



# TaxNewsFlash

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## Notice 2023-27: Guidance and request for comments on treatment of certain NFTs as section 408(m) collectibles

The IRS today released an advance version of [Notice 2023-27](#) [PDF 119 KB] announcing that the Treasury Department and IRS intend to issue guidance treating certain nonfungible tokens (NFTs) as section 408(m) collectibles and requesting comments on such treatment.

According to a related IRS release—[IR-2023-50](#) (March 21, 2023)—an NFT is a unique digital identifier that is recorded using distributed ledger technology and may be used to certify authenticity and ownership of an associated right or asset. Distributed ledger technology, such as blockchain technology, uses independent digital systems to record, share and synchronize transactions, the details of which are recorded simultaneously on multiple nodes in a network. A token is an entry of data encoded on a distributed ledger. A distributed ledger can be used to identify ownership of both NFTs and fungible tokens, such as cryptocurrency, as described in Rev. Rul. 2019-24.

Section 408(m)(2) provides for a specific list of items that constitute collectibles for certain purposes. Acquisition of a collectible by an individual retirement account (IRA) or individually-directed account of a qualified plan is treated as a distribution from the account equal to the cost to the account of the collectible. Generally, collectibles also do not have as advantageous capital-gains tax treatment as other capital assets.

Until additional guidance is issued, the IRS intends to determine when an NFT is treated as a collectible by using a “look-through analysis.” Under the look-through analysis, an NFT is treated as a collectible if the NFT’s associated right or asset falls under the definition of collectible in the tax code. For example, a gem is a collectible under section 408(m); therefore, an NFT that certifies ownership of a gem is a collectible.

The IRS requests comments on any aspect of NFTs that might affect the treatment of an NFT as a collectible as well as certain comments specifically set out in the notice.

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