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### Claiming Bitcoin 1031 Exchanges On Your 2017 Taxes

You might think the biggest tax debate about bitcoin and other crypto is whether you should report it, or whether the IRS will catch people who don't. Actually, there's no longer much debate about these topics. Everyone seems to know that you should report, and that the IRS is after those who do not. The IRS is tracking with software, and the [IRS Summons of Coinbase](#) is already bearing fruit with account files for the IRS. In fact, the biggest crypto tax debate *still* seems to be about [1031](#), the tax code provision that allows some like-kind exchanges. Everyone knows that 1031 *currently* only applies to exchanges of real estate. The Trump tax law passed right around Christmas 2017 means that for 2018, you can forget arguing that swaps of one crypto for another are tax free. But there is debate about the past.



If you are about to file your tax return, should you claim 1031 treatment for 2017 crypto transactions? If you are cleaning up past tax reporting before the IRS finds you, you might have the same issue for 2016 or even 2015. Claiming 1031 treatment for crypto trades for the past turns out to be a nuanced

subject. Until the Trump tax bill killed it, depending on how aggressive you were, and how you could orchestrate it, you could try swapping one digital currency for another. A 1031 or like-kind exchange is a swap of one business or investment

asset for another, but most swaps are taxable. Section 1031 is an exception to the rule that swaps are fully taxable. If you qualify, your tax basis stays the same, so your investment continues to grow tax-deferred. If you qualify, there is no limit on how many times or how frequently you can do a 1031.

Real estate investors do this all the time. Despite a profit on each swap, they avoid tax until they sell for cash years later, paying only one tax, ideally as a long-term capital gain. Whether 1031 (before 2018) applied to cryptocurrency is debatable. Some exchanges of personal property (say a painting or a private plane) have qualified. But exchanges of corporate stock or partnership interests never did. Classically, an exchange involves a simple swap of one property for another between two people. But the majority of exchanges are not simultaneous, but are delayed or “Starker” exchanges (named for the tax case that allowed them). In a delayed exchange, you need a middleman who holds the cash after you “sell” your property and uses it to “buy” the replacement property.

The intermediary must meet a number of requirements. That’s one reason delayed exchanges of cryptocurrency may not qualify. There are also two timing rules you must observe in a delayed exchange. Once the sale of your property occurs, the intermediary will receive the cash. Then, within 45 days of the sale of your property, you must designate replacement property in writing to the intermediary, specifying the property you want to acquire. The second timing rule in a delayed exchange relates to closing. You must close on the new property within 180 days of the sale of the old. These two time periods run concurrently. You start counting when the sale of your property closes.

Many holders of cryptocurrency probably can say they are holding their cryptocurrency for investment. The tougher hurdle is whether they swapped for property of like-kind. Section 1031 does not apply to trades of stocks or bonds, and the IRS could rely on this rule to disqualify any cross-species trade of cryptocurrency. However, different types of cryptocurrency are arguably like different types of gold coins. If a swap of one type of gold coin for another qualifies, why not swaps of cryptocurrency? The IRS may argue that swapping Ripple for Bitcoin is really more like swapping silver for gold, or vice versa. Silver for gold would be taxable, so the IRS may say that a swap of cryptocurrency should be taxable too.

Some of this may turn on the size of your gains, and how much of a chance are you willing to take. But one big issue is the mechanics of tax reporting. You need to *claim* Section 1031 treatment to say you met the rules. It might seem tempting not to report swaps of cryptocurrency at all. But for those trying to use 1031, failing to report is a mistake, in my view. If you want to see what to report, check out [IRS Form 8824](#).

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