[00:00:00] **Eric:** So, a few weeks ago, organizations involved in the digital asset space started to realize that the infrastructure bill had misdefined the term broker and proposed amendments to IRS code 6045 C that would have expanded that will expand reporting requirements beyond what even the drafters themselves had intended.

Why the commotion? It was poorly considered, and it was not subject to any kind of educated or reasoned debate despite its unintended consequences. The whole way it was inserted into the bill was designed to force passage without deliberation. As we all saw fact is most of the members of Congress don't understand how this will affect commerce in the years ahead and are frankly too apathetic about it.

Has my pet project been covered? I, in fact, the issues with the revisions to the IRS code in the infrastructure bill go deeper than simply the definition of the broker. And this is something that Abe Sutherland identified early and started raising a few weeks ago. What Abe Sutherland saw is that additional revisions to IRS code 6050.

Raise new issues in a way that was also never contemplated and was jammed into the bill. He realized that 6050, I ran directly contrary to the ability of every American to ultimately realize the benefits of a more efficient payment system. And it would unnecessarily impact Americans' privacy and autonomy in the name of tax collection.

In the name of an antiquated pay for provision that is used to theoretically offset on balanceable budgets. This episode is one that you shouldn't miss. Of course, you're on it now, so you're not missing it, but you should also make sure to share it with your colleagues, people you barely know on social media, your friends.

I'm not going to say that. I hope you enjoy this episode because actually I don't want you to. I want you to be disturbed by it because this is what's happening right now.

Welcome to The Encrypted Economy, a weekly podcast, featuring discussions, exploring the business laws, regulation, security, and technologies relating to digital assets and data. I am Eric Hess, founder of Hess Legal Counsel. I've spent decades representing regulated exchanges, dealers, investment advisors, and all matter of FinTech companies for all things touching electronic trading, with a focus on new and developing technologies.

So, this is Eric Hess with the encrypted economy. And today I'm really excited to have Abe Sutherland, founder of sacker group on the podcast. In addition to being the founder of sacker group, he is also an adjunct law professor. He's written extensively about policy and tax policy.

Abe for starters, welcome to the show.

Abe: Thanks. Good to be here.

Eric: So, I, I started to touch on it, but could you give a little bit about you, your background before we get into the podcast?

Abe: , well, I'm a lawyer have done different things in the law and came to cryptocurrency a few years ago, just as an interesting a place where the full implications of this new technology and how to fit them into our existing categories. Hasn't been worked out. And the consequences of these decisions early in this, in this process are really important. And where things are in flux, that means there's an opportunity and a lot of consequences for getting it right.

Eric: Great. And I warned you in advance of the podcast, a, a personal experience that shaped your values or your work.

Abe: Wow. Well, I don’t know how, how far to go into this, but something really on my mind recently I spent time in Afghanistan with the state department and over these past few weeks here with the, the events with the Taliban have been deeply on my mind.

So certainly, that experience working with Afghans in Afghanistan and seeing how this was playing out now, but certainly formative and it's certainly on my mind. So, I'll offer that.

Eric: Well, it definitely could see that. So let's start to talk about your recent posting on 6050 I, and a lot of the work that you've been doing and talking about this provision that was jammed into the infrastructure bill now, a lot of people who are listening to the podcast may be very familiar with 6045 C, which was the provision that the whole crypto industry rallied around basically surrounding this definition of who is a broker and the potential for it, extending to minors and even developers treasury department said, no, no, no, no.

Put it in as is. We won't really touch it. It guides a SKIDATA it got crushed at the final hour to try and broke a broker, a compromise. And there was talk that the house of representatives is just going to jam it through without any revisions. , but maybe a little bit of background on the congressional pay for provisions, which you've spoken about Abe.

And before we started hitting me into getting into 6050, I, which is something that's been overlooked.

Abe: Right. So, so what we're talking about here are provisions in the infrastructure bill. , which are technically there as you mentioned, pay for which are designed to help address and offset the expense of the spending anticipated in that bill.

And as you mentioned fortunately did get attention. These, these so-called broker provisions under an amendment to section 6045 of the internal revenue code. But what brings me here today and attracted my attention was a provision that, that had basically seemed to be overlooked in this consequences which is an amendment to a different provision of the.

, section 6050, I which has which is quite different from, from the broker provisions. And it's something I think just really needs to, to, to get some public awareness, especially as we rush through, [00:06:00] , with this, with this infrastructure.

Eric: Right. And, and just to put some further context today we're hearing about that the treasury department is seeking broader powers to be put into the infrastructure bill that would allow it to share information collected with foreign governments.

, and they want to include that in the infrastructure bill as well. This is all a developing story, but the context is some of the points that we're going to talk about today with regards to 6050, I obviously also have implications in the context of how the information captured can then be shared beyond just did the treasury department and the IRS.

So, with that His is the, so, so the issue is 6050. I do you want to give us a little bit of the backdrop on it?

Abe: Sure. So, 6050, I R let me start with the amendment to it. The amendment is extremely brief. It's just a few words. And what it does is it, is it points to 6050, I, and it says in this particular statute, the definition of cat.

, which generally in that statute means physical currency coins and paper money. A few other exceptions are X is expanded to include digital assets. And I, and I mentioned that because it's perhaps part of the reason why that has failed together. , Gar garner market tension is it's such a simple, small change to the statute.

So, we have to understand what 6050 I do. What, what does this statute? It provision added 1984 and it's designed to reduce the incidents of large cash transactions or more, more, more generally early to, to require record keeping and reporting of large cash transactions, specifically those over the threshold of $10,000.

And what it means is anybody who receives $10,000 or more in cash. , in the course of their trade or business, and we're going to come back to these different elements is required to report it. And that means fill out a form it's currently known as form 8300. I actually encourage people to go look online and look at what form 8300 is and report to the IRS and to report to the government, the details of that transaction specifically, including the personal information.

, and social security number, name, address, profession, and other information concerning the person from whom they receive the money. So, this is a general provision, which applies actually to any person in, That that receives cash over this threshold in the course of their trade or business.

So, what this does is, is at, by adding digital assets to the definition of cash, it, it imposes a very serious reporting requirement on [00:09:00] all Americans, all American businesses and anybody. in the course of their trade or business to obtain indeed verify and promptly report the personal information of the person that they've received these digital assets to the government.

Eric: And so, I guess one question is. Do today, a lot of this reporting occurs seamlessly without us knowing about it. Do you want to kind of expand on that and why this sort of hits the digital assets more directly, as opposed to what occurs in the current modern-day economy?

Abe: Well, there's a couple of pieces of this and I'm going to come back and talk a little bit about how the statute exists.

Most of us aren't aware of it are only vaguely familiar because after all, most of us aren't transacting and, and $10,000. Cash increments. , in part, because of this very statute, which makes it expensive and adds a lot of obligations to those who might accept large amounts of cash. But w what we've got to focus on here is, is what this means in the context of digital.

Yeah. And the context of cash. We've got to look at the statute. The assumption with cash of course, is that this is a person-to-person face-to-face transaction. Right. , and that makes it at least feasible for the person receiving the cash. And remember, this is an obligation on the person receiving the cash.

It's not the person sending it or paying it to the other too. This kind of fundamentally in-person nature of a cash transaction makes it feasible for the person receiving it too, to insist on verifying the person's identification and completing and gathering all the information that is required to be reported on this IRS form 8300 digital assets, of course, are not cash in this one.

, they are not in-person transactions and indeed the potential and the promise of digital assets is, is not simply to replace the use of cash. It's more to offer an alternative and whole new Technology-enabled possibilities. , the more compete with, or, or might replace traditional bank and other financial institution mediated transactions.

So, the, the, the challenge we're facing is we have. The stone age statute, kind of for old world of dealing with physical objects being asked to apply to a new technology, which fundamental to it is the ability to enable these transactions again, when you're not face-to-face. , and to do things that, that here to for at least in recent history have required the use of a financial intermediary.

One reason why this provision ends up being pretty complicated because it only makes sense against the backdrop of existing financial regulation. And that brings us into the bank secrecy act and the nervous provisions there, which already exist that provide the IRS and the government with visibility on financial transactions.

, in this case the argent for this is tax collection because when you have a peer-to-peer transaction such as with, with physical cash there's a possibility of it not being reported, but when you have an intermediary or somebody else that is required to report it just think generally about banks or financial institutions there is visibility and it reduces the opportunity for under-reporting of income and, and, and tax problems.

Eric: And so, is this fundamentally a taxation issue or is it fundamentally a reporting issue?

Abe: Well, to the, the tax receipts are the hook on which this provision exists, and this does get complicated because there are other provisions and, and, and similar provisions in the bank, secrecy act are rooted in and, and both tax considerations, but also kind of more general crime-fighting provisions concern over money, laundry.

Concern over counter-terrorism efforts and terrorism funding, but it's a reporting provision.

Eric: And does the reporting provision itself impose a tax of its own?

Abe: No, not at all. This is simply to ensure that, the government has the information. , to enable investigations to, to, to compare against one's returns filed and so on.

So, this does not change the substantive tax, if anything which is important, right? The tax law is the tax law. , with we're talking about digital assets. When you realize gains, those are subject to tax, that there's nothing changed here. It's a question of government access to the information to ensure compliance and to reduce , hiding of assets or under-reporting.

Eric: So, is this particular provision necessary for the government?

Abe: Well, look this, this is a deep question. I think it's important. Look at, at, at, at this kind of two steps. One is the nature and the way that this provision is, has ended up already passed by the Senate and now pending in the house. , and to flag these issues, which require more discussion.

I have strong opinions on this, I think it should be back to absolutely back to the drawing board. And we need to do these calculations and make people be upfront about the costs and benefits of this. so, I'm very critical of the need for this. , but in, in a more immediate fashion and, and, and certainly an argent that I think should get general support is that this is absolutely not the way to proceed with, with, with, with the new provision, too.

Escaped scrutiny in, in, in [00:15:00] an infrastructure bill without full appreciation of its consequences. And again, the reason its consequences aren't clear is that we're using a very old statute to do something to an entirely new technology that really doesn't match up. So, this is what I'm trying to help spell out, or at least give the fundamental parts to it because I think it, it needs attention from others who are.

, attuned to this type of regulation to help spec, to help begin to spell out those consequences. So that at the very least we can have a real debate here because , maybe now, Eric, I should kind of turn to an overview so people can get an appreciation of what triggers this requirement and what the consequences are.

Eric: Sure.

Abe: first let's see which to do first. I want to talk about the consequences kind of. Get people's attention. This is a criminal statute, so violations can, can result in, in a crime prison time as possible. And, and the requirement is to file the information requested under the statute and, and through regulation to the government.

, and right now that's within 15 days of a receipt. , of cash or in for what we care about digital assets and a failure to file accurately and promptly that can lead to fines or even criminal penalties. So, there's the obligation. Now the question is, well, what can trigger that and why is this such an expansion that we should be worried about it?

Well, again, we have to, we have to reference to the original statute, which has to do with. , in, in that case you went upon receiving cash an exit $10,000. You have 50 days to fill out this form. And that includes a requirement of verifying the persons from whom you receive it, their identification, you take down their social security number and you file this form with the government.

You then need to keep that information on file a w , and at the end of the year, provide an annual summary to each person that you report. And then you also need to keep all of these forms in your files for a minim of five years after that. So, what happens when we apply this trigger for reporting to digital assets, and there's a couple elements to it, the first is a receipt, and I want to focus on this because I think to the extent people look at this, they say, well if we look at the cash example, this means if you, if you're accepting cash as payment, it's income, it's revenue.

Receipt is not defined as revenue. It has nothing to do with tax liability or, or what your tax consequences might be. It's simply a receipt. And of course, with physical cash, that's relatively clear and relatively rare. But with digital assets, a receipt is much different. , and probably means anytime digital assets and we'll come to the definition of that.

And yeah. , are received and have made available to, to you and in an account to which you have control through private keys or, or, or otherwise a receipt has nothing to do with taxable income. It could be the proceeds of a loan. If you receive a loan, it could be the repayment of a loan, something that was already yours.

, so, it has it's triggered simply by the receipt and, and, and it may have, may have nothing to do with your net position. , pay it forward, just to give an example in the old world example that will make this clear an exchange of physical cash for other cash can trigger the statute. So, if you had $15,000 of cash and you traded it to me you had small bills and I had large bills I received in that transaction.

, More than $10,000 in cash. And so did you, and we would both be under an obligation under existing law since 1984 to report each other social security numbers and the nature of the transaction within 15 days. So is that illustrating that it has nothing to do with. potential taxable income.

It's broader than that. And when you, and there's one really important point about that too, which is if we exchange the 15,000, there is no electronic record of that having occurred. There's no footprint. , so, so people could be not in compliance, and no one would ever know. but with digital assets when that occurs or isn't electronic record.

, and so if there isn't a reporting, it could have really very real consequences.

Abe: Right? Well, I think what I'm hearing from that is it's, it's, it's pointing out an asymmetry, which makes the urgency of reporting all of these less intense because of the potential for kind of an auditing trail or something.

And I think that's a good point and that's exactly the kind of thing that should be done. , as, as people kind of spell out and weigh out the, the, the full consequences and range of scenarios where this will occur, because that's exactly right with, with cash. The assumption is there's absolutely no tracking ability.

And that's certainly not the case with digit assets.

So, we've talked about how broad the concept of, of a receipt is why don't we get it? Can I kind of continue to go through the elements? , another one is that it only needs to be reported if, if the digital assets are received in the course of a trade or business. And I think this is another reason why it hasn't attracted the scrutiny.

People look at that and they say, okay, if you're a business, if you're Elon Musk accepting Bitcoin for a car then you're in a position you need to report the buyer's social security number and stuff. , but Hey, that's, that's a trade or business and that doesn't apply to us. But the concern here is that the trade or.

Limitation is not necessarily nearly as broad does not provide the safe Harbor, the Harbor that people expect because , first of all, what counts as a trade or business is, is somewhat vague. , it's, it's not defined in the statutes. It's subject to judicial interpretation. , and a lot of activities can be trade or business.

And once you are in a trade or business, anything received in the course of that would also qualify. So, to give kind of a an old world example, if you sell your used car for cash, $10,000 in cash, you may not need to report that because it's not received in a trade or business, but if you were to sell your used work vehicle that would be in the course of your trade or business and would need reporting and with, and with digital assets, so much of what is done whether it's mining, staking or lending.

And in some cases, simply trading can be a trade or business. And that means any assets received in the course of that activity. our receipts under the statute that leads us to the next element of this, which is the $10,000 threshold. Right? So, this, this only applies starting with cash for, for transactions over $10,000.

, but in fact, the transaction is defined very broadly, and it includes related transactions, and it can include payments related to a single transaction. So, if I lend you money even if your payments to me or mine are far below $10,000 those are all related to the same transactions and therefore they need to be counted and added up over time.

And then the reporting obligation kicks in as soon as the total adds up in the course of a year to over $10,000. And then it continues to add up and, and, and require a new reporting obligation. Each time it reaches $10,000. Again. So, if I were to lend you a $50,000 in digital assets and you made periodic payments back to me again, this isn't the trade or business that would trigger the requirement every time that your, your, your, your payments totaled up to $10,000.

So, the point I'm trying to make here is that. A requirement, which in the, in the, in the old fashioned world of cash may not be too, too, too serious, or it's easy to track simply due to the inconvenience of cash could, can, and will be triggered much more easily in the world of digital

Eric: assets. Right.

With ramifications that haven't been thoughtfully considered because it's been jammed into the infrastructure bill. Exactly. we talked about the dichotomy between digital assets in cash and how that has different ramifications.

, we talked about the difficulty of even complying with a form 8300 for a lot of digital asset businesses, because it requires. Different bureaucratic structure. That's designed for the old world and not designed for digital assets. do you want to double click on any of those applications or lay out a couple of more?

Yeah, let's

Abe: think about this. , yeah, some of these things bear emphasis because they're, they're so obvious, but they're important. This requirement asses a connection to the person who it asses two things. One, it asses it's a person transferring the assets to you. Now remember one of the problems that were raised with the other provision that did rightfully get attention was the question of, Hey, this might be impossible to comply with.

People might be obliged under sanction in a penalty. Of under, under legal penalty to report information, they may not have access to. And, and we have that same potential with this statute because the statute asses not only that you're receiving these digital assets from a person, but then that it's an identifiable, actual hand who is providing that.

, so, we still have so, so point number one is we fundamentally a possibility what if digital assets are received from some type of algorithm, how is compliance even possible now? And this gets to the question. And as you mentioned earlier we might have the treasury department come forward and say, oh, don't worry about that.

We'll be realistic here, but we have to look to, to the terms of the statute. , and, and also to the existing regulations to get a sense of how this might work. , and as a matter of, of, of, of, of a new criminal law provision it's important for this stuff to be clear. And so, my argent there is , Sharon's is, are, are, are, are not enough.

We need to address these things at the level of before we put them into law.

Eric: Right. Because they have fundamental policy implications too, particularly given that we still don't know how the script is going to be written five years, 10 years, 20 years' time when nobody's demonizing the wild west and crypto.

And this is just part of everyday commerce

Abe: is this is critical. Part of the argent, but it's a very difficult one to make. , in particular to people who may not be deeply familiar with digital assets and that's to attempt to quantify and raise a flag about the, about the collateral consequences, the unintended consequences of like, of, of a provision like this.

, in terms of its effect on the industry as a whole America's potential [00:26:00] leadership and the consequences for what it will do to, to discourage activity and digital assets. , these are very hard to quantify, but these are the types of questions I'm trying to raise. , so people. Can debate them, ask questions of, of legislators and, and, and, and, and try to kind of have an informed discussion of all the unseen consequences of something.

That's this dramatic.

Eric: Right. And, and, and some of the other implications that concern me, having spent a fair amount of time on cybersecurity and privacy as well. , one is who's ever collecting this information. There are various touch points, particularly if it's being shared internationally. So arguably there is a honeypot of information this exists today, but it's only going to.

, growing exponentially under the statute, if they're successful in collecting this, and the question is, is, do we keep forging ahead and, and, and saying, we got this and without contemplating what it does to the sheer vole and how particularly if you're sharing how it's actually going to be protected, what's the plan to scale the security.

What about post quant security? What about homomorphic? Encryption?

Abe: Yeah. Excellent points. We were already dealing with these with existing financial institutions and there's a kind of a parallel debate going on under the bank secrecy act and related provisions about the consequences of requiring this information collection and storage and reporting.

But this opens it up again on every and any American, certainly any American business. And then any individual. Who's , acting in the course of the, of, of, of their, their, their trade or business. So suddenly this requirement, which is requires obtaining sensitive personal information from, from one, those one interacts with , social security number, nature of transaction details like this, and requiring to store that and share it with the governor.

, the consequences of this data collection and storage requirement, again, being imposed broadly not just on, on already regulated, highly regulated financial institutions, which are required to have systems in place. , the consequences for that for simply dissuading the use of this technology.

, and then the next level down is kind of sorting its potential. And again, driving. use back through these institutions, these financial institutions, these existing intermediaries which are specialized in this, which directly challenges the, the, one of the central propositions here is that there's a better, cheaper way to do this, which, which can, can reach more people at, at, at, at lower costs.

And, and the effect of these provisions is to Make it that much more expensive, that much riskier impose these privacy related concerns a clear effect of that is to, to privilege these existing intermediaries and financial institutions , because who wants to comply with such an extraordinary.

Eric: Burden, right. I I've advised a lot of companies on cyber security and sometimes in a negotiation there'll be a provision that says, oh, you're going to take all these different privacy measures with regard to any personal information we give you. And if there's any possibility of that if there's no possibility.

I often pushed back hard. And then I say, no, you have to rep to me that you're not going to give me this information because I don't want the burden of having to protect it. I don't want you to poison me, poison my client with PII. And so, with a lot of digital assets protocols, they don't take in that PII it's,

So, the danger isn't there as fully encrypted it's to a wallet address. And, and there isn't the issue with PIs. Particularly, as it relates to smaller transactions in the normal course, the question is, is that burden worth it? When now it not only imposes this additional reporting obligation antiquated as it is, but now it also forces that business in the position where they have sensitive information.

And presumably they can't just wipe it because what the government, what about, there's never a transmission. What about that? The government comes back. They also have to report at the end of the year. So now they're forced to retain this information. And it brings in a number of different statutes. There could be a GDPR implications.

If it's a European resident, there could be CPRA under California and a slew of other state privacy statutes that are coming into four. And obviously privacy is important being protected around the world. But now you have this for digital assets. And the implications could be that you now need to have an entire privacy infrastructure in addition to the reporting and tax and AML infrastructure, is that all this entails.

Abe: Exactly. And I think that's

helpful for illustrating the effect of this on kind of the existing system and reliance on intermediate. , which the government relies on for, for, for the majority of its information reporting. Right. Because, and let me use another old world example, if you and I are two shopkeepers and or you want to, let's say you want to pay me in cash, $15,000 in cash, and I want to receive cash.

Well, if we're going to do it. Under existing law. I've got to fill out form 8300 and I've got to get your personal information. I've got to store it. I've got to give you an update at the end of the year. I've got to keep it for five years. I have to, we have to do the, go through all of this PII process, or we can just walk to it.

Right. And you could hand them the $15,000 and then they hand it to me. And then I don't have to do this job of recording your information and raising all of these, these privacy, and data maintenance issues. Right? Why is it that, that, that, that avoids the problem? Well, it avoids the problem by going to the bank because of, of completely separate regulations under the bank secrecy act, which means that the bank is.

Perform that, that equivalent surveillance and reporting, they're going to make a record of that $15,000 received. And they're going to make a record of that $15,000 sent and they're set up for that. And more or less we accept that , that, that, that tax reporting regime. , and, and I get that.

Old world example to, to emphasize the, the, the, the pressure that this will create to, to re-introduce intermediaries. Would I accept digital assets from you? If there's a chance that it might total up to 10, $1,000 at some point and if it does, I'm in a position of needing to somehow verify again, unclear how that's even possible under the status.

, with digital assets and maintain your personal information. And in my files, when we can go back and rely on , old fashioned intermediaries, the whole point of this technology , of course is to is, is, is, is to reduce our reliance.

Eric: Right. Right. And I think one point that you raised is that when the statute was first passed, the 10,000 was equivalent to $65,000 today.

So, it hasn't been adjusted for inflation. , so at a very minim, it, it potentially puts burdens on a far lower threshold of cash in real dollar terms than was ever intended.

Abe: Right. And these are all important parts that need to come out in the debate. These , this well-known $10,000 threshold dates to 1970 under the bank secrecy act.

And, and, and, and roughly back then, that would have been about $65,000 in today's terms. , and that's slowly gone kind of been eaten away, but, but that's another thing that it isn't much under discussion, which is to, to, to really look at the costs and benefits even of these different thresholds.

That's a, that's a very different figure. , $10,000 in 2021 than it was in 1970, or even in 1984 when they use that same threshold from, from previously and, and, and brought it into this provision, which again, doesn't just apply to banks. It applies to any person, any American who's, who's receiving value in the course of their trade or business.

, Maybe we should talk about, we haven't even mentioned kind of the definition of digital assets that we're, that we're dealing with here. the statute is, is remarkably broad. , it, it applies to digital asset is defined to any digital representation of value that exists on a distributed ledger technology.

, again, and then with, with additional , authority vested in the treasury department to kind of define that around the edges. , but digital this [00:35:00] afternoon is definition of digital assets. If any digital representation of value, it goes far beyond the use of straightforward cryptocurrencies.

Digital asset is much broader than that. And , in effect it's, it's, it's bringing in transfers of value , in any form of, of that exists on digital asset technology. And this is important because again, it's not just payments that we're talking about is things of value. the receipt of non-fungible token.

, that have a value could trigger this. , and that, that also illustrates how this moves beyond just the world of, of, of, of payments, of, of value for other things. , digital assets are, there are their own thing. , and the exchange of digital assets qualifies. So, if you and I were to make a trade of.

something defined as digital assets under the plain tax, we would both be in a, in a situation of needing to verify each other's personal information store it, report it under threat of a criminal.

Eric: And it's interesting last week or an earlier week, I had a podcast with Matt Zand and author of a book on Hyperledger fabric and very plugged into the Hyperledger community.

Great podcast, probably about smart contracts. Number of things in the podcast I asked specifically was if there was any kind of awareness of the impact of the infrastructure bill on what occurred with. Hyperledger, which is a pro private blockchain network. And his impression of gourd, of course, he doesn't speak for the entire Hyperledger community was, well it doesn't really apply to us as structured differently, blah, blah, blah.

But aid, and I'm not picking on Matt because he certainly knows this stuff very well. And he was, I didn't bring him onto the podcast to talk about crypto tax law, but, and in fact, it's not really. Limited to, again, this notion of wild west crypto hit, it extends to Hyperledger. If you have a why, why is there an impression that it's limited to crypto only because crypto has been most vocal, but in fact, the implications for private networks and PDP transfers within those private networks that some of the.

Fortune 500 companies are supporting on Hyperledger or quarter or whatever a private blockchain network is developed in the future to interact with the public blockchain or not. Those transactions are similarly impacted and there is no exception for it is as you noted that definition of digital assets is very broad based and a captures that as well.

So, the, the, the full impact of this. In fact, it hasn't even been recognized by the crypto community. There's one of the reasons we're doing this podcast, but it be the full implications of it for even private blockchain networks and how P2P transactions occur on private networks. Hasn't even been.

Discussed or debated or, or acknowledged.

Abe: Exactly. So, this is what people need to explore, and hopefully we can get people looking at this because there's all these examples that I'm not an expert in, but, but, but should be raising people's attention. Look at a fundamental feature of this technology is to allow kind of near instant, low cost clearing of transactions in ways that aren't don't necessarily have analogs in traditional finance, but especially not with cash.

Right. and again, this comes back to the, to the requirement of a receipt. There's no netting, net receipt element to that. It's a receipt. what if you receive 10,000 payments or a hundred thousand payments of 3 cents apiece , as funds are moving back and forth, as, as things are immediately cleared and settled and remained in an equilibrium with another party.

, that that could trigger the statute, even if the net effect of those things is, is zero or very, or very small. So. My sensors, there's an entire universe of, of, of consequences to the statute that, that we need to expose that really get to the potential. And I think even current use cases for, for this broad category of digital assets.

Eric: Right. Right. And I also think it's. Ironic that most Americans would view what China is doing with their CBDC as giving excessive, governmental control and visibility over citizens, financial deal dealings, but they don't. But, but this is sort of passing under the radar. Do you think that's a little perverse?

Abe: Yeah, it's, it's very strange. And it's interesting because. No to be a little provocative, at least in a system like that. only the government might have access to it, right? Because we're not moving directly in that, that China direction. , but this provision adds an interesting wrinkle where we're actually enlisting our comrades and fellow citizens to monitor.

Each other and exposing each other to that information. Right. It would be one thing if, if, if we had kind of the Chinese model, for lack of a better term of a blockchain with complete transparency, at least for the, for the people, with the right to know and some level of day-to-day privacy for the rest of us.

But, but this is very interesting because it introduces all not just financial institutions but potentially all businesses and all Americans into that role. Of monitoring, keeping, and reporting on each other. , so it's, it, it is ironic

Eric: and introducing friction. one of the things that I'm sort of struggling with is that there's a lot of hammers being given to regulators these days the, the Gensler's looking to grab his hammer treasury, he's grabbing their hammer and they're all when you're a hammer, you're, you're looking for nails.

But there's very little consideration about what it actually is doing to the ecosystem. And Hey, how do we actually harness this [00:41:00] innovation in a way? And how do we be thoughtful about deploying it in a way that doesn't kill the space that allows us to proliferate that allows us to become a source for the innovation in the space versus.

crushing it. the, for the U S the U S has the monopoly on the dollar, and if it wants to maintain dollar dominance, I guess one way is to try to control the world and force everybody to sort of abate to this reporting structure that makes it hard for anything to occur outside.

But I think, history has shown that, that, that doesn't always work out so well. Yeah.

Abe: And your metaphor of the hammer. the way to think about this or the way some people think about it the comparison of, of physical cash and cryptocurrency S some people kind of accept that analogy that the, that they're in meaningful ways equivalent, but I really want to challenge that.

And it's an important issue, because if you, if, if, if you look, if all you're concerned about is tax compliance, You can see there's an apparent similarity there because the feature shared by cash and digital assets is that they can move from a to B, without the involvement of a financial intermediary, which has already authorized to observe and report the transaction.

Right. , and there's your, your, your hammer scenario that you look at this, and that's, that's, that's the, that's all you see is this similar. , but that's a mistaken view of digital assets. They're not simply a payment mechanism analogous to cash in that respect. , they, they have other potential, but, but, but describing that potential , is difficult and it's hard to educate people on.

And so that's why we have everybody looking and using this, this hammer of, of section 6050 to apply to something that is so much broader, and the implications are so. Understood at this point.

Eric: And so, it looks unfortunately that the there wasn't much success in the Senate, although we did.

, when I say we, the, the, the crypto space writ large, was able to sort of raise the issue and have it more. Debated, even if the debate ultimately didn't achieve what it should have. , and it was just passed and said, oh well if you want your Senator Shelby, if you want your, your defense appropriation I guess we don't get what we need, and it goes through.

What happens next? If in fact it is passed by the house and it goes back to the sentence when finally approved, well, a

couple of thoughts.

, we're all in for a rude awakening as the, as the, as the regulation promulgation process starts and the consequences of this sink in. Okay. So that's to answer your question. What we're in for next is, is as, as treasury sets down and say, okay, how are we going to administer this new requirement under 6050?

Abe: Yeah. and, and, and the extent of the treasury department's power in limiting or making it feasible to comply is going to come in and we're going to see a prolonged and huge debate with a lot of, kind of lobbying around the edges to make it at least feasible to comply. , but I want to make another comment on generally, like you say, maybe it's upon conclusion of the house.

I don't know. What's exactly where things stand there but one time. Cause for optimism or something like optimism is I was actually quite impressed with how the, the issue in 6045, the, the broker provision managed to, to, to achieve some kind of salience with the public, not just the cryptocurrency sphere, but.

Legislators and others about his consequences. That's actually a pretty complicated argent, right? About kind of the nature of, of broker provisions. Those are far more far more removed from the day-to-day life of most Americans. Th that's why I'm emphasizing, this provision. I think there's an opportunity here.

The consequences could be much more salient if people appreciate them, right? Th this is a provision that applies to every American yes, there's the, the thing it has to be in the course of your trade or business, but that does not provide the safe Harbor people think. And it's a requirement that we'll, we'll put Americans in the position of collecting and storing and obtaining personal information of others and reporting it to the government.

And I think once the consequences of that are a little better understood this, that kind of the political saliency of that in position. , are even clearer than they were with section 45 and, and have the potential at least to, to provoke the debate. Right. , I know where I come out on this debate down the road, I think it's , it's, it's not feasible to do this, but at the very least we need to have that debate.

And I think we can get there; people understand the full implications of it.

Eric: And, and do you think that 6050 perhaps resonates more on the, on the policy objectives of financial inclusion?

Abe: , certainly does, but, but some of these argents they've kind of faded from, from public view. I think that's unfortunate. it certainly can, but, but T to understand why we have to go through the steps of, of what this means for real people in the future and, and, and whether this provision is going to force, or not force, is going to lead businesses and institutions to play it safe and avoid peer to peer transactions, thereby privileging and pushing back through financial institutions these transactions, which are supposed to be enabled to, to avoid that entire level of, of, of cost and, and, and centralization. So Yeah, there's work to be done on kind of making that point more, more salient because it it's [00:47:00] complicated, but I certainly hope so.

Eric: So, I'm, I'm, I'm asking you difficult questions along the way, and I'll ask you one last one. Why do you like in this case, obviously this was jammed in as part of the overall infrastructure bill, but why do you think provisions, like this ended up getting put into law?

Abe: Well, if you take a step back and view kind of, and it requires some overall perspective, I think on kind of the re the, the, the status quo today and in the early 21st century about the steps in place for the IRS and the government in general to maintain awareness over the financial transactions of Sydney.

And again, this, this is something which is relatively removed from all from Americans' day-to-day lives. But it's an important story to understand the extent to which the institutions that have evolved over centuries. Have been used. , really you would say in the last 50 years have, have, have become an incur increasingly relied upon for this purpose of tax collection in general.

, crime prevention, right. Banks did not evolve specifically to allow government. Yeah. To keep tabs on transactions and to keep people safe and maintain tax revenues, but they were very convenient for that. And what we're seeing now are efforts to in order to maintain that. On information to enable a full tax collection and crime fighting a reluctance to this new technology that has the effect of, of, of pushing us back and increasing our Alliance on these institutions.

So, No, that's complicated stuff, but I think that that kind of big picture is important to understand what's going on here and to understand the effect of, of, of a provision like this by imposing unlike these other provisions, which impose new responsibilities. , existing intermediaries for information reporting, whether it was banks, financial institutions, or even this expansive definition of broker which I think goes too far and, and, and is very concerning.

, this, this is, is doing what we did with cash was saying, Hey, that those institutions don't work and, and, and, and, and creating the monitoring that we need for this. Therefore, we need to impose this information collecting and reporting provision on end-users. , which is the general public. And again, it's framed in terms of whether you have a trade or business.

, but with digital assets, that's just much broader than is practically speaking the case with physical cash.

Eric: All right. Well, listen, this has been an enlightening episode. I hope this gets a, a lot of play because I think a lot of people need to hear this message. , thanks for coming on the show.

Excellent. Thanks, Eric. And if people want to learn more about you and what you're writing, where can they find you? ,

Abe: well, I'm working on something else to, to get out there soon. I've got one article out there on tax notes, which introduces the issue. I'm really, my goal now is to give some of the raw materials and understanding of the statutes so that others can spell out the consequences.

, and can we communicate these, I'm not a lobbyist or political activists by. Inclination or anything. so, so I'm hoping that people kind of see the basic issues and then can help spell that out further. So, I should have another article out soon, but Hey, people should just look at the bill.

Look up 20, 60 U S C 6050. I and see what that means once that includes digital ads. , ask questions and start spelling out what the consequences for this would be on the American economy, on, on this whole area for innovation and for their own business practices. What does it mean? What would it mean for you?

If you need to track your receipt of digital assets in a way that might lead to a requirement to report those transactions to the government? , that's, what's lacking here. And so hopefully. , get to get some attention to it so that other people can fill out those consequences.

Eric: Great. Thanks so much, Amy is excellent to have you on the show.

Abe: Thanks Eric.