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THE PROPOSED TAX CONSEQUENCES OF BLOCKCHAIN FORKS

MARISARA MELÉNDEZ TORRES*†

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I. INTRODUCTION

On August 1, 2017, the software that runs the Bitcoin network was modified prospectively, causing a software spinoff or split that resulted in a separate blockchain with new rules and a shared history with the original Bitcoin blockchain ("BTC"). This spinoff is known as a hard fork. The newly created blockchain is the

* Marisara Meléndez Torres has been a liscensed attorney since 2000. She obtained her undergraduate degree from Clark University in Worchester, MA where she completed a double mayor in comparative history and public administration. She has also obtained an L.L.B. degree, as part of a joint-degree program from the University of Barcelona. She is an active member of the legal community in Puerto Rico and is recognized in the field for her expertise in Blockchain technology, and its potential legal and tributary implications. Meléndez Torres has also given lectures and conferences regarding the federal regulations of cryptocurrency.

† This document came about after a year-long collaboration amongst the Block Legal LLC attorneys and other valuable contributors. However, the opinions expressed in it are my own. This document is not financial or tax advice. In fact, the opinions expressed go against the current IRS rules in regard to cryptocurrency taxation.

cryptocurrency Bitcoin Cash ("BCH"). All BTC holders prior to the spinoff automatically received the corresponding rights in the forked chain, effectively granting them an equivalent amount of BCH.[1]

As of 2019, the IRS determined that a hard fork constitutes a realization event, asserting that the coins assigned to legacy coin holders are "received" and therefore subject to taxation as ordinary income.[2] However, this conclusion reflects a fundamental misunderstanding of blockchain technology and its implications for taxation. The inability of the government to accurately classify these transactions hinders its ability to regulate and tax cryptocurrency assets effectively.

While it is true that this particular hard fork –BCH– may have benefited some pre-hard fork holders of bitcoin, this purported windfall is not a predetermined characteristic of hard forks and thus, we argue that the subsequent exposures to the forked chain cannot be taxable events. Most importantly, any gain or loss from the sale or disposition of such forked rights should be treated as a capital gain or loss, not as ordinary income.

Attorneys, advisors, and ultimately the government needs to consider the insuppressible and parasitic nature of fork formation in a blockchain. Scrutiny of this asset class suggests that blockchains may have more likeness to natural phenomena than to traditional financial assets. Consequently, the appropriate tax treatment of this asset class may well be guided by the treatment of appurtenant water rights as it was in *Gladden v. Comm'r*, 262 F.3d 851, (9th Cir. 2001).

II. FORKS ARE INHERENT TO BLOCKCHAINS

Forks are an inherent characteristic of blockchain technology. They are organic or inseparable from the asset itself; and, thus, buying rights in a blockchain exposes taxpayers to every fork that is borne from that chain. The protocol can be modified by any user at any time. The result of the modification cannot be

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[1]A hard fork is a modification of the blockchain protocol that renders the resulting software incompatible with the original blockchain. A soft fork is an upgrade in the blockchain protocol that remains compatible with the existing blockchain. In short, a soft fork is backward compatible, and a hard fork is not. *Blockchain Council,* October 12, 2022, https://www.blockchain-council.org/blockchain/soft-fork-vs-hard-fork (last visit on June 18th, 2024).

[2] Rev. Rul. 2019-24, at 5, https://www.irs.gov/pub/irs-drop/rr-19-24.pdf (last visit on April 1, 2024).

anticipated; they could add value to the original chain holder or likewise be a hacking attempt. In fact, ownership of the forked coin will depend on the specific rules and distribution mechanisms implemented by the forked blockchain. The potential quantity of forks in a popular blockchain, the publicity or lack thereof of the forks created, and the dangers or limitations in attempting to take hold –dominion and control– of the new asset make it nearly impossible for taxpayers to comply with the regulation.

Taxpayers would have to be aware of all the forks created in each of the blockchains in which they have rights. Further, they would have to know the distribution protocol implemented in each fork. Then, they would need to assess the value of their exposure. Presuming that they would need to sell some of the forked coins to be able to pay their taxes, they would have to follow protocol to take control of the new coins without jeopardizing the legacy ones. Finally, a market would have to have enough volume for an exchange into legal tender to be possible. Quite a feat that the IRS expects from coin hold. The description of the steps that must be taken to actually take hold of the asset should start impressing upon the reader the inexistence of possession at the point of creation of the "hard fork." There are just too many unknowns for tax regulation to stand unchallenged.

III. The Bitcoin Cash Hard Fork

The BCH fork caused great waves in the bitcoin community as it was backed by owners and miners with much sway and outstanding technological advantages within this space. The crux of the issue was the size of the blocks which if increased lead to faster cheaper transactions in exchange for security and decentralization. The proponents of larger blocks –32MB vs. 1MB blocks– did not convince the bitcoin community to change the Bitcoin protocol. So, when the larger blocks advocates activated their new protocol, they did not upgrade Bitcoin, they forked the Bitcoin blockchain. The new coin was born; its origin was identical to its predecessor but from that point on, different and incompatible with it.

Because of the attention and controversy surrounding BCH, it was actively traded in futures markets before it was even launched.[3] As a result, it entered the market with an established value, a rarity among forked cryptocurrencies. It's important to note that most forks do not follow this pattern, nor do they carry the same level of publicity. The high visibility of BCH made it an outlier and, therefore, an unreliable basis for broad tax regulation. This hard fork may have created the impression that all hard forks could be known and quantified, valued and transacted on. However, this is not the case and therefore, BCH as an outlier is not the model upon which regulation should depend.

IV. Suggested Tax Treatment

The American Bar Association ("ABA") was one of the first to publish an opinion on how to pay taxes for the BCH hard fork.[4] The ABA asserted that the creation of a Hard Forks was a capital taxable event. In 2019, the IRS went further and declared the hard fork an ordinary income taxable event. Nonetheless, just before the 2018 tax season, the ABA advocated for a safe harbor solution in which the tax basis for the forked coin would be zero. Because the Association deemed the hard fork itself a realization event, the taxpayer would have to disclose their exposure to the newly minted coin.

Under their proposal, the disclosure would have been required regardless of the amount of tax liability to which each taxpayer would be exposed, even if the tax liability was zero. "This was a Solomonic determination that at the time would have had little tax consequence for taxpayers while arming the IRS with information to receive millions of dollars in tax revenue in the subsequent years. The logic behind it was that BCH would dramatically increase its value and the holders would have to pay capital gains upon a zero basis. However, a year later the IRS would decide that the hard fork was, in fact, a taxable event and that the taxpayers would have to pay ordinary income on this unsolicited property at a fair market value ("FMV").[5]

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[3] Approximately $400.00 USD in August 2017.

[4] American Bar Association Section of Taxation, *American Bar Association Section of Taxation Comments on the Tax Treatment of Hard Fork*s, March 19, 2018, https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/031918comments2.authcheckdam.pdf (last visit on April 1, 2024).

[5] Rev. Rul. 2019-24, *supra* note 4.

V. Hard Forks are not Free Money

The IRS uses the term “airdrop” to describe the distribution of cryptocurrency units following a hard fork, conflating two fundamentally different processes. Within the cryptocurrency community, airdrops typically refer to promotional giveaways designed to incentivize user adoption. In contrast, hard forks result in the creation of new blockchain assets, inherently linked to the original chain.[6] In its description the IRS acknowledges that “a hard fork followed by an airdrop results in the distribution of units of the new cryptocurrency to addresses containing the legacy cryptocurrency.”[7] Therefore, the hard fork airdrop is not a random windfall,[8] it is a direct consequence of having rights in the legacy blockchain.

Using the term “airdrop” for both sources of gain is an oversimplification with significant tax consequences. The airdrop as a marketing ploy requires an interested receiving party with a compatible wallet while the hard fork coin distribution is an unavoidable consequence of having rights in a blockchain that does not require any active participation from the receiving party. The act of unilaterally creating a hard fork in a blockchain challenges the concepts of “realization” and “undisputed possession.” The IRS code addresses the notion of “undisputed possession” when referring to treasure troves as gross income. Moreover, there is jurisprudence that defines how and when possession is undisputed.

However, if undisputed possession is an element of the realization of a gain or loss, and a hard fork does not guarantee possession, then how could it be ordinary income? The unexpected nature of a treasure trove added to the fact that treasures are not in any way a necessary consequence of a previously held asset make it a dissimilar asset to hard forks and thus, unreliable to guide taxation in the cryptocurrency asset class. The definition of gross income is purposely broad and encompassing. “Gross income means all income from whatever source derived which has been realized in any form […]”[9] In the IRS code, treasure troves are

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[6] Andrey Sergeenkov, *What is a Crypto Airdrop?*, COINDESK (May 11, 2023) https://www.coindesk.com/learn/what-is-a-crypto-airdrop/
[7] Rev. Rul. 2019-24, *supra* note 4, at 2
[8] *Windfall:* An unanticipated benefit, in the form of a profit and not caused by the recipient. Black's Law Dictionary (11th ed. 2019).
[9] “Gross income means all income from whatever source derived, unless excluded by law. Gross income includes income realized in any form, whether in money, property, or services. Income may be realized, therefore, in the form of services, meals, accommodations, stock, or other property, as well as in cash. […] Gross income, however, is not limited to the items so enumerated.” Internal Revenue Service, Treasury, 26 C.F.R. § 1.61-1.

included as an example of an item subject to taxation only when there is "undisputed possession" of the treasure.[10]

It is well established that income must be realized to be taxable. Presumptions of future gains are not subject to taxation.[11] A realized gain does not have to be cash, but to be realized one must have effective possession of the asset. In this regard the Supreme Court of the United States held that the language of Section 61(a) encompasses all "accessions to wealth, clearly realized, and over which the taxpayers have complete dominion."[12]

Possession, control, and dominion are determinative indicators of the time in which a taxpayer acquires a tax obligation. The landmark case *Commissioner v. Glenshaw Glass Co.,*[13] may be instructive in determining if the receipt of new cryptocurrency as a result of a fork results in a taxable event. The first prong of the Glenshaw Glass test is whether the taxpayer had an accession to wealth. The second prong requires that the taxpayer clearly realizes an accession to wealth. Realization occurs when the taxpayer receives the value of the property. The inability to take possession of the new coin may delay the realization event. The third and final prong of the test requires a taxpayer to have complete dominion and control of the new money or property.

In *Cesarini v. United States,*[14] Cesarini found money stuck inside a piano that had been purchased seven years earlier. Cesarini contended that if the money found constituted a realization of ordinary income under Section 61, it was due when the piano was purchased and not when the money was found.[15] The Government argued otherwise, and the court agreed that the tax obligation came about when the money was found, not when the piano was purchased. Further, the court discussed that "possession" must be guided by

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[10] "In addition to the items enumerated in section 61(a), there are many other kinds of gross income. [...] Treasure trove, to the extent of its value in United States currency, constitutes gross income for the taxable year in which it is reduced to undisputed possession." *Id.* at § 1.61-14.

[11] See *Helvering v. Horst*, 311 U.S. 112, 115- 116 (1940). In *Moore v. United States*, 36 F.4th 930 (9th Cir. 2022) the petitioners claimed issues regarding the 16th amendment and the IRS' ability to tax unrealized income. However, it is unlikely that the Supreme Court will modify the maxim that taxable income is that which is realized.

[12] *Commissioner of Internal Revenue v. Glenshaw Glass Co.,* 348 U.S. 426, 431 (1955).

[13] *Id.*

[14] Cesarini v. United States,296 F. Supp. 3 (1969).

[15] *Id.* The plaintiff in *Cesarini* argued:

> "[T]hat the $4,467.00 found in the piano is not includible in gross income under Section 61 of the Internal Revenue Code. (26 U.S.C. § 61), and, that if the treasure trove money is gross income for the year 1964, it was entitled to capital gains treatment under Section 1221 of Title 26." *Id.*

the law of the state in which the taxpayer resides or where the dispute center is located.[16] We contend that the mere creation of a hard fork does not equate to the undisputed possession of the forked coin. It follows that forked coins have to be accepted by the legacy coin holder before there is undisputed possession of the asset. It is inconsistent with the local legislation and its jurisprudence to equate a right to own an asset with the effective possession of it.[17]

In *Haverly vs. United States,*[18] a school official received free textbooks from publishing companies. Presumably, so that he could evaluate and choose them to be used in the classroom. Haverly gathered the books and donated them to the school library. On his tax return he took the charitable donation for the gifted property. The Seventh circuit said:

> [a]lthough the receipt of <u>unsolicited samples may sometimes raise the question of whether the taxpayer manifested an intent to accept the property or exercised "complete dominion" over it</u>, there is no question that this element is satisfied by the unequivocal act of taking a charitable deduction for donation of the property.[19] (Emphasis added)

With cryptocurrency the manifestation of acceptance will be clearer than in Haverly.[20] This is because to effectively possess forked coins, the holder must perform tasks that will identify when and how many coins were accepted. The IRS agrees, "[a] taxpayer does not have receipt of cryptocurrency when the airdrop is recorded on the distributed ledger if the taxpayer **is not able to exercise dominion and control** over the cryptocurrency."[21] (Emphasis added). As discussed, in *Cesarini v. United States*, the Government asserts that the money is taxable in the year it was actually found and not before. However, when it comes to cryptocurrency the IRS has concluded that a protocol assigning coins to legacy holders is the same as receiving an airdrop, "[a] hard fork is not always followed by an airdrop. Cryptocurrency from an airdrop generally is received on the date and at the time it is recorded on the distributed ledger."[22]

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[16] *Id.*
[17] In Puerto Rico, the landowner has the right to the fruits of the land. The Civil Code states that the fruits are attained when they separate from the plant, tree, or land. See 31 L.P.R.A. § 7871. (Translation supplied).
[18] *Haverly vs. United States,* 513 F.2d 224 (7th Cir. 1975)
[19] *Id.* at 226.
[20] *Id.*
[21] Rev. Rul. 2019-24, supra note 4 at 2.
[22] *Id.*

VI. The Act of Gaining Possession

The IRS agrees that hard forks are not coin "airdrops" as they are not free distribution of coins. A forked coin is not a free coin that was randomly dropped at a digital wallet. If a hard fork includes a coin distribution such as the BCH case, that in itself does not equate to receiving what was distributed. The BCH Hard Fork caused the pre-fork coin holders to be able to access the same number of rights to unspent transaction outputs (UTXOs)[23] in the new blockchain as they had in the BTC blockchain. A hard fork followed by an airdrop is the description according to the IRS. The IRS, however, does not allow for the possibility of an unrealized or unsuccessful airdrop. This is the case we discuss, because exercising this right is at the sole discretion of the taxpayer. If not exercised, the taxpayer would have never received anything; the forked coin could get lost forever in the blockchain. No gain or accession of wealth would ever be perceived. The mere privilege to access the rights in the blockchain falls short of what it means to be in "complete control and dominion" of the new asset. Simply put, the taxpayer has to either express an intent or actually exercise control and dominion over the forked coin. To do that, the taxpayer must reassign UTXOs from the original blockchain to the forked blockchain.[24] It is at that exact moment that the taxpayer takes possession of the newly created coin and thus, a realization event occurs because it is then that the coin becomes part of taxpayer wealth.

VII. An Unusual Analogy

Is this realization ordinary income or a capital gain? Ordinary income is usually associated with regular earnings like wages, business income, rent or interest. Capital gains come from selling capital assets. Participation or rights in a blockchain when exchanged for legal tender create a realization event that may

[23] The asset is a right or entitlement on the blockchain—a right to reassign Unspent Transaction Outputs (UTXOs). Technologically speaking, the term "coin" refers to an Unspent Transaction Output (UTXO), which represents the accumulated value that stakeholders can log, validate, and record in a transaction on the blockchain. Therefore, owning BTC means owning the right to use UTXOs and reassign them as one sees fit.

[24] The process entails having a wallet that carries both coins and for non-programmers using a third party such as trezor.com to guide you along. The reader may search "how do I claim forked assets" to understand that having the right to have a coin is not synonymous with possessing or holding a coin. An additional example of the process required to get hold of BCH may be found in Chat GPT 4o which offers six steps and three warnings to be able to access BCH for legacy coin holders.

generate gains or losses. If the participant –the coin holder– does not sell or exchange the coins there is no taxation event. The blockchain may be changed without intervention or knowledge of any of the entitled parties. All that a change requires is the desire and technological know-how of an honest or dishonest actor who decides to modify the rules of the chain. When this modification happens, a fork is created.

Forks can affect the value and can harm or threaten the safety of the UTXOs –the coins– without any recourse from the users and right holders of said chain.[25] This characteristic of a fork is what can make them more dangerous than desirable. Regardless of the positive or negative outcomes forks cannot be controlled by owners of the rights to the chain just as a mine owner cannot know if a newly dug or discovered tunnel will contain precious metals or if it will instead cause a complete collapse in the mine. The formation of a fork alone cannot be considered income even if it is accompanied by the right to distribution of the new UTXOs.

We consider fork formation more akin to natural phenomena than other income realizing events. We are not alone in suggesting that for tax purposes a fork is to the bitcoin blockchain as a calf to the cow, a mango tree to the land that it is rooted on, or water to the land it irrigates. None of these are taxable events and we contend that the creation of a hard fork ought not to be either.

Mary Conway, a partner in Davis Polk & Wardwell LLP's Tax Department in New York, disagreed with the ABA tax section's conclusion that a hard fork should be treated as a taxable event. Hard forks are inherent in cryptocurrency assets, and the purchaser buys into that from the beginning, Conway said. The only realization event that should occur is at the time the original or forked coin is sold, she said. Conway used the example of a farmer with a cherry tree as an analogy. A cherry tree is more valuable to the farmer when it produces cherries, but it always had the inherent ability to do so, she said. "The cherry tree is going to grow, it's going to produce branches, it's going to produce leaves, and it's going to produce cherries. And

[25] "Replay attacks are especially relevant in the context of blockchain technology and cryptocurrencies due to the distributed nature of their blockchain ledgers. When a hard fork occurs in a blockchain, the existing ledger splits into two – one running the legacy version of the software and the other running the updated version. This ledger split creates an environment where transactions processed on one ledger by a person whose crypto wallet was valid before the hard fork will also be valid on the other ledger. Consequently, an attacker could replicate the transaction and fraudulently transfer an identical number of cryptocurrency units to their account again, exploiting the vulnerability caused by the hard fork event." DeVries, Daniel, *Understanding Replay Attacks in the Cryptocurrency and Blockchain Ecosystem*, BLOCKSPOT (Jan. 23, 2024), https: //blockspot.io/understanding-blockchain-replay-attacks/.

the cherries could even be picked. But none of those things is a taxable event," Conway said. "The taxable event is the sale of the cherries."[26]

A blockchain may be copied, modified, upgraded (soft fork), and, ultimately, hard forked. When an individual holds a virtual coin, they are the owner of such 'property' inclusive of its characteristics and potential. Forks are in the nature of the blockchain as the cherry tree to the land. Something surprisingly similar happened in *Gladden v. Commissioner*[27] much before anyone could imagine this case could be useful to explain the capital gain characteristic of this newest of the new financial assets.

Gladden bought land with the expectation that water for irrigation would eventually come to the land. The purchased land eventually did get irrigation water and *Gladden* proceeded to **sell the irrigation rights but not the land**.[28] (Emphasis added). The Circuit Court confirmed the Tax Court's decision that the water rights were a capital asset and that the character of its proceeds were capital gains, not ordinary income. Both courts arrived at this conclusion based on 26 C.F.R. §§ 1.61-6(a) which states that:

> When a part of a larger property is sold, the cost or other basis of the entire property shall be equitably apportioned among the several parts, and the gain realized, or loss sustained on the part of the entire property sold is the difference between the selling price and the cost or other basis allocated to such part.[29]

Gladden treated the water rights as if there was a reasonable expectation that irrigation water would be a value gained on the land itself. Furthermore, both courts located the capital basis at the time when the original land was bought.[30]

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[26] Allyson Versprille, *Crypto 'Hard Forks' Tax Guidance Unlikely in Near Term: Lawyers, Bloomberg Industry Group,* BLOOMBERG TAX (Mar. 26, 2018) https://news.bloombergtax.com/daily-tax-report/crypto-hard-forks-tax-guidance-unlikely-in-near-term-lawyers.
[27] *Gladden v. Commissioner*, 262 F.3d 851 (9th Cir. 2001)
[28] *Id.* As bitcoin holders may sell the rights to BCH without it having any bearance on their rights in the bitcoin blockchain.
[29] 26 C.F.R. § 1.61-6 (2025).
[30] In *Gladden v. Commissioner*, *supra,* note 29, the taxpayers were partners in the partnership that purchased the land in 1976. At the time of the purchase, the land had no appurtenant water rights but was within the boundaries of an irrigation district formed to acquire water rights and distribute irrigation water in the area. In 1983 the partnership obtained water rights from the irrigation district since the land was eligible for irrigation water. In 1993 an agreement between the Federal government and the irrigation district allowed landowners to sell their water rights to the government without an accompanying sale of the land. The partnership sold the water rights and distributed a share of the proceeds to the taxpayers. On their 1993 tax return, the taxpayers reported their share of the sales price as capital gain and offset part of the gain by a portion of the original purchase price for the land that they claimed was paid for the expectation of the water rights. The Service disagreed with the taxpayers and determined that the proceeds from the sale of the water rights was ordinary income, with no offset for any amount paid for the expectancy in the water rights. The Tax Court held that the water rights were a capital asset, but that the taxpayers could not apply any of their tax basis in the land to the sale of water rights because the partnership had purchased the land before acquiring the water rights.

On appeal, the Ninth Circuit found that the water rights were not vested at the time the partnership purchased the land, but the purchase was made with a realistic expectation that water rights would eventually attach to the land and that expectation had a real economic value at the time of the purchase. Further, the Court found that the land was purchased at a premium based on the

Hard Forks are ultimately part of the "land." The forked coins are like the water rights in *Gladden* in that once a hard fork occurs and a forked coin is borne, such coin, for tax purposes, shall be treated as if it had been a part of the fruits from the original blockchain. It is in the nature of the blockchain to fork as it is in the nature of land to have fruit trees grow on it. Whether or not a coin holder had the expectation that the hard fork would occur goes only to the calculation of the tax basis that may be allocated to the forked coin.

The taxable event, therefore, shall be at the sale of the forked coin and the characterization of the proceeds shall be treated as capital gains. It is important to note that under Notice 2014-21 the IRS treats virtual currencies as 'property' for tax purposes.[31] Thus if a Hard Fork is treated as part of such property -- the original blockchain-- the taxable event happens whenever a forked coin is sold. In such a case, the Hard Fork would be an increase in the value of the blockchain, just like the later-acquired water rights were an increase in the value of the property in *Gladden*. Accordingly, the vesting of the water rights in *Gladden* was not a taxable event, but the sale of such rights was.

The appurtenant water rights are not the only instance in which the courts have determined that the value of a new asset is inexorably linked to the origin of the asset. In the following instances the court determined that the new asset was a gain (or loss) whose cost base is the original asset. In a case where a Racehorse breeder paid $60,000 to acquire a mare in foal, to the extent that a portion of this purchase price was in fact paid to acquire the unborn foal, that amount became the petitioner's cost basis in the foal.[32] To this point, the Court expressed that:

> "We are fully convinced by the record as a whole that petitioner did pay more [...] than he would have paid to acquire her 'open' or in foal to a lesser-known stallion. It is our best judgment that $20,000 of the purchase price was properly attributable to the unborn foal [...] We do not accept the Government's contention that the foal had no cost basis whatever, nor do we approve."[33]

Likewise, when Florida citrus farmers sold a tract of land, with citrus fruit trees, the US Court of Appeals of the Fifth Circuit held that the non-severed and still immature fruit was a capital asset.[34] While the

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expectation of a future water right. The Court determined that the taxpayers could apportion some of their tax basis in the land to the later sale of the water rights appurtenant to that land. *Gladden v. Commissioner, supra,* note 29.

[31] IRS Notice 2014-21, section 4, at 2, https://www.irs.gov/pub/irs-drop/n-14-21.pdf (last visit on April 1st, 2024).

[32] *Gamble v. Comm'r of Internal Revenue,* 68 T.C. 800, 820–21 (1977).

[33] *Id*. at 821.

[34] *Owen v. Comm'r*, 192 F.2d 1006 (5th Cir. 1951).

fruit on petitioner's groves was intended to be eventually sold, it was not primarily held for sale until it became personal property by actual or constructive severance from the trees.[35] While, as here, it was still in the process of being grown, it was held only for potential future sale.[36] As the Court stated:

> "This unpicked fruit could not be included by the petitioner in her inventory if on hand at the close of a taxable year. For all the reasons stated above it was not, at the time of these sales, property held primarily for sale in the ordinary course of her business. We repeat, there was no sale of the fruit as personality severed from the freehold. The severance made by the Commissioner for tax purposes was purely an artificial one, which did not in fact occur. While on the trees and unsevered, the fruit was as much a capital asset as the trees and land. The fruit was as much a part of the trees as the leaves and branches."[37]

These are some instances in which courts have recognized the nature of property within the context of its origin and have consequently assigned the appropriate tax treatment. The common past, and enmeshed unsolicited aspect of BCH makes it unique. Certainly, neither an airdrop nor an accession to wealth occurs until affirmative actions are taken. Similarly to foal, oranges, and irrigation rights, BCH cannot be taxed until it is realized. Having a potential of realization when the fork is created is simply not enough to fulfill the requirements of the IRS Code section 1001.[38]

VIII. CONCLUSION

The IRS ought to review and revise its determination. As it stands, it is difficult to know if the IRS is enforcing this ruling. If it is, the legacy coin holders exposed to BCH would have to amend their 2017 tax returns. They would without a doubt cause a run in the BCH market. Legacy holders would have to begin by

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[35] *Id.*
[36] *Id.*
[37] *Id.* at 1009.
[38] Except as otherwise provided in subtitle A of the Code, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained. The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. The general method of computing such gain or loss is prescribed by section 1001 (a) through (d) which contemplates that from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by section 1011 and the regulations thereunder (i.e., the cost or other basis adjusted for receipts, expenditures, losses, allowances, and other items chargeable against and applicable to such cost or other basis). The amount which remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain. If the amount realized upon the sale or exchange is insufficient to restore to the taxpayer the adjusted basis of the property, a loss is sustained to the extent of the difference between such adjusted basis and the amount realized. The basis may be different depending upon whether gain or loss is being computed. See 26 CFR § 1.1001-1.

taking hold of their BCH coins. They would have to assert their rights in the BCH chain, then exchange the coins for legal tender to pay taxes on an asset that might not have enough of a market to withstand the volume.

Bitcoin holders will not take this lightly, especially those displeased by the group that forked the coin and nearly caused the death of BTC. There is promising and novel litigation ahead. Finally, this is just one of the issues that legacy coin owners face. Those that took hold of BCH to change it back to bitcoin have an additional tax exposure. It would be useful to study whether exchanges between forked coins and its predecessors ought to be considered realized gains/losses; or if, on the contrary, these exchanges are, at least at the outset, exchanges in substantially identical assets and thus, not taxable as per the colorable losses criteria. We believe so.