

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.160 Violations and Penalties; Interest

- a) The provisions of the Uniform Penalty and Interest Act [35 ILCS 735] that are not inconsistent with the Act apply to the enforcement of the Act. See Section 3-1A of the Uniform Penalty and Interest Act.
- b) *Any digital asset broker who fails to file a return, or who violates any other provision of the Act, or who fails to keep books and records as required by the Act, or who files a fraudulent return, or who willfully violates any rule or regulation of the Department for the administration and enforcement of the provisions of the Act is guilty of a Class 3 felony.*
- c) *Any officer or agent of a corporation or manager, member, or agent of a limited liability company subject to the Act who signs a fraudulent return filed on behalf of such corporation or limited liability company, or any accountant or other agent who knowingly enters false information on the return of any taxpayer under the Act is guilty of a Class 3 felony.*
- d) *A prosecution for any act in violation of Section 3-55 of the Act may be commenced at any time within 5 years of the commission of that act. [35 ILCS 195/3-55]*

(Added at 50 Ill. Reg. ____, effective ____)

Section 497.165 Administration and Enforcement

DEPARTMENT OF REVENUE

NOTICE OF PROPOSED RULE

- a) The Department shall have full power to:
 - 1) administer and enforce this Act;
 - 2) to collect all taxes and penalties due hereunder;
 - 3) to dispose of taxes and penalties so collected in the manner herein provided; and
 - 4) to determine all rights to credit memoranda, arising on account of the erroneous payment of tax or penalty hereunder.
- b) In the administration of, and compliance with, this Act, the Department and persons who are subject to the Act shall have the same rights, remedies, privileges, immunities, powers, and duties, and be subject to the same conditions, restrictions, limitations, penalties, and definitions of terms, and employ the same modes of procedure, as are prescribed in Sections 4, 5, 5a, 5b, 5c, 5d, 5e, 5f, 5g, 5i, 5j, 6b, 6c, 8, 9, 10, and 11 of the Retailers' Occupation Tax Act, which are not inconsistent with the Act, as fully as if those provisions were set forth herein. References in the incorporated Sections of the Retailers' Occupation Tax Act to retailers, to sellers, or to persons engaged in the business of selling tangible personal property mean digital asset brokers when used in the Act. References in the incorporated Sections to sales of tangible personal property mean sale of digital asset business activity subject to tax under the Act when used in the Act.

(Added at 50 Ill. Reg. ____, effective ____)