



Suspending the Tax-Exempt Status of Terrorist and Terrorist Supporting Organizations: H.R. 6408 in Context

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H.R. 6408 would establish a process for suspending the tax-exempt status of organizations if the Secretary of the Treasury designates them as “terrorist supporting organizations.” The suspended organizations would then be subject to income tax and unable to receive tax-deductible contributions. The House Ways and Means Committee [reported](#) on the bill on December 19, 2023, and it passed the House on April 15, 2024. The Senate is [currently](#) considering the bill, which has been referred to the Senate Committee on Finance. An identical bill was introduced in the Senate on April 17, 2024, as S. 4136.

H.R. 6408 seeks to [amend](#) Section [501\(p\)](#) of the Internal Revenue Code (IRC), which currently suspends the tax-exempt status of “terrorist organizations.” H.R. 6408 would create a separate category of “[terrorist supporting organizations](#)” with different suspension and review procedures than those currently in place for terrorist organizations.

This Legal Sidebar describes the Section 501(p) procedure for suspending the tax-exempt status of terrorist organizations, explains how H.R. 6408 would create a different process to suspend the tax-exempt status of terrorist supporting organizations, identifies existing legal authority under which the Internal Revenue Service (IRS) already can revoke the tax-exempt status of organizations that materially support terrorist organizations, and summarizes the debate over H.R. 6408.

The Section 501(p) Process

Section [501\(p\)](#) of the IRC currently provides a process to suspend the tax-exempt status of terrorist organizations. “[Terrorist organizations](#)” are defined as organizations [designated](#) or defined as such under other laws, including the [Immigration and Nationality Act](#) and Section 140(d)(2) of the [Foreign Relations Authorization Act, FY1988 and 1989](#), or designated by an executive order issued pursuant to the [International Emergency Economic Powers Act](#) or the [United Nations Participation Act of 1945](#).

The suspension of tax-exempt status [begins](#) automatically on the date of the designation (or, for already designated terrorist organizations, on November 11, 2003—the [date of enactment](#) of section 501(p)). The

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suspension [continues](#) until the designation is rescinded. When the tax-exempt status of a terrorist organization is suspended, no [deduction](#) for charitable contributions to the terrorist organization is allowed.

Section [501\(p\)\(5\)](#) denies administrative or judicial review of both the suspension and denial of deduction. Some recourse is available for [erroneous designation](#) through a credit or refund for any overpayment of tax resulting from the error. The IRS publishes a [list](#) of organizations whose tax exemption is suspended under Section 501(p).

While it may seem improbable that a terrorist organization, wanting to operate covertly, could pursue and maintain tax-exempt status, some suspended terrorist organizations—for example, the [Global Relief Foundation](#)—engaged in ostensibly legitimate charitable activity until they were designated as terrorist organizations.

H.R. 6408

H.R. 6408 would [amend](#) Section [501\(p\)](#) to create a separate category of “terrorist supporting organizations.” “[Terrorist supporting organization](#)” is defined as any organization designated by the Secretary of the Treasury as having provided material support to a terrorist organization in the prior three years. [Providing material support](#) is defined by reference to [criminal law](#) as “knowingly provid[ing] material support or resources to a foreign terrorist organization, or attempt[ing] or conspir[ing] to do so.”

An organization would receive [written notice](#) prior to being designated a terrorist supporting organization and 90 days after notice to either [contest](#) the allegations underlying the proposed designation or to [cure](#) the material support by making a reasonable effort to get the support returned and certifying it will not provide any further support. The designation [will be made](#) if the organization does not contest or cure the potential designation within the 90-day period. The designation must be [rescinded](#) if, and only if, (1) the designation was erroneous; (2) the organization did not receive the notice, and either demonstrates that it did not provide material support to a terrorist organization or makes reasonable efforts to recover the support and certifies that it will not provide any further support; or (3) the terrorist organization to which material support was provided is no longer suspended from tax exemption.

[Administrative review](#) of a designation as a terrorist supporting organization is available with the [IRS Independent Office of Appeals](#) (IRS Appeals). A federal district court can [judicially review](#) a “final determination” of an organization’s designation. The proposed amendment in H.R. 6408 does not define “final determination,” but says that a [final determination](#) does not require use of IRS Appeals. Thus, the organization does not have to go through IRS Appeals to exhaust administrative remedies before seeking judicial review of the designation, as is the case in [other](#) IRS determinations.

The period of suspension for terrorist supporting organizations would be the same as it is for terrorist organizations. The suspension [begins](#) upon designation as a terrorist supporting organization and ends upon rescission of the designation. As with terrorist organizations, no deduction for charitable contributions to terrorist supporting organizations would be allowed.

Existing IRS Enforcement Authority

Tax-exempt organizations under Section [501](#) of the IRC are subject to existing requirements that enable the IRS to revoke the tax-exempt status of an organization that provides material support to a terrorist organization.

First, charitable organizations under Section 501(c)(3) are subject to the requirement that their purposes and activities cannot be [illegal](#) or [contrary to public policy](#). Because providing material support to terrorist organizations is [illegal](#), the IRS could revoke a 501(c)(3) organization's tax-exempt status for doing so.

Second, some organizations under Section 501, including 501(c)(3) organizations, must be operated exclusively for certain enumerated exempt purposes. The IRS could find that providing material support to a terrorist organization is contrary to an organization's exempt purposes, justifying revocation of its tax-exempt status.

On at least [one occasion](#), the IRS has revoked the tax-exempt status of a 501(c)(3) organization suspected of supporting a terrorist organization. The IRS revoked the organization's exempt status when public sources indicated that the organization had provided support to a terrorist organization and the organization failed to show that its money had been used exclusively for charitable purposes. The IRS also explained that the organization's activities violated law and public policy.

As the House Ways and Means Committee's report [explains](#), such existing revocation authority is exercised after [examination](#)—or audit—of the organization and the provision of notice, [administrative appeal](#), and [judicial review](#).

One difference between enforcement under existing IRS authority and the process proposed in H.R. 6408 is that revocation under existing authority comes after examination, whereas under H.R. 6408 it would come after designation as a terrorist supporting organization. The rules and regulations the Department of the Treasury (Treasury Department) would promulgate for the criteria and procedure for designation might differ from the existing IRS examination procedure. These potential differences could result in differences in the incidence of revocation.

Debate on H.R. 6408 and Considerations for Congress

H.R. 6408 was introduced [in the wake of](#) the October 7, 2023, terrorist attack on Israel by Hamas and congressional testimony about fundraising by foreign terrorist organizations and their receipt of material support from tax-exempt organizations. In the debate that preceded the House vote on April 15, 2024, some Members supporting the bill [referenced](#) the October 7 terrorist attack as well as the Iranian missile attack on Israel that occurred shortly before the debate. The supporters claimed that the bill would empower the Treasury Department to revoke the tax-exempt status of terrorist supporting organizations and disrupt terrorism financing. One Member offered that the bill would also provide “thoughtful [safeguards](#) to protect due process” during the suspension process.

While no Member spoke against the bill in the [House debate](#), there are opponents who have expressed concern that the proposed suspension process “could be used to [target](#) politically disfavored nonprofits,” including “nonprofit groups that are supportive of a cease-fire in the Israel-Hamas war or who are otherwise rhetorically [supportive](#) of the Palestinians or even seeking to provide humanitarian aid to people in Gaza.” Other opponents argue that the legislation is [unnecessary](#) because providing material support to terrorist organizations is already a federal crime, and the bill would give the Treasury Department excessive authority. Groups representing [humanitarian charities](#) and [Muslim civil rights](#) have expressed opposition to the bill.

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