

# IRS Provides Guidance for Trusts Engaged in Staking

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On November 10, 2025, the IRS issued Rev. Proc. 2025-31 (the Rev Proc.), which provides a safe harbor for investment trusts and grantor trusts to stake certain digital assets without jeopardizing their status as trusts for U.S. federal income tax purposes. The Rev. Proc. comes in response to the White House's request made in July 2025 for published guidance on this topic.<sup>[1]</sup>

## Staking Generally

Decentralized cryptocurrency blockchains rely on systems (referred to as “consensus mechanisms”) that allow the users in a network to agree on which blockchain transactions are legitimate. The two major consensus mechanisms used by most blockchains today include “proof-of-work” and “proof-of-stake.”

“Staking” refers to the process of “locking up” a digital asset native to a blockchain in order to assist in the validation of transactions, as well as the underlying network security and integrity. Staking is used in blockchain technology that relies on proof-of-stake architecture (e.g., Ethereum 2.0). In exchange for restricting their access to the digital asset for a period of time, the staking party typically is rewarded by receiving more of the staked cryptocurrency. In this sense, staking a digital asset could be viewed as the equivalent of lending fiat currency (e.g., U.S. dollars) and earning interest on the loaned money.

## Tax Classification as a Trust

The term “trust” refers to an arrangement created by a will or an inter vivos declaration, in which trustees hold title to property to protect or conserve it for the beneficiaries.<sup>[2]</sup> In general, trusts are treated as flow-through entities for U.S. tax purposes (*i.e.*, the grantor (not the trust) reports all items of income, gain, loss, deduction, and credit attributable to its portion of the trust and is liable for paying the associated tax).<sup>[3]</sup> However, a legal arrangement referred to as a “trust” may nevertheless fail to be classified as a trust for U.S. tax purposes if the arrangement is created to engage in activities for a profit. Notably, if there is a power under the trust agreement to vary the investment,<sup>[4]</sup> an investment trust will not be classified as a trust for U.S. tax purposes and will not receive flow-through treatment.

## The Safe Harbor

To qualify for the safe harbor, the Rev. Proc. requires that the trust satisfy 14 requirements, including most notably:

- The interests in the trust must be traded on a national securities exchange and comply with SEC regulations;

- The trust must own only cash and units of a single type of digital asset carried out on a permissionless network that uses a proof-of-stake mechanism to validate transactions;
- The trust's digital assets must be held by a custodian, acting on behalf of the trust, at digital asset addresses controlled by the custodian;
- The trust's staking of its digital assets must protect and conserve trust property by mitigating the risk that a third party could control a majority of the total staked assets and engage in transactions that reduce the value of the trust's digital assets; and
- All digital assets must be made available to the staking provider at all times (with certain exceptions permitted).

The Rev. Proc. is effective for tax years ending on or after November 10, 2025. A trust may amend its trust agreement to authorize staking at any time during the nine-month period beginning on November 10, 2025, and the amendment will not prevent the trust from qualifying as an investment trust or as a grantor trust if the 14 requirements noted in the Rev. Proc. are satisfied.

## Why It Matters

U.S. investment funds that qualify as exchange traded products (ETPs) holding digital assets are often organized as trusts, and usually take the position that, for U.S. federal income tax purposes, the ETPs are investment trusts classified as grantor trusts.<sup>[5]</sup> Treatment as a trust is generally favored by both investors and ETPs, given the flow-through treatment of the ETP's income and the relatively simple tax reporting regime of IRS Forms 1099. If, however, the ETP retains the power to vary its investment, it would no longer be considered a trust for federal income tax purposes, but rather a business trust (*i.e.*, a legal arrangement referred to as a trust but not classified as a trust for U.S. tax purposes). A business trust with more than one owner typically defaults to a classification of partnership for federal income tax purposes. As a partnership, the ETP would be required to file an IRS Form 1065 and an investor would receive a Schedule K-1, and also be subject to the complex partnership tax regime promulgated under Subchapter K of the Internal Revenue Code. A partnership whose interests are considered publicly traded would be treated for federal income tax purposes as publicly traded partnership and subject to the applicable rules.

The Rev. Proc. grants crypto ETPs comfort and certainty regarding the U.S. tax classification of ETPs organized as investment trusts in certain circumstances when staking digital assets and sharing the staking rewards with retail investors. While the Rev. Proc. is welcome news, additional guidance is still needed on how staking should be treated with respect to unrelated business taxable income, effectively connected income, and a whole host of other issues. We welcome further progress on these matters.

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[1] See <https://www.whitehouse.gov/wp-content/uploads/2025/07/Digital-Assets-Report-EO14178.pdf>, p. 131; for additional insight on the White House's July 2025 report, see [Trump Administration's Landmark Report on Digital Assets – Troutman Pepper Locke](#).

[2] Treas. Reg. Section 301.7701-4(a).

[3] Section 671. For further insight on the tax classification of grantor trusts, see Thomas Gray and Joel Post, "[Grantor Trusts – Disregarded or Not?](#)" *Tax Notes Federal*, September 2024.

[4] Treasury Regulation Section 301.7701-4(c)(1). For additional insight on the meaning of the power to vary an

investment, see Thomas Gray, “[Investments Trusts, the Power to Vary, and Holding Partnership Interests](#),” *Journal of Taxation*, May 2016.

[5] See [STRENGTHENING AMERICAN LEADERSHIP IN DIGITAL FINANCIAL TECHNOLOGY](#) p. 127.

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