

**BUILDING (BITCOIN) BACK BETTER: ATTAINING  
THE WIDESPREAD ADOPTION OF  
CRYPTOCURRENCY WITH ECONOMICALLY &  
ENVIRONMENTALLY CONSCIOUS TAX CODE  
AMENDMENTS**

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ABSTRACT

Although the cryptocurrency industry has grown exponentially over the last decade, cryptocurrency has not attained widespread adoption in the United States. Cryptocurrency’s failure to attain widespread adoption in the United States can be attributed to the Internal Revenue Code. Amending the Internal Revenue Code will allow cryptocurrency to attain widespread adoption, while also bolstering the economic and environmental interests of the federal government.

Under the current Internal Revenue Code, cryptocurrency is classified as property. This is problematic because property transactions have burdensome reporting requirements that deter consumers and businesses from using cryptocurrency. By amending the Internal Revenue Code and reclassifying cryptocurrency as foreign currency, these burdensome reporting requirements will be eliminated. This will encourage consumers and businesses to transact with cryptocurrencies. This will also provide additional tax revenue for the federal government, which it can use to fund social programs and combat the national debt.

The other deficiency of the Internal Revenue Code is the ability of cryptocurrency miners to deduct the cost of their electricity from their taxable income. This prevents the widespread adoption of cryptocurrency because cryptocurrency mining uses an exorbitant amount of electricity, and consumers and businesses place a large emphasis on corporate social responsibility. When the electricity deduction for cryptocurrency miners is eliminated, the cryptocurrency industry will switch to less energy-intensive mining methods and invest in renewable sources of energy. This will cause an influx of

support from environmentally conscious consumers and businesses. Additionally, this will help the federal government accomplish its environmental goals, which include achieving a carbon-neutral electric sector by 2035. Amending the Internal Revenue Code will enable cryptocurrency to attain widespread adoption and the federal government to achieve its various economic and environmental goals.

#### INTRODUCTION

Throughout history, different currencies and mediums of exchange have emerged to address the needs of society.<sup>1</sup> As civilization progressed and developed, the sophistication of its mediums of exchange followed.<sup>2</sup> Today, cryptocurrency seeks to address the current issues and limitations of the U.S. dollar and, once again, make mediums of exchange more advanced.<sup>3</sup> Although cryptocurrency has experienced immense growth over the last decade and offers several advantages over the U.S. dollar, cryptocurrency has failed to attain widespread adoption in the United States.<sup>4</sup> Until lawmakers amend the Internal Revenue Code (“IRC”), cryptocurrency cannot attain widespread adoption in the United States.

Cryptocurrency advocates have previously presented laws and amendments intended to benefit the cryptocurrency industry to the federal government, but few of these proposals have been successful.<sup>5</sup> Many of these proposals have been grandiose and sought rapid and dramatic change to cryptocurrency’s regulatory environment.<sup>6</sup> Moreover, few of these proposals have accounted for the interests of the federal government.<sup>7</sup> This Note argues that a more targeted approach that considers the interests of the federal government will have more success. Enacting amendments to the IRC will help cryptocurrency attain widespread adoption, while bolstering the economic and environmental interests of the federal government.

This Note builds on these arguments in four parts. In Part I, this Note provides important background information on cryptocurrency

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1. See Andrew Beattie, *The History of Money*, INVESTOPEDIA (June 20, 2022), [https://www.investopedia.com/articles/07/roots\\_of\\_money.asp](https://www.investopedia.com/articles/07/roots_of_money.asp).

2. See *Id.*

3. See *infra* Section I.

4. See *infra* Section I.

5. See, e.g., S. 3206, 117th Cong. (2021).

6. See, e.g., Cryptocurrency Tax Fairness Act of 2017, H.R. 3708, 115th Cong. (2017).

7. See, e.g., S. 3206.

and the cryptocurrency industry. Part I also explains the potential benefits of cryptocurrency's widespread adoption for consumers and the federal government. In Part II, this Note describes the current state of the IRC and its unfavorable treatment of cryptocurrency. The two deficiencies of the IRC that this Note identifies are: cryptocurrency's classification as property; and cryptocurrency miners' ability to deduct the cost of their electricity from their taxable income. Part II explains why these deficiencies prevent cryptocurrency from attaining widespread adoption and the federal government from achieving its various economic and environmental goals.

In Part III, this Note offers a solution to cryptocurrency's classification as property. This solution is reclassifying cryptocurrency as foreign currency. By reclassifying cryptocurrency as foreign currency, cryptocurrency can attain widespread adoption and the federal government can achieve its economic goals. In Part IV, this Note presents a solution to cryptocurrency miners deducting the cost of their electricity from their taxable income. This solution is eliminating the ordinary and necessary business expense deduction for cryptocurrency miners' electricity. By eliminating this deduction, cryptocurrency can attain widespread adoption and the federal government can achieve its environmental goals. Ultimately, the IRC amendments that this Note advocates for will enable cryptocurrency to attain widespread adoption and further the economic and environmental interests of the federal government.

#### I. THE QUEST FOR WIDESPREAD ADOPTION: AN OVERVIEW OF CRYPTOCURRENCY & ITS MANY BENEFITS

It is important to explain what cryptocurrency is because it is a new and complex technology. Although nearly nine out of ten Americans have heard about cryptocurrency, only sixteen percent of Americans have used cryptocurrency.<sup>8</sup> Moreover, only about seventeen percent of cryptocurrency investors fully understand cryptocurrency.<sup>9</sup> There have been many attempts to enact beneficial

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8. Andrew Perrin, *16% of Americans Say That They Have Ever Invested in, Traded or Used Cryptocurrency*, PEW RSCH. CTR. (Nov. 11, 2021), <https://www.pewresearch.org/fact-tank/2021/11/11/16-of-americans-say-they-have-ever-invested-in-traded-or-used-cryptocurrency/>.

9. See Nicholas Vega, *More Than 1 in 3 Cryptocurrency Investors Know Little to Nothing About it, Survey Finds*, CNBC (Mar. 4, 2021, 3:35 PM), <https://www.cnbc.com/2021/03/04/survey-finds-one-third-of-crypto-buyers-dont-know-what-theyre-doing.html>.

cryptocurrency laws in the United States, but most have failed.<sup>10</sup> The failure of these bills may be attributed to lawmakers' lack of cryptocurrency knowledge.<sup>11</sup> Thus, it is imperative to develop a baseline understanding of cryptocurrency, the growth of the cryptocurrency industry, and the potential benefits of cryptocurrency's widespread adoption.

#### A. An Overview of Cryptocurrency & the Cryptocurrency Industry

Cryptocurrency is a form of digital money that users send and receive through the blockchain, a network of decentralized computers.<sup>12</sup> Consumers are drawn to cryptocurrency because its transactions are cheap, fast, anonymous, and secure.<sup>13</sup> The first cryptocurrency, Bitcoin, was created in 2008.<sup>14</sup> Since Bitcoin's inception, the growth of the cryptocurrency industry has been explosive.<sup>15</sup> There are now more than 20,000 different types of cryptocurrencies, millions of users who regularly transact with cryptocurrencies, and \$130 billion worth of cryptocurrency that is traded on global exchanges each day.<sup>16</sup> Moreover, nearly one-third of

10. See, e.g., S. 3206; see, e.g., H.R. 3708.

11. See 167 CONG. REC. S6061, S6084 (2021) (statement of Sen. Ted Cruz) (“The ugly truth . . . is that there aren’t five Senators in this body with any real understanding of how cryptocurrency operates.”).

12. See Samantha T. Edgell, *Toto, I’ve a Feeling the Environment Isn’t Safe from Cryptocurrency Anymore: The Degrading Ecological Effects of Bitcoin and Digital Currencies*, 32 VILL. ENV’T. L. J. 69, 70 (2021); see also Kate Ashford, *What Is Cryptocurrency?*, FORBES ADVISOR (last updated June 6, 2022, 7:23 PM), <https://www.forbes.com/advisor/investing/what-is-cryptocurrency/>.

13. See *Advantages of Cryptocurrency: All You Need to Know*, EUR.N BUS. REV. (July 14, 2020), <https://www.europeanbusinessreview.com/advantages-of-cryptocurrency-all-you-need-to-know/>.

14. See Deidre A. Liedel, *The Taxation of Bitcoin: How the IRS Views Cryptocurrencies*, 66 DRAKE L. REV. 107, 110 (2018).

15. Compare Liedel, *supra* note 14, at 141 (explaining that 10,000 bitcoins could have been purchased for fifty dollars in 2009), with Akshay Chinchalkar, *Crypto Barrels Towards 2022 After Adding \$1.5 Trillion in Value*, BLOOMBERG (Dec. 20, 2021), <https://www.bloomberg.com/news/articles/2021-12-20/cryptocurrencies-and-bitcoin-btc-2021-year-in-charts?leadSource=verify%20wall> (showing that the overall cryptocurrency market value climbed from about \$1.5 trillion to about \$2.3 trillion in 2021); Niccolo Conte, *Visualizing the Rise of Cryptocurrency Transactions*, VISUAL CAPITALIST (Sept. 22, 2021), <https://www.visualcapitalist.com/visualizing-the-rise-of-cryptocurrency-transactions/> (demonstrating that the amount of daily transactions of three major cryptocurrencies “increased sixfold” in a five year period).

16. See Chinchalkar, *supra* note 15; Conte, *supra* note 15; see Riley Adams, *75 Cryptocurrency Statistics Show Crypto’s Gone Mainstream*, YOUNG AND THE

all small businesses in the United States accept cryptocurrency as a form of payment.<sup>17</sup>

*B. The Benefits of Cryptocurrency for Consumers*

One of the chief advantages of using cryptocurrency is that it is decentralized, and no public or private entity controls its production.<sup>18</sup> Unlike the U.S. dollar, which is managed by the federal government and Federal Reserve, cryptocurrency does not have a governing body and its only oversight is from its network of users.<sup>19</sup> This is significant because the value of the U.S. dollar can be changed and manipulated by the monetary policies of the Federal Reserve, while the value of cryptocurrencies cannot.<sup>20</sup>

As a result of cryptocurrency's decentralization, cryptocurrencies are unlikely to suffer from inflation.<sup>21</sup> Conversely, the federal government and Federal Reserve recently oversaw a 6.8% annual increase in the Consumer Price Index, the largest annual increase since 1982.<sup>22</sup> Consumers fear the effects of government interference, like inflation, because it adversely affects their families and day-to-day

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INVESTED (Aug. 23, 2022), <https://youngandtheinvested.com/cryptocurrency-statistics/>.

17. See Tor Constantino, *One-Third of U.S. Small Businesses Accept Cryptocurrencies as Payment. Here's Why the Trend Keeps Growing*, INC. (Oct. 29, 2021), <https://www.inc.com/tor-constantino/one-third-of-us-small-businesses-accept-cryptocurrencies-as-payment-heres-why-trend-keeps-growing.html>; see also Andrew Lisa, *10 Major Companies That Accept Bitcoin*, YAHOO! (Aug. 25, 2021), <https://www.yahoo.com/now/10-major-companies-accept-bitcoin-190340692.html> (explaining that large companies like Microsoft, Whole Foods, Starbucks, and Home Depot also accept cryptocurrency as a form of payment).

18. See Stephen Wilks, *The Reimagined Schoolyard: Cryptocurrency's Adoption in Tomorrow's International Monetary Order*, 2020 B.C. INTELL. PROP. & TECH. F. 1, 33 (2020).

19. See Aaron Hsieh, Note, *The Faceless Coin: Achieving a Modern Tax Policy in the Changing Landscape of Cryptocurrency*, 2019 U. ILL. L. REV. 1079, 1084-85 (2019).

20. See *What is Inflation?*, COINBASE, <https://www.coinbase.com/learn/crypto-basics/what-is-inflation> (last visited Nov. 8, 2022).

21. *Id.* (stating that cryptocurrencies are “more resistant to inflation than fiat currencies like the U.S. dollar “because cryptocurrencies cannot be manipulated by governments who adjust their interest rates or print more money).

22. *Consumer Prices Up 6.8 Percent for Year Ended November 2021*, U.S. BUREAU OF LAB. STATS. (Dec. 15, 2021), <https://www.bls.gov/opub/ted/2021/consumer-prices-up-6-8-percent-for-year-ended-november-2021.htm>.

lives.<sup>23</sup> In 2021, inflation caused the price of gas to increase by forty-two percent, the price of meats to increase by ten percent, and the price of used cars to increase by twenty-four percent.<sup>24</sup> While the value of the U.S. Dollar decreased in 2021 because of inflation and government intervention, the value of Bitcoin rose by 47%.<sup>25</sup>

There are also no private entities that intervene in cryptocurrency transactions, as cryptocurrency transactions are truly peer-to-peer.<sup>26</sup> When transacting with U.S. dollars, there are intermediaries such as banks, credit card companies, and websites like PayPal that facilitate transactions.<sup>27</sup> These intermediaries have a lot of power and can charge various fees and expenses to consumers.<sup>28</sup> With cryptocurrency transactions, there are no late fees, overdraft fees, or interest payments.<sup>29</sup> This allows sending and receiving cryptocurrency to be cheaper than sending and receiving U.S. dollars.<sup>30</sup> In fact, the transaction fee from using Bitcoin is about one ninth of the cost of a transaction fee from a Western Union or MoneyGram wire transfer.<sup>31</sup>

Lower transaction fees can provide numerous benefits to consumers and society at large. The transaction fee from using a credit card, typically two to three percent, is suffered by the merchant. Merchants commonly charge those fees to consumers or raise the price

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23. 168 CONG. REC. S925, 933–34 (2022) (statement of Rep. Stephanie Bice) (“According to a recent Gallup Poll, 79 percent of Americans expect inflation to continue to rise over the next 6 months. Inflation isn’t an abstract concept. Americans across the country are feeling the pinch every day at the grocery store, the gas pump, and everywhere else as they buy goods to support their families.”).

24. Alicia Adamczyk, *Prices Continue to Rise—Here’s What’s Getting the Most Expensive*, CNBC (Oct. 13, 2021, 12:18 PM), <https://www.cnbc.com/2021/10/13/prices-continue-to-riseheres-whats-getting-the-most-expensive.html>; see also *Coronavirus and CARES Act: Hearing Before the Sen. Comm. on Banking, Hous., and Urb. Affs.*, 117th Cong. (2021) (statement of Jerome Powell, Chairman, Board of Governors of the Federal Reserve System) (“[W]e are seeing upward pressure on prices . . . [t]hese effects have been larger and longer lasting than anticipated.”).

25. Bitcoin to USD Chart, COINMARKETCAP, <https://coinmarketcap.com/> (last visited Nov. 8, 2022) (follow “Bitcoin” hyperlink; then switch view of chart to “ALL” and examine chart to see the price of Bitcoin on January 1, 2021 and December 31, 2021).

26. Liedel, *supra* note 14, at 110.

27. *Id.*

28. Hsieh, *supra* note 19, at 1085.

29. Edgell, *supra* note 12, at 73; see also Liedel, *supra* note 14, at 113–14.

30. Liedel, *supra* note 14, at 113–14.

31. *Id.* at 114.

of their goods and services to offset this expense.<sup>32</sup> Through the lower transaction fees of cryptocurrencies, merchants can either lower the price of their goods and services or maintain their prices and yield additional profits.<sup>33</sup> Yielding additional profits benefits consumers and society because businesses use extra profits to provide bonuses to employees, invest in the research and development of new technology, pay local, state, and federal taxes, and distribute dividends to shareholders.<sup>34</sup> All of these various benefits are derived from cryptocurrency's defining characteristic, its decentralization. These advantages have caused consumers to begin to transact with cryptocurrency. Once the federal government discovers the potential benefits of using cryptocurrency, it will likely start to transact with cryptocurrency as well.

### *C. The Benefits of Cryptocurrency for the Federal Government*

The best way to enact favorable cryptocurrency amendments to the IRC is to demonstrate that the proposals will not only help cryptocurrency attain widespread adoption, but also allow the federal government to achieve its own goals. Two of the interests of the federal government are maintaining a strong economy and protecting the environment.<sup>35</sup> The widespread adoption of cryptocurrency will provide economic benefits to the federal government, which will be explained in this section. The widespread adoption of cryptocurrency will also provide environmental benefits to the federal government, which will be explained in a subsequent section.

The cryptocurrency industry provides a great deal of economic opportunity for the federal government. The market capitalization of the cryptocurrency industry reached 2.31 trillion dollars in December

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32. See AnnaMarie Andriotis, *Paying With a Credit Card? That's Going to Cost You*, WALL ST. J. (Aug. 19, 2021, 9:00 AM), <https://www.wsj.com/articles/paying-with-a-credit-card-thats-going-to-cost-you-11629378047>.

33. Lucas Downey, *Transaction Costs*, INVESTOPEDIA (Apr. 30, 2021), <https://www.investopedia.com/terms/t/transactioncosts.asp> (“[T]he prices of many goods and services have lowered due to a reduction in [transaction costs].”).

34. Tejvan Pettinger, *What Do Firms Do with Profit?*, ECONS. HELP (Oct. 24, 2019), <https://www.economicshelp.org/blog/21266/economics/what-do-firms-do-with-profit/>.

35. *What Economic Goals does the Federal Reserve Seek to Achieve Through its Monetary Policy?*, THE FED. RSRV. (Aug. 27, 2020), <https://www.federalreserve.gov/faqs/what-economic-goals-does-federal-reserve-look-to-achieve-through-monetary-policy.htm>; *Our Mission and What We Do*, U.S. ENV'T PROT. AGENCY (June 13, 2022), <https://www.epa.gov/aboutepa/our-mission-and-what-we-do>.



2021.<sup>36</sup> This is so large that if the cryptocurrency industry was a country, its economy would be the eighth largest in the world.<sup>37</sup> Moreover, the average annual income of a blockchain developer in the United States is a staggering \$136,000.<sup>38</sup> If the federal government truly wants to maintain a strong economy, the widespread adoption of cryptocurrency should also be one of its goals.

As stated previously, the decentralization of cryptocurrency produces various economic benefits for consumers. The same proves true for the federal government. President Biden stated that he wants to “build [the] economy from the bottom up and from the middle out, not the top down.”<sup>39</sup> The decentralized nature of cryptocurrency can help the President with this task. Since there are no public or private entities involved with cryptocurrency transactions, impoverished individuals can more easily control their money and make investments.<sup>40</sup> Poorer consumers are often denied access to financial services, charged exorbitantly high interest rates on loans, or forced to navigate through massive amounts of red tape by large financial institutions.<sup>41</sup> Cryptocurrency eliminates many of these hurdles because there are no minimum balance requirements, credit checks, or

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36. Chinchalkar, *supra* note 15.

37. See Aaron O’Neill, *Countries with the Largest Gross Domestic Product (GDP) 2021*, STATISTA (Jul. 27, 2022), <https://www.statista.com/statistics/268173/countries-with-the-largest-gross-domestic-product-gdp/>.

38. 167 Cong. Rec. S6061, S6085 (daily ed. Aug. 9, 2021) (statement of Sen. Ted Cruz) (“The average annual income in the United States for a blockchain developer is \$136,000. That represents a steady career of good income for someone to own a home, to raise a family, to live a good and comfortable life.”).

39. Joseph Biden, President, U.S., Remarks on the American Jobs Plan (Mar. 31, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/03/31/remarks-by-president-biden-on-the-american-jobs-plan/>.

40. See Tara Shirvani, Infrastructure Portfolio Manager, Eur. Bank for Reconstruction and Dev., Address at TEDxCambridgeUniversity: *How Can We Sustainably Power a Cryptocurrency Future?*, YOUTUBE (May 9, 2019), <https://www.youtube.com/watch?v=hukR1LysU2Y>; see also Jack Boreham, *Fighting Poverty with Cryptocurrency—A New Age of Economic Development*, HACKER NOON (Sept. 7, 2021), <https://hackernoon.com/fighting-poverty-with-cryptocurrency-a-new-age-of-economic-development-xqw37np>.

41. FED. DEPOSIT INS. CORP., HOW AMERICA BANKS: HOUSEHOLD USE OF BANKING AND FINANCIAL SERVICES 3 fig.3 (2019) (illustrating that fifty percent of Americans who did not have bank accounts could not open a bank account because they did not meet the minimum balance requirements); see Mark Leon Goldberg, *Cryptocurrency Isn’t All Bad*, FOREIGN POL’Y (Jun. 22, 2021, 12:48 PM), <https://foreignpolicy.com/2021/06/22/blockchain-bitcoin-energy-decentralized-finance-development-poverty/>.

other barriers.<sup>42</sup> This creates a level playing field for all citizens and allows the middle and lower classes to compete with the wealthy.<sup>43</sup> This can also help close the wealth gap that currently exists in the United States.<sup>44</sup> Eliminating income inequality is important to the current administration, and the widespread adoption of cryptocurrency may be a solution to this problem.<sup>45</sup>

## II. PREVENTING WIDESPREAD ADOPTION: THE CURRENT TAX SCHEME FOR CRYPTOCURRENCY & ITS MANY DEFICIENCIES

The current tax code and regulatory environment surrounding cryptocurrency is lagging the cryptocurrency industry's growth. Yet, it is common for tax law to lag technological advancements.<sup>46</sup> For example, Amazon did not collect sales tax from most consumers for twenty years because states did not know how to regulate e-commerce sales.<sup>47</sup> Now, Amazon collects sales tax in forty-five states.<sup>48</sup> Thus, it is no surprise that the IRS has yet to create clear and effective tax guidance for cryptocurrency.

There are two sections of the IRC that need to be amended for cryptocurrency to attain widespread adoption. For the federal government to consider amending the IRC, the deficiencies in the current code must be demonstrated. The best way to do this is to

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42. See Michael Gardon, *Can A Crypto Savings Account Beat The Bank?*, GOOD FIN. CENTS (Jan. 28, 2022), <https://www.goodfinancialcents.com/crypto-savings-account-beat-the-bank/>.

43. See Boreham, *supra* note 40; see also Perrin, *supra* note 8 (explaining that the percentage of Asian, black, and Hispanic Americans who have used cryptocurrency is more than the percentage of white Americans who have used cryptocurrency).

44. See TELCOIN, TELCOIN WHITEPAPER 9 (2017) (stating that Telcoin created its own cryptocurrency (TEL) because “the widespread disparity between access to financial services” and the World Bank estimating that “more than 35 percent of the global adult population still doesn’t have access to basic financial services”); see also Sylvia Kwan, *A Hard Look at Investing and Systemic Racism*, ELLEVEST (June 16, 2020), <https://www.ellevest.com/magazine/investing/investing-and-systemic-racism>.

45. See Gardon, *supra* note 42; Boreham, *supra* note 40; Perrin, *supra* note 8; TELCOIN, *supra* note 44; see also Sharon Epperson & Michelle Fox, *President Biden Pledges to Fix the Racial Wealth Gap. Here Are His Plans*, CNBC (Feb. 5, 2021, 3:36 PM), <https://www.cnbc.com/2021/02/05/president-biden-plansto-fix-the-racial-wealth-gap.html>.

46. See, e.g., Liedel, *supra* note 14, at 116 (explaining that it took the IRS twenty years to develop guidelines for how PayPal users were supposed to report their revenues).

47. *Id.* at 115.

48. *Id.*

explain why the current IRC is preventing cryptocurrency's widespread adoption and how this does not align with the economic and environmental interests of the federal government.

*A. Cryptocurrency's Classification as Property: Preventing Widespread Adoption & Inhibiting the Federal Government's Economic Goals*

Cryptocurrency is currently classified by the Internal Revenue Service ("IRS") as property.<sup>49</sup> The IRS's classification of cryptocurrency as property is preventing cryptocurrency from attaining widespread adoption because property transactions have onerous reporting requirements.<sup>50</sup> When consumers use cryptocurrency to purchase goods or services, they must report their transactions and capital gains to the IRS.<sup>51</sup> Conversely, when consumers use U.S. dollars to purchase goods or services, they do not have to report anything.<sup>52</sup> Juxtaposing these two statements reveals a major disadvantage for cryptocurrency.

The burden of cryptocurrency's reporting requirements is evidenced by *United States v. Coinbase, Inc.*<sup>53</sup> This case is significant within the cryptocurrency community because Coinbase is the largest cryptocurrency exchange in the United States and the first major cryptocurrency company in the United States to go public.<sup>54</sup> In this case, it was discovered that only about 900 taxpayers reported gains from cryptocurrencies even though there were 500,000 active users of Coinbase at the time.<sup>55</sup> This shows that consumers are not aware of

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49. I.R.S. Notice 2014-21 ("For federal tax purposes, virtual currency is treated as property. General tax principles applicable to property transactions apply to transactions using virtual currency.").

50. See Liedel, *supra* note 14, at 145.

51. See Hsieh, *supra* note 19, at 1108–9.

52. See Liedel, *supra* note 14, at 118.

53. See generally *United States v. Coinbase Inc.*, No. 17-cv-01431-JSC, 2017 U.S. Dist. LEXIS 196306 (N.D. Cal. July 18, 2017).

54. Lauren Aratani, *Coinbase, US's Largest Cryptocurrency Exchange, Makes Nasdaq Debut*, THE GUARDIAN (Apr. 14, 2021, 1:04 PM), <https://www.theguardian.com/technology/2021/apr/14/coinbase-nasdaq-value-cryptocurrency>.

55. See Hsieh, *supra* note 19, at 1097; see *Coinbase*, 2017 U.S. Dist. LEXIS, at \*14 (statement of IRS) ("[T]here seems to be a substantial gap between the number

the reporting requirements, are confused by the burdensome reporting requirements, or they do not want to comply with the reporting requirements because they are too arduous.

Consumers' reluctance to use cryptocurrencies because of reporting requirements is exacerbated by their fear of being investigated by the IRS.<sup>56</sup> Failing to report taxes or misreporting taxes invites investigations from the IRS.<sup>57</sup> As stated in § 7602(a) of the IRC:

For the purpose of ascertaining the correctness of any [tax] return . . . the [IRS] is authorized [t]o examine any books, papers, records, or other data which may be relevant . . . [t]o summon the person liable for tax . . . or any officer or employee of such person . . . [and] [t]o take such testimony of the person concerned, under oath.<sup>58</sup>

The fear of an IRS investigation is well-founded—tax evasion is a felony that can lead to a \$100,000 fine and a five-year prison sentence.<sup>59</sup> The burdensome reporting requirements derived from cryptocurrency's classification as property, especially when compounded with the fear of IRS investigations, deter consumers from using cryptocurrency and prevent cryptocurrency from attaining widespread adoption.

*United States v. Coinbase* also reveals a major issue for the federal government and IRS.<sup>60</sup> Since cryptocurrency transactions are anonymous, it would be impossible for the IRS to identify the parties involved in all cryptocurrency transactions.<sup>61</sup> In *Coinbase*, the IRS requested data from hundreds of thousands of Coinbase users to

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of people transacting in virtual currency . . . and those that are reporting [their] transactions.”).

56. See generally *Trust in Government Nears Record Low, But Most Federal Agencies Are Viewed Favorably*, PEW RSCH CTR. (Oct. 18, 2013), <https://www.pewresearch.org/politics/2013/10/18/trust-in-government-nears-record-low-but-most-federal-agencies-are-viewed-favorably/> (demonstrating that the IRS is viewed less favorably than every other administrative agency and is the only administrative agency with a negative approval rating).

57. I.R.C. § 7602(a)–(b).

58. I.R.C. § 7602(a).

59. I.R.C. § 7201. *But see* *Sansone v. United States*, 380 U.S. 343, 351 (1965) (explaining that a felony conviction for tax evasion requires “an affirmative act constituting an evasion or attempted evasion of tax” and if this element is not present, tax evasion will more likely be a misdemeanor).

60. See *infra* text accompanying notes 61–63.

61. Hsieh, *supra* note 19, at 1103.

calculate their tax liability.<sup>62</sup> The court stated that the “IRS [offered] no explanation as to how [it] can legitimately use most of these millions of records on hundreds of thousands of users.”<sup>63</sup> Cryptocurrency’s classification as property is disadvantageous for the federal government as well because it inhibits the federal government’s ability to collect tax revenue.

Being able to easily collect tax revenue is important to the federal government, as evidenced by the recent passage of the American Families Plan.<sup>64</sup> This bipartisan infrastructure law included a provision that redefined the term “broker” and required all cryptocurrency companies to report transactions from its users that exceed \$10,000 to the IRS.<sup>65</sup> In this law, the federal government also increased the amount of funding for the IRS in order to prevent tax evasion.<sup>66</sup> With cryptocurrency’s current classification as property, it will be difficult for the IRS to collect tax revenue on cryptocurrency transactions.

In addition to the aforementioned tax considerations, there are other economic factors that should induce the federal government to reclassify cryptocurrency. Pamir Glenbe, a CoinSummit Conference co-founder, stated that cryptocurrency’s classification as property encourages users to “hoard rather than spend, because as soon as they spend they would be liable to incur capital gains taxes.”<sup>67</sup> The federal government should want consumers to spend their cryptocurrency because “consumer spending is the single most important driving

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62. United States v. Coinbase, Inc., No. 17-cv-01431-JSC, 2017 U.S. Dist. LEXIS 196306, at \*13–15 (N.D. Cal. No. 28, 2017).

63. *Id.* at \*14.

64. U.S. DEP’T OF THE TREASURY, THE AMERICAN FAMILIES PLAN TAX COMPLIANCE AGENDA 20–21 (2021).

65. See 167 Cong. Rec. 6061, 6085 (daily ed. Aug. 9, 2021) (statement of Sen. Ted Cruz) (“The . . . bill widens the definition of ‘broker,’ those who . . . have to collect information on cryptocurrency consumers and report this information to the IRS.”); See also 167 CONG. REC. S5894 (daily ed. Aug. 5, 2021) (statement of Sen. Ron Wyden) (“Our amendment simply says that nobody can use crypto to avoid paying the taxes they owe, and anybody acting as a broker in the cryptocurrency industry must comply with reporting requirements, the same as brokers in every other industry.”); Kendall Little, *The Biden Administration Took a New Stance on Crypto. Here’s What Investors Should Know*, TIME (July 13, 2021), <https://time.com/nextadvisor/investing/cryptocurrency/us-treasury-crypto-stance/>.

66. See Jen Psaki, Press Secretary, The White House, Press Briefing on the American Families Plan (April 28, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/04/28/fact-sheet-the-american-families-plan/>.

67. Hsieh, *supra* note 19, at 1099.

force of the U.S. economy.”<sup>68</sup> The Biden Administration has recently employed policies that encourage spending by consumers, like extending the COVID-19 relief payments.<sup>69</sup> Cryptocurrency’s current classification as property is not in accordance with the economic interests of the federal government.

*B. The Electricity Deduction for Cryptocurrency Miners: Preventing Widespread Adoption & Inhibiting the Federal Government’s Environmental Goals*

Under the current IRC, cryptocurrency miners can deduct the cost of electricity from their taxable income. The IRS levies taxes on the taxable income of United States businesses.<sup>70</sup> Taxable income is a business’s gross income, the amount of money the business earns in a given year, after subtracting all relevant expenses and deductions.<sup>71</sup> The IRC allows businesses to deduct “ordinary and necessary” business expenses from their gross income, and the electricity used during cryptocurrency mining is considered an ordinary and necessary business expense.<sup>72</sup> Courts broadly interpret the ordinary and necessary business expense deduction and are reluctant to disallow businesses from using the deduction, even when there are public

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68. Kimberly Amadeo, *Consumer Spending and Its Impact on the Economy*, THE BALANCE (Dec. 30, 2021), <https://www.thebalance.com/consumer-spending-definition-and-determinants-3305917>; see BUREAU OF ECON. ANALYSIS, CONCEPTS AND METHODS OF U.S. NATIONAL INCOME AND PRODUCT ACCOUNTS, ch. 5-1 (2017), <https://www.bea.gov/resources/methodologies/nipa-handbook/pdf/all-chapters.pdf> (explaining that consumer spending accounts for about two-thirds of all domestic spending and is the “primary engine that drives future economic growth”).

69. See Katie Arcieri, *Biden-Backed Stimulus Checks Could Give the Retail Sector a Badly Needed Boost*, S&P GLOB. (Jan. 20, 2021), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/biden-backed-stimulus-checks-could-give-the-retail-sector-a-badly-needed-boost-61958377>; see also Paul Davidson, *‘Remarkable Outcome’: Big Gains are Likely for Economy This Year Even as COVID-19 Damage Lingers*, USA TODAY (Feb. 23, 2021, 5:04 PM), <https://www.usatoday.com/story/money/2021/02/23/stimulus-economy-falling-covid-19-cases-fuel-growth/4542441001/> (demonstrating that retail sales increased by 5.3% percent in January 2021 because consumers “splurged on cars, furniture, clothing and appliances” with their coronavirus relief payments).

70. See, e.g., I.R.C. § 11(a).

71. Julia Kagan, *Taxable Income Defined*, INVESTOPEDIA (July 30, 2022), <https://www.investopedia.com/terms/t/taxableincome.asp>.

72. I.R.C. § 162(a); see generally Audrey Carroll, *The Other Side of the (Bit)Coin: Solutions for the United States to Mitigate the Energy Consumption of Cryptocurrency*, 12 GEO. WASH. J. ENERGY & ENV’T L. 59 (2021).

policy considerations.<sup>73</sup> In fact, the Supreme Court stated that ordinary and necessary business expense deductions are only rejected “in extremely limited circumstances.”<sup>74</sup>

Allowing businesses to use this deduction is dangerous because cryptocurrency mining requires extensive computing power and exorbitant amounts of electricity.<sup>75</sup> For example, the average annual carbon dioxide emissions from mining Bitcoin is equivalent to the annual emissions of 4.97 million cars.<sup>76</sup> Moreover, Bitcoin miners in 2018 used more energy than the entire countries of Ireland and Austria.<sup>77</sup> Electricity is commonly derived from the burning of fossil fuels, and the burning of fossil fuels is linked to worsening air quality and increasing carbon dioxide emissions.<sup>78</sup> Researchers estimate that mining cryptocurrency could warm the planet by two degrees Celsius in a mere twenty-two years.<sup>79</sup> The environmental effect of cryptocurrency mining should serve as motivation for the current U.S. administration to act because President Biden himself stated that “we’ve already waited too long to deal with climate change and we can’t wait any longer.”<sup>80</sup> Since the United States recently became the

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73. See Carroll, *supra* note 72, at 59.

74. Comm’r v. Tellier, 383 U.S. 687, 693–94 (1966).

75. See Killian Steer, *Cryptocurrency Mining: The Challenges It Faces and How New Regulations Can Help*, 20 N.C. J. L. & TECH. 301, 314 (2019).

76. *Id.* at 317.

77. See Heidi Samford & Lovely-Frances Dimingo, *The Political Geography and Environmental Impacts of Cryptocurrency Mining*, UNIV. OF WASH. (July 10, 2019), <https://jsis.washington.edu/news/the-political-geography-and-environmental-impacts-of-cryptocurrency-mining/>.

78. See Edgell, *supra* note 12, at 76.

79. See Univ. of Haw. at Manoa, *Bitcoin Can Push Global Warming About 2 C in a Couple Decades*, PHYS.ORG (Oct. 29, 2018), <https://phys.org/news/2018-10-bitcoin-global-couple-decades.html>.

80. Joseph R. Biden, President, U.S., Remarks by President Biden Before Signing Executive Actions on Tackling Climate Change, Creating Jobs, and Restoring Scientific Integrity (Jan. 27, 2021), <https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/01/27/remarks-by-president-biden-before-signing-executive-actions-on-tackling-climate-change-creating-jobs-and-restoring-scientific-integrity/>; see also *Cleaning up Cryptocurrency: The Energy Impacts of Blockchains: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Com.*, 117th Cong. (2022) (statement of Diana Degette, Chair, Subcomm. on Oversight and Investigation) (“It is crucial for cryptocurrency networks to identify ways to reduce the need for constant high volume energy use and minimize effects on the environment.”).

largest miner of Bitcoin in the world, there is no better time for the current administration to act than now.<sup>81</sup>

The ability to use this deduction is especially problematic because the energy consumption of mining cryptocurrency steadily increases over time as cryptocurrency progressively becomes harder to mine.<sup>82</sup> For example, Bitcoin is designed for a block to be mined in ten minutes.<sup>83</sup> As more miners begin mining Bitcoin, the algorithms must get harder so the time remains at ten minutes.<sup>84</sup> When the algorithms get harder, more computing power is required and more electricity is used.<sup>85</sup> According to MIT, the computing power and energy required to solve a Bitcoin mining algorithm multiplied by three times in 2018.<sup>86</sup> To illustrate this, in 2010 a household computer was able to mine a Bitcoin in ten minutes. Today, it would take the same household computer ten years to mine a single Bitcoin.<sup>87</sup>

This adversely affects the adoption of cryptocurrency because environmentally conscious consumers and businesses will be reluctant

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81. See Robert Hart, *U.S. Claims Top Spot For Bitcoin Mining as Miners Flee China Crackdown — Here Are the World's Biggest Mining Hubs*, FORBES (updated Apr. 21, 2022), <https://www.forbes.com/sites/roberthart/2021/10/13/us-claims-top-spot-for-bitcoin-mining-as-miners-flee-china-crackdown—here-are-the-worlds-biggest-mining-hubs/?sh=37799cef6af7>; see also Karim Helmy & Brandon Bailey, *How 2021 Became One of the Most Surprising, Formative Years in Bitcoin Mining*, BITCOIN MAG. (Jan. 26, 2022), <https://bitcoinmagazine.com/business/reviewing-2021-in-bitcoin-mining> (explaining that at the start of 2021, there were only two Bitcoin mining companies that were publicly listed on the NASDAQ, and now there are sixteen).

82. See MacKenzie Sigalos, *It Just Got Harder and Less Profitable to Mine for Bitcoin as Algorithm Adjusts*, CNBC (Aug. 13, 2021, 2:36 PM), <https://www.cnbc.com/2021/08/12/bitcoin-mining-becomes-more-difficult-as-algorithm-adjusts.html> (demonstrating that Bitcoin becomes more difficult to mine about every two weeks).

83. See Oliver Barsby, *How Long Does It Take To Mine 1 Bitcoin?*, PLANET CRYPTO (Aug. 8, 2022), <https://www.gfinityesports.com/cryptocurrency/how-long-to-mine-1-bitcoin-cryptomining-BTC-mining-pool/>.

84. See Carroll, *supra* note 72, at 56.

85. Compare Justin O'Connell, *The 2010s In Bitcoin: The Year 2010*, FORBES (Dec. 23, 2019) (stating that Bitcoin could easily be mined with a home computer in 2010), with Nicoleta Balan, *How Long Does it Take to Mine 1 Bitcoin Depending on Your Device?*, 5 SMU DATA SCI. REV., 2021, 3 (explaining that it would now take ten years to mine one Bitcoin with a home computer).

86. See Christian Stoll, Lena Klaassen, & Ulrich Gellersdörfer, *The Carbon Footprint of Bitcoin 1* (Mass. Inst. for Tech. Ctr. for Energy and Env't Pol'y Rsch., Working Paper No. 2018-018).

87. See Balan, *supra* note 85.



to accept cryptocurrency due to its impact on the environment.<sup>88</sup> Seventy percent of American consumers want to know what companies are doing to address social and environmental issues and nearly half of American consumers “pay close attention” to companies’ corporate social responsibility efforts.<sup>89</sup> For example, Tesla stopped accepting Bitcoin on May 12, 2021 and Elon Musk stated that “[c]ryptocurrency is a good idea on many levels and [Tesla] believes it has a promising future, but this cannot come at a great cost to the environment.”<sup>90</sup> Bill Gates also has a negative perception of cryptocurrency because it “uses more electricity per transaction than any other method known to mankind.”<sup>91</sup> The concerns of Musk and Gates are valid; one Bitcoin transaction uses 954 kilowatt-hours of electricity while 100,000 credit card transactions only expend a mere 169 kilowatt-hours of electricity.<sup>92</sup>

88. See GLASS LEWIS, 2022 POL’Y GUIDELINES – ENV’T, SOC. & GOVERNANCE INITIATIVES, 30 (2022), <https://www.glasslewis.com/wp-content/uploads/2021/11/ESG-Initiatives-Voting-Guidelines-GL-2022.pdf> (“We believe that insufficient oversight of material environmental and social issues can present direct legal, financial, regulatory and reputational risks that could serve harm to [a company].”); see also Chris B. Murphy, *Why Social Responsibility Matters to Businesses*, INVESTOPEDIA (May 31, 2022), <https://www.investopedia.com/ask/answers/041015/why-social-responsibility-important-business.asp> (“[S]ocially responsible policies [go] a long way towards attracting and retaining customers, which is essential to a company’s long-term success.”); see also Alan Murray, *America’s CEOs Seek a New Purpose for the Corporation*, FORTUNE (Aug. 19, 2019, 4:30 AM), <https://fortune.com/longform/business-roundtable-ceos-corporations-purpose/> (showing that forty-one percent of Fortune 500 CEO’s say solving social problems should be part of a business’ strategy and mission).

89. Marianne Wilson, *Study: Consumers Want Brands to Take a Stand—To an Extent*, CHAIN STORE AGE (Oct. 2, 2019), <https://chainstoreage.com/study-consumers-want-brands-take-stand-extent>.

90. Elon Musk (@elonmusk), TWITTER (Aug. 29, 2022, 4:49 PM), <https://twitter.com/elonmusk/status/1392602041025843203>.

91. ClubhouseConvos, *Andrew Ross Sorkin Interviews Bill Gates in Clubhouse*, YOUTUBE (Feb. 24, 2021), [https://www.youtube.com/watch?v=VQFNb93q3CI&ab\\_channel=ClubhouseConvos](https://www.youtube.com/watch?v=VQFNb93q3CI&ab_channel=ClubhouseConvos).

92. Kevin V. Tu, *Crypto-Collateral*, 21 SMU SCI. & TECH. L. REV. 205, 252 (2018); see also Jeff Cox, *Yellen Sounds Warning About ‘Extremely Inefficient’ Bitcoin*, CNBC (Feb. 23, 2021, 11:35 AM), <https://www.cnbc.com/2021/02/22/yellen-sounds-warning-about-extremely-inefficient-bitcoin.html> (statement of Janet Yellen, Secretary, U.S. Department of the Treasury) (“[T]he amount of energy consumed in processing [cryptocurrency] transactions is staggering.”).

The concerns of Musk and Gates are also influential.<sup>93</sup> As the first and fourth richest men in the world, consumers and businesses will be hesitant to use cryptocurrency until the apprehensions of these respected business leaders are alleviated.<sup>94</sup> It is clear that environmental and social issues are extremely important for a company's longevity and success in the United States.<sup>95</sup> Due to the importance of corporate social responsibility in the United States, cryptocurrency will not attain widespread adoption until more energy-efficient technology is utilized.

### III. ATTAINING WIDESPREAD ADOPTION & BOLSTERING THE FEDERAL GOVERNMENT'S ECONOMIC INTERESTS: RECLASSIFYING CRYPTOCURRENCY AS FOREIGN CURRENCY

In order for cryptocurrency to attain widespread adoption, the burdensome reporting requirements imposed by cryptocurrency's classification as property must be eliminated. The best way to do this is by reclassifying cryptocurrency as foreign currency. Before foreign currency had its own classification, it was also classified as property.<sup>96</sup> Additionally, users of foreign currency expressed the same concerns about foreign currency's classification as cryptocurrency's consumers are expressing now.<sup>97</sup> Reclassifying cryptocurrency as foreign currency, rather than property, is simple because Congress can pass amendments to the IRC at any time.<sup>98</sup> However, the federal government will not make this change on a whim—the advantages of this change must be demonstrated. Reclassifying cryptocurrency as foreign currency will help cryptocurrency attain widespread adoption and provide economic benefits to the federal government.

#### A. *Reclassifying Cryptocurrency Will Eliminate the Burdensome Reporting Requirements*

The first advantage of reclassifying cryptocurrency as foreign currency is that the burdensome reporting requirements are eliminated. When foreign currencies are used to purchase goods and

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93. See generally *The World's Real-Time Billionaires*, FORBES <https://www.forbes.com/real-time-billionaires/#761c75e33d78> (last visited Nov. 8, 2022).

94. See *id.*

95. See GLASS LEWIS, *supra* note 88; see *infra* notes 123–25.

96. Hsieh, *supra* note 19, at 1109.

97. See *id.*

98. *Id.* at 1105, 1114.

services, consumers are not required to report their transactions.<sup>99</sup> Thus, from a tax perspective, it will be just as easy for consumers to transact with cryptocurrency as it is to transact with U.S. dollars. As stated by Representative David Schwikert, this encourages the use of cryptocurrencies because “individuals all over the world are starting to use cryptocurrencies for small everyday transactions . . . [and] with this simple legislative change, anyone can make digital payments to buy a newspaper or a bike without worrying about tax code challenges.”<sup>100</sup> Additionally, by eliminating the tax code challenges that Representative Schwikert spoke about, consumers’ fears of IRS investigations will be ameliorated. Without burdensome reporting requirements and concerns relating to the IRS, consumers will be more inclined to use cryptocurrency and the amount of cryptocurrency users will increase. This will help cryptocurrency attain widespread adoption.

In addition to increasing the number of consumers who use cryptocurrency, reclassifying cryptocurrency as foreign currency will also increase the number of businesses that transact with and invest in cryptocurrency.<sup>101</sup> Wells Fargo, the fourth largest bank in the United States,<sup>102</sup> believes that improved regulatory clarity will help the cryptocurrency industry mature.<sup>103</sup> When there is less uncertainty in an industry, businesses will be more likely to enter the space.<sup>104</sup> Reclassifying cryptocurrency as foreign currency will provide this needed clarity.<sup>105</sup>

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99. *Id.* at 1109.

100. *Id.*

101. See H.R. REP. NO. 115-596, at 224–25 (2018) (explaining that “America is already subject to a complex set of regulatory institutions governing financial products and transactions” and eliminating hurdles will allow entrepreneurs to innovate).

102. *Large Commercial Banks*, FEDERAL RESERVE STATISTICAL RELEASE (June 30, 2022), <https://www.federalreserve.gov/releases/lbr/current/>.

103. *The Investment Rationale for Cryptocurrencies*, WELLS FARGO (May 2021), [https://www.wellsfargo.com/investment-institute/sr\\_investment\\_rationale\\_for\\_cryptocurrencies](https://www.wellsfargo.com/investment-institute/sr_investment_rationale_for_cryptocurrencies).

104. See PodBytes, *Episode 8: A Look Back & An Outlook Ahead; The State of Cryptoassets*, KPMG CAN., at 03:30 (Dec. 16, 2021), <https://kpmgcanada.podbean.com/e/episode-8-a-look-back-an-outlook-ahead-the-state-of-cryptoassets/> (“We’ve seen banks exploring [cryptocurrency] . . . and I think a lot of this is to do with how the market infrastructure is maturing for crypto assets.”).

105. See *id.* at 08:30.

KPMG, one of the “big four” accounting firms, shares Wells Fargo’s belief and stated that “regulatory changes have gone a long way to legitimize crypto” and “the more [regulatory] clarity we get . . . the better it is for the [cryptocurrency industry].”<sup>106</sup> KPMG also noted that regulatory clarity in the tax space, the same type of regulatory clarity this Note is advocating for, will especially benefit the cryptocurrency industry.<sup>107</sup> There is already institutional support for cryptocurrency, but the regulatory clarity from reclassifying cryptocurrency as foreign currency will amplify it.<sup>108</sup> By reclassifying cryptocurrency as foreign currency, new consumers and businesses will begin to transact with cryptocurrency and widespread adoption will be attained.

*B. Reclassifying Cryptocurrency Will Provide Tax Benefits to Consumers & the Federal Government*

Reclassifying cryptocurrency as foreign currency will also provide tax advantages to consumers and the federal government. There is a de minimis exemption for foreign currencies that prevents the gains from foreign currency transactions from being taxed.<sup>109</sup> If the gain from a foreign currency transaction is less than two hundred dollars and the foreign currency was not held for investment or business purposes, individuals do not have to pay taxes on their transaction.<sup>110</sup> Thus, for everyday purchases like sandwiches and bicycles that Representative Schwikert spoke about, consumers will not have to report or pay taxes on their transactions.

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106. *Id.* at 08:37.

107. *Id.* at 08:30.

108. *See* Press Release, KPMG Can., KPMG in Can. Adds Bitcoin and Ethereum to its Corporate Treasury (Feb. 7, 2020), <https://www.newswire.ca/news-releases/kpmg-in-canada-adds-bitcoin-and-ethereum-to-its-corporate-treasury-851778842.html> (“[KPMG’s] investment [in cryptocurrency] reflects [KPMG’s] belief that institutional adoption of [cryptocurrency] . . . will continue to grow and become a part of the asset mix.”).

109. I.R.C. § 988(e) (explaining that there is no taxable gain for foreign currency transactions when the gain is less than two hundred dollars and the transaction is a personal transaction); INTERNAL REVENUE SERV., LB&I INT’L PRAC. SERV. CONCEPT UNIT: CHARACTER OF EXCH. GAIN OR LOSS ON CURRENCY TRANSACTIONS, 12 (2016), [https://www.irs.gov/pub/int\\_practice\\_units/fcu\\_cu\\_c\\_18\\_2\\_1\\_04.pdf](https://www.irs.gov/pub/int_practice_units/fcu_cu_c_18_2_1_04.pdf) (“There is an exception for individual taxpayers. [The tax] does not apply if an individual disposes of nonfunctional currency in a personal transaction.”).

110. I.R.C. § 988(e).

Although this creates the appearance that the federal government will lose tax revenue, this is not the case. Foreign currency gains are taxed at the ordinary income tax rate. As stated in § 988 of the IRC, “any foreign currency gain . . . shall be computed separately and treated as ordinary income.”<sup>111</sup> This tax rate, the income tax rate, is higher than the tax rate on capital gains from the sale of property.<sup>112</sup> While capital gains are only taxed at zero, fifteen, or twenty percent, income taxes are taxed at ten percent to thirty-seven percent.<sup>113</sup> Reclassifying cryptocurrency as foreign currency will allow the federal government to procure additional tax revenue.

Additional tax revenue is important for the current administration because it wants to enact various social programs that will be expensive, like the Build Back Better Act.<sup>114</sup> The Congressional Budget Office estimated that this bill will cost more than three trillion dollars.<sup>115</sup> Furthermore, the national debt just surpassed thirty trillion dollars for the first time ever in January 2022.<sup>116</sup> In addition to being the highest that the national debt has ever been, the economy is still recovering from the COVID-19 pandemic and suffering from record setting inflation.<sup>117</sup> This underscores how important it is for the federal government to procure additional tax revenue. Reclassifying cryptocurrency as foreign currency will provide tax revenue that the federal government desperately needs. This, in turn, will allow the federal government to achieve its various economic goals.

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111. I.R.C. § 988(a)(1)(A); see INTERNAL REVENUE SERV., *supra* note 108, at 11 (“The character of the exchange gain or loss from the disposition of nonfunctional currency is generally ordinary.”).

112. Compare I.R.C. § 1(a)–(d), with I.R.C. § 1231; Hsieh, *supra* note 19, at 1091, 1108–09.

113. Evan Tarver, *Income Tax vs. Capital Gains Tax: What’s the Difference?*, INVESTOPEDIA (Feb. 24, 2022), <https://www.investopedia.com/ask/answers/052015/what-difference-between-income-tax-and-capital-gains-tax.asp>.

114. See Build Back Better Act, H.R. 5376, 117th Cong. (as reported by H. Comm on the Budget, Sep. 27, 2021).

115. See Letter from Phillip L. Swagel, Director, Cong. Budget Off., to Lindsey Graham, Sen., U.S. S. & Jason Smith, Rep., U.S. H.R. (Dec. 10, 2021), <https://www.cbo.gov/system/files/2021-12/57673-BBBA-GrahamSmith-Letter.pdf>.

116. See 168 CONG. REC. H921, H922 (daily ed. Feb. 3, 2022).

117. See *id.* at H934.

IV. ATTAINING WIDESPREAD ADOPTION & BOLSTERING THE FEDERAL GOVERNMENT'S ENVIRONMENTAL INTERESTS: ELIMINATING THE ELECTRICITY DEDUCTION FOR CRYPTOCURRENCY MINERS

Like reclassifying cryptocurrency as foreign currency, eliminating the electricity deduction for cryptocurrency miners can be accomplished by amending the IRC.<sup>118</sup> In *Commissioner v. Sullivan*, the Supreme Court stated that “[d]eductions are a matter of grace and Congress can, of course, disallow them, as it chooses.”<sup>119</sup>

Eliminating the electricity deductions for cryptocurrency miners has several environmental benefits for the United States. Each of these benefits flows from the economic effect of eliminating this deduction. Eliminating this deduction makes mining cryptocurrency less profitable because miners have to pay additional taxes. Like most companies in a capitalist economy, cryptocurrency companies are motivated by profits and change their behaviors and practices in accordance with this motivation.<sup>120</sup> It is clear that cryptocurrency miners are motivated by profits because they commonly relocate to rural areas with low energy costs to mine.<sup>121</sup> To maintain profitability

118. See Carroll, *supra* note 72, at 59 (explaining that Congress has the power to make exceptions to the ordinary business expense deductions and could use this to eliminate the deduction for electricity expenses for cryptocurrency miners).

119. *Commissioner v. Sullivan*, 356 U.S. 27, 28 (1958); see also, e.g., *Congress Eliminates Tax Deductions for Business Entertainment Expenses*, PAULE, CAMANZINE & BLUMENTHAL, PC (Jan. 12, 2018), <https://www.pcblawfirm.com/congress-eliminates-tax-deduction-business-entertainment-expenses/> (demonstrating that the business deduction for entertainment was eliminated when the Tax Cuts and Jobs Act was passed in 2017).

120. Bloomberg Technology, *How Bitcoin Mining Can Incentivize Renewable Energy*, YOUTUBE (Apr. 23, 2021), <https://www.youtube.com/watch?v=tq1KQLxlC7c> (statement of Marco Streng, CEO & Co-founder, Genesis Digital Assets) (“Miners are driven by . . . profits and they will always go where they have the lowest cost of power.”); Steer, *supra* note 75, at 317–18; see Sarwat Jahan & Ahmed Saber Mahmud, *What Is Capitalism?*, INT’L MONETARY FUND (June, 2015), <https://www.imf.org/external/pubs/ft/fandd/2015/06/basics.htm> (stating that the “essential feature of capitalism is the motive to make a profit”); see also STEVEN A. GREENLAW & DAVID SHAPIRO, *PRINCIPLES OF ECONOMICS* 589 (2d ed., OpenStax 2018) (explaining that increased costs in inputs, like energy, will discourage a business from producing because it reduces the possibility of earning profits).

121. See *Cleaning Up Cryptocurrency: Hearing Before the Subcomm. On Oversight and Investigations of the H. Comm. on Energy and Com.*, 117th Cong. (2022) (statement of Steve Wright, Former CEO, Chelan County Public Utility District and Bonneville Power Administration) (“It is clear that cryptocurrency miners are looking for a lowest-cost resource.”); Tu, *supra* note 92, acartt 252–53 (explaining that cryptocurrency miners “tend to gravitate to rural areas with low energy costs”); see also Corey Kilgannon, *A Bitcoin Boom Fueled by Cheap Power*,

after eliminating the deduction, cryptocurrency companies will have two choices: switch to less energy-intensive mining; or invest in more sustainable energy sources. Both choices will provide environmental benefits that will allow cryptocurrency to attain widespread adoption and the federal government to achieve its environmental goals.

*A. Eliminating the Electricity Deduction Will Incentivize Energy-Efficient Mining*

The first environmental benefit of eliminating the electricity deduction for cryptocurrency miners is that cryptocurrency companies will switch to less energy-intensive mining methods. Many cryptocurrencies, like Bitcoin, use proof-of-work mining.<sup>122</sup> However, if the electricity deduction for cryptocurrency miners is eliminated, most cryptocurrency companies will switch to proof-of-stake mining. This will protect the environment because proof-of-stake mining uses far less electricity than proof-of-work mining. Proof-of-stake mining requires less electricity than proof-of-work mining because the speed and effectiveness of a miner is based on the amount of cryptocurrency the miner owns, not the power of their computer.<sup>123</sup> As a result, proof-of-stake mining uses 99.99% less electricity than proof-of-work mining.<sup>124</sup>

Switching to proof-of-stake mining will help cryptocurrency attain widespread adoption because American consumers and businesses place a large emphasis on corporate social responsibility.<sup>125</sup>

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*Empty Planets and Few Rules*, N.Y. TIMES, Dec. 6, 2021, <https://www.nytimes.com/2021/12/05/nyregion/bitcoin-mining-upstate-new-york.html> (comparing bitcoin miners rushing to claim abandoned factories in upstate New York to the “Wild West”).

122. Steer, *supra* note 75, at 308.

123. See Larissa Lee, Note, *New Kids on the Blockchain: How Bitcoin’s Technology Could Reinvent the Stock Market*, 12 HASTINGS BUS. L. J. 81, 108 (2016).

124. See *Cleaning up Cryptocurrency: Hearing Before the Subcomm. On Oversight and Investigations of the H. Comm. on Energy and Commerce*, 117th Cong. (2022) (statement of Ari Juels, Professor, Cornell Tech) (“The amount of energy for a [proof-of-stake] network . . . would be that of a small village, rather than an entire nation [for a proof-of-work network.]”); Ezra Kaplan, *Cryptocurrency Goes Green: Could ‘Proof of Stake’ Offer a Solution to Energy Concerns?*, NBC NEWS (Jun. 1, 2021, 8:56 AM), <https://www.nbcnews.com/tech/tech-news/cryptocurrency-goes-green-proof-stake-offer-solution-energy-concerns-rcna1030>.

125. See Press Release, BlackRock, The BlackRock Foundation Grants \$100 Million to Breakthrough Energy’s Catalyst Program for Investments Focused on Clean Energy Technologies (Sept. 20, 2021),

About ninety percent of consumers say that they will have more trust, be more loyal, and have a more positive image of companies that support social or environmental issues.<sup>126</sup> By utilizing proof-of-stake mining, the cryptocurrency industry will attract these environmentally conscious consumers.<sup>127</sup> This will increase the amount of cryptocurrency users, which is needed for cryptocurrency to attain widespread adoption.

The user base will further expand from the newfound support of businesses. Elon Musk stated that “[Tesla] intend[s] to use [Bitcoin] for transactions as soon as mining transitions to more sustainable energy.”<sup>128</sup> Since proof-of-stake mining consumes 99.99% less electricity than proof-of-work mining, Tesla’s concerns will be

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<https://www.blackrock.com/corporate/newsroom/press-releases/article/corporate-one/press-releases/blackrock-foundation-grants-100m-to-breakthrough-energy> (statement of Larry Fink, Chairman and CEO, BlackRock) (“The transition to a net-zero world and creating a more sustainable future is the shared responsibility of every citizen, corporation and government.”); *see also* Bloomberg Quicktake: Explained, *How Bitcoin Companies Are Going Green*, YOUTUBE (Aug. 18, 2021), [https://www.youtube.com/watch?v=FHHlfX-APxk&ab\\_channel=BloombergQuicktake%3AExplained](https://www.youtube.com/watch?v=FHHlfX-APxk&ab_channel=BloombergQuicktake%3AExplained) (statement of Bryan Bullet, CEO, Bit Digital) (“Using sustainable energy sources is clearly the right thing to do from the perspective of the planet . . . [and] it’s important because it’s something our investors care about.”) [hereinafter Bloomberg Quicktake: Explained, *How Bitcoin Companies Are Going Green*]; *see also* Chris Martin & Millicent Dent, *How Nestle, Google and Other Businesses Make Money by Going Green*, L.A. TIMES (Sept. 20, 2019, 1:48 PM), <https://www.latimes.com/business/story/2019-09-20/how-businesses-profit-from-environmentalism> (“[Google, Facebook, and Amazon] committed to getting 100% of their power for their data centers from renewable resources such as wind and solar.”).

126. *See* Adam Butler, *Do Customers Really Care About Your Environmental Impact?*, FORBES (Nov. 21, 2018, 8:00 AM), <https://www.forbes.com/sites/forbesnycouncil/2018/11/21/do-customers-really-care-about-your-environmental-impact/?sh=4c2217bb240d>; *see also* Katie Jahns, *The Environment is Gen Z’s No. 1 Concern—and Some Companies Are Taking Advantage of That*, CNBC (Aug. 11, 2021, 8:23 AM), <https://www.cnn.com/2021/08/10/the-environment-is-gen-zs-no-1-concern-but-beware-of-greenwashing.html> (stating that “73% of Gen Z consumers surveyed were willing to pay more for sustainable products”).

127. *See* Bloomberg Quicktake: Explained, *Using Clean Energy to Power Bitcoin Mining*, YOUTUBE (Dec. 17, 2021), [https://www.youtube.com/watch?v=D7n3wRtiR54&ab\\_channel=BloombergQuicktake%3AExplained](https://www.youtube.com/watch?v=D7n3wRtiR54&ab_channel=BloombergQuicktake%3AExplained) [hereinafter Bloomberg Quicktake: Explained, *Using Clean Energy to Power Bitcoin Mining*] (statement of Sam Tabar, Chief Strategy Officer, Bit Digital) (“There is a huge [environmental, social, and governmental] movement happening with respect to investing in companies . . . and that’s why we’re very motivated financially to find clean sources of power so we can attract these kinds of investors.”).

128. *See* Musk, *supra* note 90.



addressed.<sup>129</sup> As a worldwide leader in sustainability, other companies will follow suit if Tesla began to accept cryptocurrencies again.<sup>130</sup> This additional institutional support will further legitimize the cryptocurrency industry and expand its network of users.

There is already evidence that cryptocurrency companies becoming more environmentally conscious will lead to greater adoption by consumers. Ethereum, the second largest cryptocurrency after Bitcoin, switched to proof-of-stake mining in 2021.<sup>131</sup> After Ethereum announced that it was switching to proof-of-stake mining, its price hit an all-time high.<sup>132</sup> The influx of investment demonstrates that consumers support cryptocurrency becoming more environmentally conscious. This also reveals that cryptocurrency companies are committed to making changes that will protect the environment.<sup>133</sup>

In addition to helping cryptocurrency attain widespread adoption, using proof-of-stake mining will also help the federal government achieve its environmental goals. Since proof-of-stake mining is more energy-efficient than proof-of-work mining, the cryptocurrency industry will dramatically decrease the amount of greenhouse gasses and other pollutants that it emits.<sup>134</sup> This is in accordance with the goal

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129. See Kaplan, *supra* note 123, at 6.

130. See Press Release, Tesla, Tesla Motors receives ‘Environmental Leadership’ Award from Global Green USA (Apr. 20, 2010), <https://www.tesla.com/blog/tesla-motors-receives-environmental-leadership-award-global-green-usa>.

131. Kaplan, *supra* note 124.

132. Taylor Locke, *Ethereum Just Hit an All-Time High of Above \$4,400 After a Recent Upgrade. Here’s What to Know*, CNBC (Oct. 28, 2021), <https://www.msn.com/en-us/news/other/ethereum-just-hit-an-all-time-high-of-above-4400-after-a-recent-upgrade-heres-what-to-know/ar-AAQ3OaE>.

133. See Bloomberg Quicktake: Explained, *Using Clean Energy to Power Bitcoin Mining*, *supra* note 127 (statement of Sam Tabar, Chief Strategy Officer, Bit Digital) (“... [Bit Digital wants] to be a model to other Bitcoin miners on how to profit with respect to Bitcoin mining but at the same time, not cause damage to the earth.”); see also Bloomberg Quicktake: Explained, *How Bitcoing Companies Are Going Green*, *supra* note 125 (statement of Bryan Bullet, CEO, Bit Digital) (“I would rather see a bunch of [computers] using energy from the sun to [mine] Bitcoins versus gold using human beings, burning fossil fuels, and stripping open mountain tops to mine gold.”).

134. See *Local Energy Efficiency Benefits and Opportunities*, ENV’T PROT. AGENCY (Feb. 6, 2022, 8:12 PM), <https://www.epa.gov/statelocalenergy/local-energy-efficiency-benefits-and-opportunities>; see also AM. COUNCIL FOR AN ENERGY-EFFICIENT ECON., *SAVING ENERGY IMPROVES AMERICANS’ HEALTH AND THE ENVIRONMENT* (2022), <https://www.aceee.org/sites/default/files/ee-improves->

of President Biden who hopes to “[achieve] 100 percent carbon-pollution-free electric sector by 2035.”<sup>135</sup> The President has also enacted various executive orders designed to protect the environment.<sup>136</sup> In one executive order, the President stated that it is “the policy of [his] Administration to . . . improve public health and protect our environment; to ensure access to clean air and water; . . . to reduce greenhouse gas emissions; [and] to bolster resilience to the impacts of climate change.”<sup>137</sup> By switching from proof-of-work mining to proof-of-stake mining, the cryptocurrency industry will use exponentially less electricity. The byproducts of using less electricity include improving public health, producing cleaner air and water, reducing greenhouse gas emissions, and combatting climate change.<sup>138</sup> Thus, switching from proof-of-work mining to proof-of-stake mining will help President Biden achieve all his environmental goals.

It is also important to note that large sects of the cryptocurrency industry share President Biden’s environmental goals. In 2021, the cryptocurrency community created the Crypto Climate Accord, a movement inspired by the Paris Climate Agreement.<sup>139</sup> The Crypto Climate Accord is “a private-sector led initiative for the entire [cryptocurrency] community focused on decarbonizing the cryptocurrency industry . . . in record time.”<sup>140</sup> The mission of the Crypto Climate Accord is very similar to the mission of the Paris Climate Agreement.<sup>141</sup> President Biden has commonly vocalized his

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environment.pdf (stating that energy efficient technology leads to cleaner air and water).

135. Exec. Order No. 14,008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

136. *E.g.*, Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021); Exec. Order No. 14008, 86 Fed. Reg. 7619 (Jan. 27, 2021).

137. Exec. Order No. 13990, 86 Fed. Reg. 7037 (Jan. 20, 2021).

138. *Benefits of Renewable Energy Use*, UNION OF CONCERNED SCIENTISTS (last updated Dec. 20, 2017), <https://www.ucsusa.org/resources/benefits-renewable-energy-use>.

139. *Crypto Climate Accord*, CRYPTO CLIMATE ACCORD, <https://cryptoclimate.org/accord/> (last visited Nov. 8, 2022).

140. *Id.*

141. *Compare id.* (“The Crypto Climate Accord’s overall objective is to decarbonize the global crypto industry by prioritizing climate stewardship and supporting the entire crypto industry’s transition to net-zero greenhouse gas emissions by 2040.”) *with* Conference of the Parties, *Adoption of the Paris Agreement*, U.N. Doc. FCCC/CP/2015/L.9/Rev/1, Art. 10(1) (Dec. 12, 2015) (“Parties share a long-term vision on the importance of fully realizing technology development and transfer in order to improve resilience to climate change and to reduce greenhouse gas emissions.”).

support for the Paris Climate Agreement and even reentered the United States into the Paris Climate Agreement on his first day in office.<sup>142</sup> It becomes far more convincing that the cryptocurrency industry will help the federal government achieve its environmental goals when it is explained that these two parties largely share the same goals. By eliminating the electricity deduction for cryptocurrency miners, it will allow the cryptocurrency industry to attain widespread adoption and for the federal government to achieve its various environmental goals.

*B. Eliminating the Electricity Deduction Will Spur Investment in Renewable Sources of Energy*

Eliminating the electricity deduction for cryptocurrency miners will also cause cryptocurrency companies to invest in renewable sources of energy. Like switching from proof-of-work mining to proof-of-stake mining, using renewable sources of energy will decrease the carbon footprint of the cryptocurrency industry.<sup>143</sup> Renewable sources of energy, like solar panels and wind turbines, emit twenty times less greenhouse gasses than fossil fuels.<sup>144</sup> Moreover, renewable sources of energy prevent water contamination and air pollution, protect animals and wildlife, and improve public health.<sup>145</sup> The benefits derived from using renewable sources of energy will further induce environmentally conscious consumers and businesses to transact with cryptocurrencies.

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142. See Press Release, Joseph Biden, President, U.S., Paris Climate Agreement (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/paris-climate-agreement/>.

143. NAT'L ACAD. OF ENG'G ET AL., THE POWER OF RENEWABLES: OPPORTUNITIES AND CHALLENGES FOR CHINA AND THE UNITED STATES 89 (2010); *Local Renewable Energy Benefits and Resources*, ENV'T PROT. AGENCY (last visited Nov. 8, 2022), <https://www.epa.gov/statelocalenergy/local-renewable-energy-benefits-and-resources>.

144. NAT'L RENEWABLE ENERGY LAB'Y, LIFE CYCLE GREENHOUSE GAS EMISSIONS FROM ELECTRICITY GENERATION (2021) <https://www.nrel.gov/docs/fy13osti/57187.pdf>; see also NAT'L ACAD. OF ENG'G ET AL., *supra* note 142, at 92 fig.4-1 (comparing the net energy ratios of renewable sources of energy against the net energy ratios of fossil fuels).

145. J.J. CHENG ET AL., EVALUATING POTENTIAL HUMAN HEALTH RISKS ASSOCIATED WITH THE DEVELOPMENT OF UTILITY-SCALE SOLAR ENERGY FACILITIES ON CONTAMINATED SITES, 11 (2013); *Expanding Renewable Energy*, THE NAT'L WILDLIFE FED'N <https://www.nwf.org/Our-Work/Environmental-Threats/Climate-Change/Renewable-Energy> (last visited Nov. 8, 2022); U.S. DEP'T OF ENERGY, SOLAR FUTURES STUDY X (2021) (estimating that renewable energy sources will cause water withdrawals to decline ninety percent by 2050).

Even without eliminating the electricity deductions, cryptocurrency companies have already demonstrated their commitment to using renewable sources of energy. A great example of this is BitDigital, one of the largest publicly traded mining companies in the United States.<sup>146</sup> The majority of BitDigital's mining infrastructure is powered by renewable sources of energy that are carbon-free.<sup>147</sup> This includes Nebraska's largest solar panel field and hydraulic turbines powered by Niagara Falls.<sup>148</sup> Additionally, Ethereum has demonstrated its commitment to protecting the environment by providing one billion dollars' worth of grants to its users so they can develop more energy-efficient mining systems.<sup>149</sup> The commitment to protecting the environment by BitDigital and Ethereum further demonstrates that the environmental goals of President Biden are largely shared by the cryptocurrency industry.

Spurring investment in renewable sources of energy is in accordance with the federal government's interests.<sup>150</sup> The federal government already invests in renewable sources of energy by providing tax credits to businesses that purchase solar panels, wind turbines, and other renewables.<sup>151</sup> However, this requires the federal government to forgo tax revenue. Meanwhile, the federal government can retain tax revenue and spur a significant amount of investment into renewable sources of energy by eliminating the electricity deduction for cryptocurrency miners. This occurs because eliminating the electricity deduction for cryptocurrency miners is free, while providing tax credits to businesses is not. This is noteworthy because the Department of Energy estimates that it will cost trillions of dollars to transition the United States to renewable sources of energy for the majority of its electricity.<sup>152</sup> Thus, eliminating the electricity

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146. Bloomberg Quicktake: Explained, *supra* note 125.

147. *Id.*

148. *Id.*; Bloomberg Quicktake: Explained, *supra* note 127.

149. Kaplan, *supra* note 124, at 86.

150. Press Release, The White House, Biden-Harris Admin. Races to Deploy Clean Energy that Creates Jobs and Lowers Costs (Jan. 12, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/01/12/fact-sheet-biden-harris-administration-races-to-deploy-clean-energy-that-creates-jobs-and-lowers-costs/>.

151. Pippa Stevens, *Biden's New Spending Framework Has \$555 Billion for Clean Energy, Focused on Incentives, Not Punishments*, CNBC (Oct. 28, 2021, 9:19 AM), <https://www.cnbc.com/2021/10/28/biden-spending-framework-includes-555-billion-in-climate-incentives.html>.

152. Ivan Penn, *From 4% to 45%: Energy Department Lays Out Ambitious Blueprint for Solar Power*, N.Y. TIMES (Sept. 8, 2021),

deduction for cryptocurrency miners will not only help the federal government transition to renewable sources of energy, but it will also allow the federal government to achieve this goal more cost effectively.

It is important to note that eliminating the electricity deduction for cryptocurrency miners will not just benefit the environmental impact of the cryptocurrency industry, but it will also benefit the environmental impact of the entire economy.<sup>153</sup> The cryptocurrency industry innovates and creates new environmentally friendly technologies that other sectors of the economy implement into their businesses.<sup>154</sup> This idea is best expressed by Brian Brooks, the CEO of Bitfury. Brooks stated:

We learn about energy efficiency in a relatively energy-intensive space like Bitcoin mining and then the broader economy benefits from that . . . . Bitcoin mining is not the only place that low voltage ASIC [chips are] used, nor is immersion cooling. . . . Those energy saving innovations were developed [from Bitcoin mining] and are now being used in other parts of the economy.<sup>155</sup>

The energy saving innovations that Brooks spoke about, like immersion cooling, are used in the datacenters of Amazon, Microsoft, Facebook, and other large businesses.<sup>156</sup> Immersion cooling consumes up to ninety-eight percent less electricity than conventional datacenter cooling systems.<sup>157</sup> Immersion cooling is also used in the batteries of

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<https://www.nytimes.com/2021/09/08/business/energy-environment/biden-solar-energy-climate-change.html>.

153. See Jonathan Shieber, *Immersion Cooling to Offset Data Centers' Massive Power Demands Gains a Big Booster in Microsoft*, TECHCRUNCH (Apr. 8, 2021, 3:50 PM), <https://techcrunch.com/2021/04/08/immersion-cooling-to-offset-data-centers-massive-power-demands-gains-a-big-booster-in-microsoft/> (noting that Microsoft uses immersion cooling for its datacenters and it was created from a Bitcoin mining company who commercialized the process and “[brought] it to the masses”).

154. See *id.*

155. *Cleaning up Cryptocurrency: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 117th Cong. (2022) (statement of Brian Brooks, CEO, Bitfury).

156. Shieber, *supra* note 153.

157. LiquidCool Solutions, Inc., *Energy-Saving Immersion Cooling Solution*, SOLARIMPLUSE FOUND. <https://solarimpulse.com/solutions-explorer/energy-saving-immersion-cooling-solution> (last visited Nov. 8, 2022).

electric vehicles and leads to faster charging and longer battery life.<sup>158</sup> Without the cryptocurrency industry, immersion cooling would not exist and these industries would not have reduced their carbon footprints.

Eliminating the electricity deductions for cryptocurrency miners will incentivize cryptocurrency companies to further invest in environmentally friendly technology and invent additional energy saving innovations like immersion cooling. As a result, the carbon footprint of the entire economy will improve and the federal government's goal of achieving a carbon-pollution-free electric sector will be more attainable.<sup>159</sup> John Kerry, the United States Special Presidential Envoy for Climate, supported this notion by stating that half of the carbon reductions that the federal government needs to make to achieve their environmental goals will come from technology that does not yet exist in the United States.<sup>160</sup> The cryptocurrency industry will help the federal government create these energy saving technologies and achieve all its environmental goals.

#### CONCLUSION

Although cryptocurrency has a tremendous amount of potential, it has not attained widespread adoption in the United States because of the current tax code. Currently, cryptocurrency is classified as property and cryptocurrency miners can deduct the cost of their electricity from their taxable income. To attain widespread adoption, cryptocurrency needs to be reclassified as foreign currency and the electricity deduction for cryptocurrency miners must be eliminated. When these IRC amendments are enacted, the federal government will receive an innumerable amount of economic and environmental benefits and cryptocurrency will attain widespread adoption.

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158. *Immersion cooling of EV batteries: "The Next Big Thing"?*, EXOES <https://exoes.com/en/immersion-cooling-of-ev-batteries-the-next-big-thing%E2%80%8B/> (last visited Nov. 8, 2022).

159. See Roger Harrabin, *John Kerry: US Climate Envoy Criticized for Optimism on Clean Tech*, BBC NEWS (May 16, 2021), <https://www.bbc.com/news/science-environment-57135506>.

160. *Id.* ("I'm told by scientists that 50% of the reductions we have to make (to get to near zero emissions) by 2050 or 2045 are going to come from technologies we don't yet have.").