

**DESCRIPTION OF H.R. 6408,
A BILL TO TERMINATE THE TAX-EXEMPT STATUS
OF TERRORIST SUPPORTING ORGANIZATIONS**

Scheduled for Markup
By the
HOUSE COMMITTEE ON WAYS AND MEANS
on November 30, 2023

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



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INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup on November 30, 2023 of H.R. 6408, a bill to terminate the tax-exempt status of terrorist supporting organizations. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 6408, a Bill to Terminate the Tax-Exempt Status of Terrorist Supporting Organizations* (JCX-53-23), November 28, 2023. This document can also be found on the Joint Committee on Taxation website at www.jct.gov. All section references herein are to the Internal Revenue Code of 1986, as amended (the “Code”), unless otherwise stated.

A. Termination of Tax-Exempt Status of Terrorist Supporting Organizations

Present Law

Revocation of tax-exempt status, in general

Under present law, the Internal Revenue Service generally issues a letter revoking recognition of an organization's tax-exempt status only after (1) conducting an examination of the organization, (2) issuing a letter to the organization proposing revocation, and (3) allowing the organization to exhaust the administrative appeal rights that follow the issuance of the proposed revocation letter. In the case of an organization described in section 501(c) or (d), the revocation letter immediately is subject to judicial review under the declaratory judgment procedures of section 7428. To sustain a revocation of tax-exempt status under section 7428, the IRS must demonstrate that the organization is no longer entitled to exemption.

Suspension of tax-exempt status of terrorist organizations (section 501(p))

To combat terrorism, the Federal government has designated a number of organizations as terrorist organizations or supporters of terrorism under the Immigration and Nationality Act, the International Emergency Economic Powers Act, and the United Nations Participation Act of 1945.

The tax-exempt status of an organization that is exempt from tax under section 501(a) is suspended for any period during which the organization is designated or identified by U.S. Federal authorities as a terrorist organization or supporter of terrorism. Such an organization is also ineligible to apply for tax-exemption under section 501(a). The period of suspension runs from the date the organization is first designated or identified (or from November 11, 2003 (the date of enactment of section 501(p)), if later) to the date when all designations or identifications with respect to the organization have been rescinded pursuant to the law or Executive Order under which the designation or identification was made.

For this purpose, a terrorist organization is an organization that has been designated or otherwise individually identified (1) as a terrorist organization or foreign terrorist organization under the authority of section 212(a)(3)(B)(vi)(II) or section 219 of the Immigration and Nationality Act; (2) in or pursuant to an Executive Order that is related to terrorism and issued under the authority of the International Emergency Economic Powers Act or section 5 of the United Nations Participation Act for the purpose of imposing on such organization an economic or other sanction; or (3) in or pursuant to an Executive Order that refers to the provision and is issued under the authority of any Federal law if the organization is designated or otherwise individually identified in or pursuant to such Executive Order as supporting or engaging in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act) or supporting terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989). During the period of suspension, no deduction for any contribution to a terrorist organization is allowed under the Code, including under sections 170, 545(b)(2), 556(b)(2), 642(c), 2055, 2106(a)(2), or 2522.

No organization or other person may challenge, under section 7428 or any other provision of law, in any administrative or judicial proceeding relating to the Federal tax liability

of such organization or other person, the suspension of tax-exemption, the ineligibility to apply for tax-exemption, a designation or identification described above, the timing of the period of suspension, or a denial of deduction described above. The suspended organization may maintain other suits or administrative actions against the agency or agencies that designated or identified the organization, for the purpose of challenging such designation or identification (but not the suspension of tax-exempt status under this provision).

If the tax exemption of an organization is suspended and each designation and identification that has been made with respect to the organization is determined to be erroneous pursuant to the law or Executive Order making the designation or identification, and such erroneous designation results in an overpayment of income tax for any taxable year with respect to such organization, a credit or refund (with interest) with respect to such overpayment shall be made. If the operation of any law or rule of law (including *res judicata*) prevents the credit or refund at any time, the credit or refund may nevertheless be allowed or made if the claim for such credit or refund is filed before the close of the one-year period beginning on the date that the last remaining designation or identification with respect to the organization is determined to be erroneous.

The IRS is directed to update the listings of tax-exempt organizations to take account of organizations that have had their exemption suspended and to publish notice to taxpayers of the suspension of an organization's tax-exemption and the fact that contributions to such organization are not deductible during the period of suspension.

As of this writing, there are nine organizations on the IRS's list of organizations suspended under section 501(p).²

Description of Proposal

In general

The proposal extends section 501(p) such that it applies not only to terrorist organizations (as under present law) but also to terrorist supporting organizations. The proposal treats a terrorist supporting organization as a terrorist organization described in section 501(p)(2). The effect of this treatment is that the tax-exempt status of a terrorist supporting organization, and the eligibility of such organization to apply for tax-exempt status, are suspended. The period of suspension of a terrorist supporting organization is treated as beginning on the date the Secretary designates the organization as a terrorist supporting organization and ending on the date the Secretary rescinds the designation, as described below.

A terrorist supporting organization is any organization that is designated by the Secretary as having provided, during the three-year period ending on the date of such designation, material support or resources to a terrorist organization or terrorist supporting organization described in

² See <https://www.irs.gov/charities-non-profits/charitable-organizations/suspensions-pursuant-to-code-section-501p>.

section 501(p) in excess of a *de minimis* amount. For this purpose, the term “material support or resources” is defined by reference to section 2339B of Title 18 of the U.S. Code.³

Notice requirement

Before designating an organization as a terrorist supporting organization, the Secretary is required to mail to the most recent mailing address provided to the IRS on its most recent annual information return filed with the IRS (or subsequently submitted form indicating a change of address) a written notice. The notice must include: (1) a statement that the Secretary will designate the organization as a terrorist supporting organization unless the organization satisfies the requirements outlined in the following paragraph, (2) the name of the organization or organizations with respect to which the Secretary has determined such organization provided material support or resources, and (3) a description of such material support or resources.

Opportunity to cure

In the case of such a notice, the Secretary shall, at the end of the 90-day period beginning on the date the notice was sent, designate the organization as a terrorist supporting organization if, and only if, the organization has not during such period: (1) demonstrated to the satisfaction of the Secretary that the organization did not provide the material support or resources, or (2) made reasonable efforts to have such support or resources returned to such organization and certified in writing to the Secretary that such organization will not provide any further support or resources to a terrorist organization or terrorist supporting organization described in section 501(p)(2). Such a certification is not valid if the organization making the certification has provided any other such certification during the preceding five years.

Rescission of designation

The Secretary shall rescind a designation if and only if: (1) the Secretary determines that the designation was erroneous; (2) after the Secretary receives a certification from an organization that it did not receive the notice described above, (a) the Secretary determines that it is reasonable to believe that the organization did not receive the notice, and (b) the organization satisfies the above requirements relating to curing a deficiency (that is, the organization demonstrates that it did not provide material support or resources or made reasonable efforts to have such support or resources returned and makes the required certification); or (3) the Secretary determines that the periods of suspension for all organization to which the material support or resources were provided have ended. The certification described in (2) above is not

³ Section 2339B defines “material support or resources” by reference to section 2339A of Title 18 of the U.S. Code. Section 2339A, in turn, provides that material support or resources means “any property, tangible or intangible, or service, including currency or monetary instruments or financial securities, financial services, lodging, training, expert advice or assistance, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel (1 or more individuals who may be or include oneself), and transportation, except medicine or religious materials.” The term “training” is defined as “instruction or teaching designed to impart a specific skill, as opposed to general knowledge.” The term “expert advice or assistance” is defined as “advice or assistance derived from scientific, technical or other specialized knowledge.”

treated as valid if the organization making the certification has provided any other such certification during the preceding five years.

Effective Date

The proposal is effective for designations made after the date of enactment in taxable years ending after such date.

B. Estimated Revenue Effects

The staff of the Joint Committee on Taxation estimates the bill to have a negligible effect on Federal fiscal year budget receipts for the period 2024 through 2033.