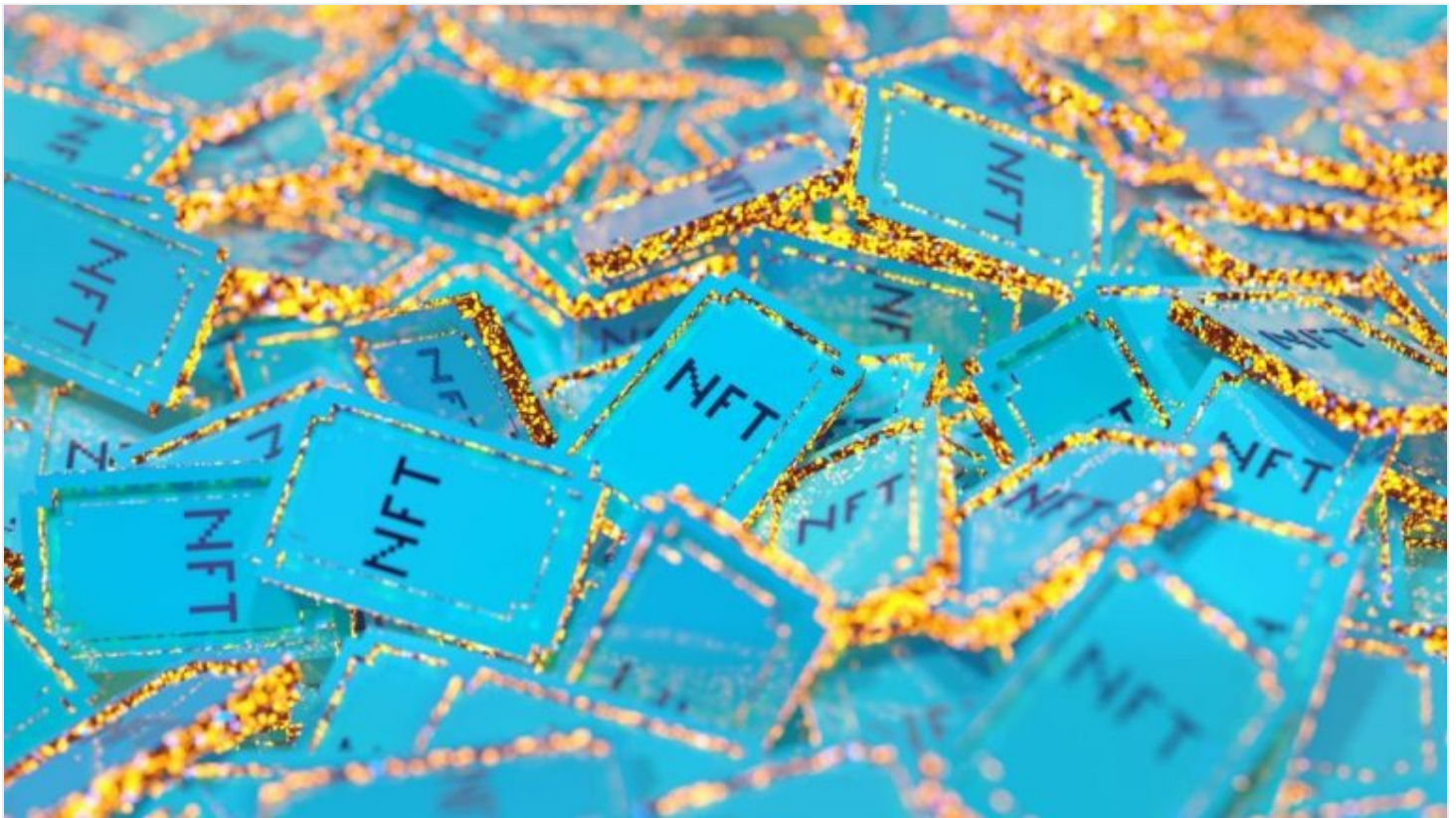


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Jason Bramwell • Mar. 23, 2023



The IRS and the Treasury Department issued preliminary guidance on Tuesday that leans toward treating nonfungible tokens (NFTs) as a collectible for tax purposes.

In a statement this morning, the IRS said:

A nonfungible token (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

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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.

Other [collectibles included in section 408\(m\)\(2\)](#) include:

- Any work of art,
- Any rug or antique,
- Any metal or gem (with limited exceptions),
- Any stamp or coin (with limited exceptions),
- Any alcoholic beverage, or
- Any other tangible personal property that the IRS determines is a "collectible" under IRC Section 408(m).

In [Notice 2023-27](#), the Treasury Department and the IRS are requesting 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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