

November 5, 2019

The Honorable Robert Sprague, Chairman
State Board of Deposit
30 East Broad Street, 9th Floor
Columbus, Ohio 43215

SYLLABUS:

2019-033

The OhioCrypto.com cryptocurrency payment processor constitutes a financial transaction device as that term is defined in R.C. 113.40. No other statute gives the Treasurer authority to use OhioCrypto.com to collect state taxes. Therefore, the State Board of Deposit must approve the collection of state taxes using OhioCrypto.com, or a similar financial transaction device, pursuant to the procedures set forth in R.C. 113.40, before the Treasurer may collect taxes using OhioCrypto.com or a similar financial transaction device.



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OPINION NO. 2019-033

The Honorable Robert Sprague, Chairman
State Board of Deposit
30 East Broad Street, 9th Floor
Columbus, Ohio 43215

Dear Chairman Sprague,

The State Board of Deposit has requested an opinion regarding whether OhioCrypto.com is a financial transaction device subject the requirements of R.C. 113.40. Specifically, you ask the following question:

Is the “OhioCrypto.com” cryptocurrency payment processor a financial transaction device, and if so, should the payment of state taxes using this payment processor be approved by the Board of Deposit under Revised Code Section 113.40?

I conclude that OhioCrypto.com is a financial transaction device, and that it cannot be used without first being approved by the Board of Deposit.

Background and Description of OhioCrypto.com

To answer your question, we first must analyze what the OhioCrypto.com cryptocurrency payment processor is. OhioCrypto.com was a website operated by the Treasurer of State (“Treasurer”). The website allowed Ohio businesses to pay twenty-three different state taxes using cryptocurrency.¹ Your letter indicates that OhioCrypto.com has been suspended pending the issuance of this opinion.

¹ The taxes at issue appear in the Revised Code at: R.C. 5747.07 (Employer Withholding Tax); R.C. 5739.122 (Sales Tax); R.C. 5739.032 (Sales & Use Tax Direct Payment Permit); R.C. 5740.03 and 5740.05 (Streamlined Sales Tax); R.C. 5741.121 (Seller’s Use); R.C. 5741.121 (Consumer’s Use); R.C. 5739.029 and 4505.06 (Non-Resident Motor Vehicle Sales Tax); R.C. 128.46 (Wireless 9-1-1); R.C. 5743.051 (Cigarette/Other Tobacco Products); R.C. 5751.07 (Commercial Activity (CAT)); R.C. 5726.03 and 5726.06 (Financial Institution (FIT)); R.C. 5736.04 (Petroleum Activity (PAT)); R.C. 5725.22 (Premium Insurance Tax); R.C. 5747.44 (Pass-Thru Entity Tax (PTE)); R.C.

Cryptocurrency or virtual currency “is a digital representation of value that functions as a medium of exchange, a unit of account, and/or a store of value. In some environments, it operates like ‘real’ currency . . . but it does not have legal tender status in any jurisdiction.” IRS Notice 2014-21, 2014 IRB LEXIS 238, *1, 2014-1 C.B. 938, 2014-16 I.R.B. 938 (I.R.S. March 25, 2014). Perhaps the best-known cryptocurrency is Bitcoin. Bitcoin is not regulated by a central bank or other governmental authority. *SEC v. Shavers*, E.D.Tex. No. 4:13-CV-416, 2013 U.S. Dist. LEXIS 110018, at *2 (Aug. 6, 2013). Bitcoin and other virtual or cryptocurrencies can be digitally traded between users and can be purchased for, or exchanged into, U.S. dollars and other real or virtual currencies. IRS Notice 2014-21, 2014 IRB LEXIS 238, *1, 2014-1 C.B. 938, 2014-16 I.R.B. 938 (I.R.S. March 25, 2014).

Taxpayers that wished to pay their taxes in cryptocurrency using OhioCrypto.com would not pay the Treasurer directly with cryptocurrency. At no point would the State Treasury actually hold cryptocurrency. Instead, the former Treasurer contracted with a third-party company, BitPay, Inc., to process the payments. The taxpayer paid BitPay in cryptocurrency. BitPay settled the payment, converted the payment to U.S. Dollars, and then paid the Treasurer in U.S. Dollars. BitPay guaranteed the payment against fluctuation of the value of the cryptocurrency while the payment was being processed. And BitPay charged a fee for its service. The fee was charged directly to the taxpayer when the taxpayer used OhioCrypto.com, and was added to the total amount the taxpayer paid through OhioCrypto.com. The payment was ultimately settled using an automated clearing house process between BitPay and a bank account maintained by the Treasurer.²

Is OhioCrypto.com a Financial Transaction Device as Defined in R.C. 113.40?

Pursuant to Revised Code Section 113.40, the State Board of Deposit may pass a resolution authorizing the payment of state expenses by a “financial transaction device.” R.C. 113.40(B). Contracts and solicitation of contracts with financial institutions, issuers of financial transaction devices, or processors of financial transaction devices made pursuant to R.C. 113.40 must comply

718.85 (Municipal Net Profits); R.C. 4705.10 (Interest on Lawyers Trust Accounts (IOLTA)); R.C. 5728.05, 5728.08 (International Fuel Tax Agreement (IFTA)); R.C. 5735.062 (Motor Vehicle Fuel); R.C. 5749.06 (Severance Tax); R.C. 5727.81 and 5727.83 (Kilowatt Hour); R.C. 5745.041 (Municipal Tax Electric Light & Telephone); R.C. 5727.83 (Natural Gas Distribution (Mcf)); R.C. 5727.311 (Public Utilities Tax).

² This description of OhioCrypto.com is compiled from OhioCrypto.com’s Terms of Service, the contract between the Treasurer and BitPay, and conversations with the Treasurer’s Office. The Attorney General generally refrains from issuing opinions about the interpretation of individual contracts. 1986 Op. Att’y Gen. No 86-039, at 2-198. We will, however, analyze the contract with BitPay to help answer the question of whether OhioCrypto.com constitutes a financial transaction device pursuant to R.C. 113.40.

with certain requirements set forth in the section. Your question asks whether OhioCrypto.com is a financial transaction device pursuant to R.C. 113.40 and subject to the requirements of the section.

The answer is yes.

R.C. 113.40 applies only to financial transaction devices as defined in R.C. 113.40(A)(1). R.C. 113.40(A)(1) defines a “financial transaction device” as a “credit card, debit card, charge card, prepaid or stored value card, or automated clearinghouse network credit, debit, or e-check entry that includes, but is not limited to, accounts receivable and internet-initiated, point of purchase, and telephone-initiated applications, *or any other device or method for making an electronic payment or transfer of funds.*” (Emphasis added).

Payment processing through OhioCrypto.com falls under this definition. Payment via OhioCrypto.com is a device or method for making an electronic payment or transfer of funds. No physical currency or written check is used when a payment is made through OhioCrypto.com, and the entire process is electronic and used to facilitate a payment. We need not decide what the difference between a “method” and a “device” is to conclude that OhioCrypto.com it is at least one of these—it is a way (method) of, or tool (device) for, making electronic payments.

This conclusion that OhioCrypto.com is a financial transaction device is bolstered by the statutory history of R.C. 113.40(A)(1). When first passed in 1998, R.C. 113.40(A)(1) defined “financial transaction device” only as “a credit card, debit card, charge card, prepaid or stored value card.” Am. Sub. H.B. No. 850, 122nd Gen. A. (1998), at 5875-5880. The General Assembly amended this definition in 2004 to add the following clause: “or automated clearinghouse network credit, debit, or e-check entry that includes, but is not limited to, accounts receivable and internet-initiated, point of purchase, and telephone-initiated applications.” Sub. H.B. No. 204, 125th Gen. A. (2004), at 4889-4893. It was amended a second time in 2008 to add: “or any other device or method for making electronic payment or transfer of funds.” Am. Sub. H.B. 562, 127th Gen. A. (2008), at 5781-5785. Given this history, the objective purpose of the 2008 amendment is clear—the General Assembly added a catch-all phrase to ensure that any electronic payment processing methods or devices would qualify as a financial transaction devices. OhioCrypto.com falls comfortably within the broad, catch-all provision.

Because payment processing through OhioCrypto.com is a financial transaction device as defined in R.C. 113.40(A)(1), the State Board of Deposit may adopt a resolution authorizing its use, or the use of a similar transaction device. Any such resolution and use must comply with the requirements of R.C. 113.40.

May the Treasurer use OhioCrypto.com if it has not been authorized by the State Board of Deposit?

The next question that arises is whether the Treasurer *may* process payments through OhioCrypto.com even if the State Board of Deposit has not authorized its use. Absent independent authority authorizing the Treasurer to do so, the answer is no. The Treasurer, as a constitutional

officer, has only such powers as are expressly conferred by the Constitution and statutes, including such implied or incidental powers as may be necessary to carry into effect those expressly conferred. 1982 Op. Atty Gen. No. 82-082, at 2-232; 1958 Op. Att’y Gen. No. 1868, p. 157, at 159-160; *see State ex rel. Trauger v. Nash*, 66 Ohio St. 612, 618-619 (1902). Numerous statutes, *see supra* note 1, authorize the Treasurer to collect tax payments electronically. But OhioCrypto.com goes beyond collecting payments electronically—it is a payment processor that performs a form of currency exchange (for which it charges taxpayers a fee), and only then allows for the transfer of money. The Treasurer’s use of a payment processor to convert cryptocurrency into dollars for the payment of taxes is not authorized, expressly or impliedly, by statutes allowing the receipt of electronic payments. Nor is there any other statute that permit such conversions.

Because of this, OhioCrypto.com, or a similar financial transaction device, must be authorized by the Board of Deposit pursuant to R.C. 113.40 before the Treasurer may use it to collect state taxes.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised as follows:

The OhioCrypto.com cryptocurrency payment processor constitutes a financial transaction device as that term is defined in R.C. 113.40. No other statute gives the Treasurer authority to use OhioCrypto.com to collect state taxes. Therefore, the State Board of Deposit must approve the collection of state taxes using OhioCrypto.com, or a similar financial transaction device, pursuant to the procedures set forth in R.C. 113.40 before the Treasurer may collect taxes using OhioCrypto.com or a similar financial transaction device.

Respectfully,



DAVE YOST
Ohio Attorney General