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Benjamin A. Rogovy & Carol J. Castellon Miranda,

Petitioners

v.

Commissioner of Internal Revenue

Respondent

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Docket No. 17513-24
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Petition

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UNITED STATES TAX COURT

BENJAMIN A. ROGOVY AND CAROL J.
CASTELLON MIRANDA,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE
SERVICE,

Respondent.

Docket No.:

PETITION

The petitioners hereby petition for a redetermination of the deficiencies set forth by the Commissioner of Internal Revenue (variously, "Respondent," "Commissioner," or "IRS") in the Commissioner's Notice of Deficiency dated August 15, 2024, and as the basis for the petitioners' case, allege as follows:

1. Petitioners Benjamin A. Rogovy ("Petitioner") and Carol J. Castellon Miranda ("Petitioner's wife") are individual residents of Nevada and United States citizens. Their

1 mailing address is 1285 Baring Blvd, #260, Sparks, NV
2 89434.

3 2. Petitioner formed Velorum, Inc. ("Velorum"), a Washington
4 state corporation, on or about March 17, 2010. Petitioner
5 was the sole shareholder of Velorum at all times relevant.
6 Velorum elected to be treated as an S Corporation by filing
7 form 2553 effective on or about March 26, 2010.

8
9 3. The Notice of Deficiency at issue herein was mailed to
10 petitioners on August 15, 2024, and was issued by the
11 Department of the Treasury, Internal Revenue Service, Small
12 Business and Self-Employed, 1999 Broadway, Denver, Colorado
13 80202-2490. A true and correct redacted copy of the Notice
14 of Deficiency, omitting the Taxpayer Identification Number
15 of the petitioners and including all the statements and
16 schedules accompanying the Notice (as they are all
17 material), is attached hereto.

18
19
20 4. Respondent issued the Notice of Deficiency, referenced
21 above, and determined deficiencies and penalties in the
22 following amounts:

Deficiency:		
Tax Year Ended	Increase in Tax	Penalty IRC 6662 (a)
December 31, 2017	\$23,569,956.00	\$4,713,991.20
December 31, 2018	\$966,778.00	\$193,355.60

1 The entire amount of the deficiencies and penalties are in
2 dispute. The Court's determination with respect to the
3 assignments of error alleged below may require a
4 redetermination of various correlative and computational
5 adjustments made in the Notice in accordance with Tax Ct.
6 R. 155.
7

8 **Assignments of Error**

9 5. Petitioner alleges Respondent erred as follows:

10 a. The proposed adjustments to tax years 2017 and 2018
11 are untimely and barred by the statute of limitations
12 as each adjustment is proposed more than three years
13 after the relevant Forms 1040 and 1120S were filed.

14 Sec. 6501(a).

15 b. The proposed adjustments to tax years 2017 and 2018
16 are untimely and barred by the statute of limitations
17 as there is no omission of income greater than 25%
18 for either tax year 2017 or 2018. Sec. 6501(e).

19 Respondent carries the burden of proof to establish
20 an omission for each taxable year.
21

22 c. Petitioners contend the tax treatment of relevant
23 items is not specifically addressed by the Internal
24 Revenue Code and are unsettled. To the extent binding
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26
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28

1 authority does not yet exist, Petitioners do not
2 concede current IRS guidance is correct.

3 d. Respondent erred in deciding that Petitioner
4 exercised dominion and control over nine separate
5 bitcoin "hard forks." Additionally, Respondent
6 wrongly determined income from these bitcoin "hard
7 forks." To the extent Petitioner neither accessed
8 nor claimed the hard fork coins, then Petitioner did
9 not have control over them and did not receive any
10 income.
11

12
13 e. Respondent erred in determining that Petitioner
14 received a distribution of capital assets in 2017,
15 and proposed an incorrect value for these capital
16 assets. Respondent erred in treating bitcoin (BTC)
17 acquired by Petitioners (as individuals) as a
18 distribution from the related S-corporation entity,
19 Velorum. Further, Respondent erred in treating any
20 hard forked coins as distributed from Velorum to
21 Petitioner.
22

23 f. Petitioners dispute Respondent's fair market value
24 determined with respect to any taxable events related
25 to cryptocurrency, including but not limited to
26 capital dispositions, capital gains or losses,
27
28

1 ordinary income from hard forks, staking or mining
2 revenue to the extent taxable events occurred.

3 g. Respondent erred in treating capital assets acquired
4 by Petitioners (as individuals) as Velorum's assets.
5 Respondent further erred in treating those as
6 distributed by Velorum as of December 31, 2017.

7
8 h. Respondent is collaterally estopped from determining
9 Velorum owned and distributed the capital assets
10 during the relevant years based upon the examination
11 report for tax years 2012, 2013.

12
13 i. Respondent erred by not recognizing the change in
14 basis from the alleged distribution from Velorum that
15 would have created a capital loss, offsetting
16 significant capital gains reported by the
17 Petitioners, for the taxable periods ending December
18 31, 2018 and December 31, 2019.

19
20 j. Respondent erred in determining any additional net
21 investment income tax.

22
23 k. Respondent erred in determining cryptocurrency staking
24 revenue is subject to self-employment tax.

25
26 l. Petitioners are entitled to equitable recoupment for
27 any offset related to the sale of capital assets sales
28 reported in any tax year which the proposed

1 adjustments would have adjusted cost basis, including
2 but not limited to sales of BTC and DASH. Sec.
3 6214(b).

4 m. Respondent erred in asserting accuracy-related
5 penalties. Petitioners are not liable for penalties
6 as they acted with reasonable cause, acted with
7 ordinary and prudent care and acted in good faith
8 when relying on professional return preparers.

9 n. Respondent carries the burden of production with
10 respect to penalties. Sec. 7491(c)

11 o. Respondent carries the burden of proof to all factual
12 issues as Petitioners complied with the requirements
13 of section 7491(a).

14
15
16 **Factual Allegations**

17 Petitioner and Velorum Generally

18 6. Petitioner is an investor, an industrialist and an early
19 adoptor of BTC.

20 7. Velorum timely filed forms 1120S, including Schedule K,
21 for tax years 2010 through 2017, inclusive.

22 8. Velorum owned and operated various websites and domains
23 providing services and goods to customers. Further,
24 Velorum provided internet marketing consulting services to
25 other online businesses. Customers and other businesses
26
27
28

1 paid Velorum for services and goods primarily with credit
2 cards. At no time did Velorum receive revenue in the form
3 of cryptocurrency or pay business expenses with
4 cryptocurrency.
5

6 9. Velorum voluntarily ceased operations in or about March of
7 2016. In August of 2016, the State of Washington
8 dissolved Velorum.

9 10. Velorum did not earn any revenue and engaged in no
10 business activity after December 31, 2016.
11

12 Relevant Definitions

13 11. Virtual currency is a digital representation of
14 value, other than a representation of the U.S. dollar or a
15 foreign currency ("real currency"), that functions as a
16 unit of account, a store of value, and a medium of
17 exchange.¹
18

19 12. Cryptocurrency is a type of virtual currency that
20 uses cryptography to secure transactions that are
21 digitally recorded on a distributed ledger, such as a
22
23
24

25
26 ¹ IRS FAQs on Virtual Currency Transactions
27 [https://www.irs.gov/individuals/international-](https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions)
28 [taxpayers/frequently-asked-questions-on-virtual-currency-](https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions)
[transactions](https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions)

1 blockchain.² Cryptocurrency falls within the Respondent's
2 definition of Virtual Currency.

3 13. Bitcoin ("bitcoin" or "BTC") is a cryptocurrency that
4 was created in or about 2009 that allows secure
5 transactions on the internet through a blockchain. Each
6 bitcoin that has been released is on the blockchain. To
7 access one's bitcoins on the blockchain one must have a
8 wallet with the corresponding private keys and public key.
9 The person who holds the private keys and associated
10 public key controls the cryptocurrency, which leads to the
11 famous saying "Not your keys, not your bitcoin."
12

13
14 14. Blockchain is a record of the relevant cryptocurrency
15 that uses distributed ledger technology to record each
16 transaction involving the cryptocurrency pursuant to the
17 cryptocurrency's underlying protocol.
18

19 15. Cryptocurrency, including bitcoin, may be acquired in
20 various ways including:

- 21 a. A peer-to-peer transaction with another individual or
22 entity,
23 b. Purchase from a third-party exchange,
24 c. Cryptocurrency mining,
25

26 _____
27
28 ² Ibid

1 d. Hark fork,

2 e. Air drop,

3 f. Mining,

4 g. Staking, and,

5 h. Theft or other illegal acquisitions of cryptocurrency

6
7 16. A cryptocurrency wallet in general is software or
8 hardware that securely stores the private key and
9 associate public key allowing the user to access their
10 cryptocurrency on the respective blockchain.
11

12 17. A custodial wallet is a cryptocurrency wallet whose
13 private key and associated public key is controlled and
14 maintained by a third party.

15 18. A non-custodial wallet is a cryptocurrency wallet in
16 which the individual has full control over the private key
17 and associated public key. Non-custodial wallets are also
18 known as self-custody wallets.
19

20 19. The private key and associated public key to access
21 bitcoin may be stored and secured through various methods
22 including:

23 a. A software wallet is a cryptocurrency wallet software
24 or application that resides on a computer or mobile
25 device that stores, send and receives cryptocurrency.
26 Software wallets safeguard cryptocurrency by securing
27

1 private keys on the computer hard drive or device.
2 The individual user maintains control of the private
3 key. Because software wallets are connected to the
4 internet they are commonly referred to as "hot
5 wallets". Because the individual controls the private
6 key, software wallets are considered "non-custodial
7 wallets".
8

9 b. Web wallets are cryptocurrency wallets that are
10 accessible through an internet browser and usually
11 hosted and maintained by a third party. The private
12 key to the web wallet is stored online with the third
13 party and as a result vulnerable to hacking or other
14 illegal attacks. Web wallets are considered "custodial
15 wallets".
16

17 c. A hardware wallet is a type of cryptocurrency physical
18 wallet device that is a dedicated cryptocurrency
19 wallet. The private keys are stored securely within
20 the hardware device so that they cannot be transferred
21 out of the wallet without physical access to the
22 device. A hardware wallet typically does not have
23 internet access and must be connected via USB to a
24 computer to transact. Hardware wallets may look like
25
26
27
28

1 a credit card or a USB stick. Hardware wallets are
2 considered non-custodial wallets.

3 d. Cold Storage refers to a method of storing the private
4 key and associated public key of a wallet offline.
5 Various levels of security and inaccessibility can be
6 applied to cold storage. Generally, the greater the
7 security is, the more difficult, technically
8 demanding, and time consuming it is to access the
9 private keys of the coin.
10

11 e. Individuals and organizations can set up, maintain and
12 keep an account at a third-party crypto exchange,
13 where they can buy, sell, or hold cryptocurrency. The
14 private key for the account is managed by the third-
15 party exchange. Because the third-party
16 cryptocurrency exchange maintains the private key it
17 is susceptible to hacking or other illegal attacks.
18 Third party exchange accounts are considered a type of
19 custodial wallet.
20

21
22 20. In 2012, Petitioner obtained a personal non-custodial
23 hot wallet ("Wallet 1").
24

25 21. In 2012 and 2013, Petitioner legally acquired various
26 lots of bitcoin from a third party, Tangible Cryptography,
27 LLC ("Tangible Cryptography"). The transactions were
28

1 facilitated by wire transferring USD from Velorum's bank
2 account directly to Tangible Cryptography. In turn,
3 Tangible Cryptography sent the purchased bitcoin to Wallet
4 1 after the time of each payment (collectively, "Tangible
5 Cryptography bitcoin").
6

7 22. On March 6, 2013, Petitioner's wife legally purchased
8 some BTC from a friend and the BTC was sent to Wallet 1.

9 23. Thereafter, Petitioner transferred all BTC held in
10 Wallet 1, through periodic transfers, to personal cold
11 storage.
12

13 24. Petitioner opened personal accounts with various
14 cryptocurrency exchanges, including Coinbase, Inc. This
15 account required anti-money laundering / know your customer
16 (AML/KYC) verification as required by the exchanges
17 regulator, Financial Crime Enforcement Network (FinCEN).
18 Petitioner provided his name and personal identification
19 information, including his social security number and other
20 forms of verification.
21

22 25. In 2014 and 2015 Petitioner legally purchased several
23 lots of BTC through his personal Coinbase account. The
24 transactions were facilitated by ACH debit, transferring
25 USD from a personal brokerage account directly to Coinbase.
26
27
28

1 29. Each of these hard forks required any bitcoin holder
2 to take a series of actions to take dominion and control
3 over the newly created fork coins, including but not
4 limited to: retrieving the private keys of bitcoin non-
5 custodial wallet, resecuring the bitcoin in a new non-
6 custodial wallet with a new private key, downloading the
7 compatible hard fork third-party software, exposing the
8 private keys through the third party software and securing
9 the new hard forked coins. None of these coins were air
10 dropped into wallets containing BTC. Rather, the hard
11 forks created a parallel blockchain and set of wallet
12 addresses.
13
14

15 30. On information and belief, the relevant hard forks
16 were not listed by US-based exchanges contemporaneously to
17 the hard fork events.
18

19 31. Petitioners never took any necessary steps to retrieve
20 nor ever retrieved any BTX, BTG, GOD, BCD, SBTC, BCA, BTSP
21 or BSV. (8 coins)
22

23 32. On or about November 8, 2017, Petitioner took the
24 necessary steps to exercise dominion and control of a few
25 hundred BCH. Petitioners never took the necessary steps
26 with respect to the remainder of their BTC holdings.
27
28

DASH Mining

1
2 33. In 2017, Petitioner acquired a cryptocurrency known as
3 DASH via an exchange.

4
5 34. In or about March of 2017, Petitioner staked tokens
6 which generated periodic amounts. To stake DASH, a DASH
7 owner had to follow a series of steps released by the Dash
8 developers including grouping their DASH into chunks of
9 1000 and entering technical information into Dash software.
10 The DASH staking process occurred remotely and not on
11 hardware maintained by the DASH user.

12
13 35. DASH staking did not require the operation of
14 hardware, material time or efforts from Petitioner beyond
15 completing the initial steps to stake tokens.

16
17 36. The staking process periodically generated additional
18 DASH tokens.

IRS Examination of Tax Years 2012 and 2013

19
20 37. In 2013, Petitioner prepared 2012 Form 1120S for
21 Velorum and 2012 Form 1040. At that time, Respondent had
22 not promulgated any guidance for the Federal tax treatment
23 for virtual currency. Velorum reported the acquisition
24 cost of bitcoins acquired in 2012 as an expense identified
25 as "Online Services". The result was reducing the ordinary
26 income reflected on the 2012 Form K-1. The 2012 Form 1120S
27

1 included a balance sheet on Sch L, which did not reflect
2 the bitcoin as an asset of Velorum.

3 38. In 2014, Petitioner prepared 2013 Form 1120S for
4 Velorum and 2013 Form 1040. At that time, Respondent had
5 not promulgated any guidance for the Federal tax treatment
6 for virtual currency. Velorum reported the acquisition
7 cost of bitcoins acquired in 2013 as an expense identified
8 as "Online Services". The result was reducing the ordinary
9 income reflected on the 2013 Form K-1. The 2013 Form 1120S
10 included a balance sheet on Sch L, which did not reflect
11 the bitcoin as an asset of Velorum.
12
13

14 39. On March 25, 2014, Respondent issued Notice 2014-21
15 reflecting the position that virtual currency is treated as
16 property for federal tax purposes.
17

18 40. On or about December 2, 2014, Respondent selected
19 Velorum's 2012 Form 1120S and Petitioners' 2012 Form 1040
20 for examination. On or about March 5, 2015, Respondent
21 expanded the examination to include Velorum's 2013 Form
22 1120S and Petitioners' 2013 Form 1040.
23

24 41. Petitioners complied with the exam by providing
25 documentation, participating in an interview, agreeing to
26 extend the assessment statute and responding to information
27 document requests.
28

1 42. During the examination, Respondent issued various
2 information document requests (IDRs). Those IDRs defined
3 the term "Taxpayer" to include Petitioners and all entities
4 that Petitioners exercised legal or effective control.
5

6 43. Petitioner understood and indicated the Tangible
7 Cryptography bitcoins were his personal assets. He further
8 indicated that any future dispositions would be reported on
9 individual income tax returns.
10

11 44. In or about August of 2015, the examination concluded
12 agreed. Respondent disallowed Velorum's expense deductions
13 for the BTC acquisitions in 2012 and 2013. Respondent
14 adjusted Petitioner's income related to those amounts.
15

16 45. For tax years 2015 through 2017, a CPA prepared Forms
17 1120S for Velorum. The same CPA also prepared Petitioner's
18 2015 and 2016 Forms 1040.
19

20 46. The same CPA had served as a representative in the
21 examination of 2012, 2013 returns.
22

23 47. 2015 through 2017 Forms 1120S contained balance sheets
24 reported on Sch L. No cryptocurrency, including BTC, was
25 reflected as an asset on any balance sheet. Nor was any
26 capital gain transaction or distribution related to any
27 cryptocurrency, including BTC, reflected on the returns.
28

1 48. Petitioners' 2016 and 2017 Forms 1040 reported the BTC
2 dispositions and was prepared by a CPA. The incorporated
3 Sch D and Form 8949 reported the dispositions as long-term
4 capital transactions. The acquisition dates were
5 consistent with the acquisition dates associated with
6 Tangible Cryptography BTC. Further, Petitioner has
7 reported all BTC dispositions for all later tax years and
8 acquisition dates consistent with the Tangible Cryptography
9 acquisitions.
10

11 2018, 2019 Forms 1040
12

13 49. Petitioners' 2018 Form 1040 were prepared by a CPA.
14 The incorporated Schedule D and Form 8949 reported the 2018
15 dispositions via Coinbase as long-term capital
16 transactions. The acquisition dates were consistent with
17 the acquisition dates associated with Tangible Cryptography
18 BTC.
19

20 50. Petitioners' 2019 Form 1040 was prepared by a CPA. The
21 incorporated Schedule D and Form 8949 reported the 2019
22 dispositions via Coinbase as long-term capital
23 transactions. The acquisition dates were consistent with
24 the acquisition dates associated with Tangible Cryptography
25 BTC. Further, Petitioner reported the disposition of DASH
26 received through staking with a zero cost basis.
27
28

1 IRS Examination of Tax Years 2017, 2018, 2019

2 51. On or about March 24, 2022, Respondent selected
3 Petitioners' 2019 Form 1040 for examination.

4 52. Respondent expanded the examination to include
5 Velorum's 2017 Form 1120S and Petitioners' 2017, 2018 Form
6 1040.

7 53. Petitioners complied with all information requests and
8 participated in an interview. Further, Petitioners twice
9 agreed to extend the relevant assessment statute.
10 Petitioners declined to a third statute extension when
11 examination denied his IRS Office of Appeals request.

12 54. With respect to 2017 Form 1040 and 2017 Form 1120S,
13 Respondent proposed the following adjustments:

14 a. First, Respondent determined that all BTC ever held by
15 Petitioners, including the amounts acquired from
16 Coinbase, were assets of Velorum. Further, Respondent
17 determined Velorum distributed the entire inventory of
18 BTC as of 12/31/2017. These flowthrough adjustments
19 passed through to Petitioners' 2017 Form 1040.

20 b. Second, Respondent determined that Velorum had
21 ordinary income related to the following six hard
22 forks:

23 i. The hard fork known as BCH.

1 ii. The hard fork known as BTX.

2 iii. The hard fork known as BTG.

3 iv. The hard fork known as GOD.

4 v. The hard fork known as BCD.

5 vi. The hard fork known as SBTC.

6
7 c. Further, these amounts were also treated as
8 distributions as of 12/31/2017. These flowthrough
9 adjustments passed to Petitioner's 2017 Form 1040.

10 d. Petitioner had ordinary income subject to self-
11 employment tax related to DASH staking. Respondent
12 characterized this activity as cryptocurrency mining.

13 e. Respondent asserted the accuracy-related penalty.

14
15 55. With respect to 2018 Form 1040, Respondent determined
16 ordinary income from the following three hard forks that
17 occurred in 2018:

18 a. The hard fork known as BCA.

19 b. The hard fork known as BTSP.

20 c. The hard fork known as BSV to BCH

21
22 56. Respondent asserted the accuracy-related penalty.

23 57. With respect to 2019 Form 1040, Respondent made no
24 adjustments.

25
26 58. Respondent refused to allow Petitioners to proceed to
27 appeals. Petitioners complied with all requests and

1 provided complete information such that they are entitled
2 to reimbursement of administrative and legal costs per Sec.
3 7430.

4 WHEREFORE, Petitioners pray that this Court hear this
5 case and determine that:
6

- 7 1. The Commissioner erred as alleged in the assignments of
8 error set forth above;
- 9 2. There is accordingly no deficiency and there are no
10 penalties due from Petitioner for the taxable year ended
11 December 31, 2017;
- 12 3. There is accordingly no deficiency and there are no
13 penalties due from Petitioner for the taxable year ended
14 December 31, 2018;
- 15 4. Petitioners are entitled to such other and further relief
16 as the Court may deem just and proper, including but not
17 limited to, equitable recoupment with respect to tax years
18 2017 through 2023.
19
20
21

22 s/Alexander Kugelman

Dated: November 5, 2024

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