
THIRD READING

Bill No: SB 834
Author: Wiener (D), et al.
Amended: 5/2/22
Vote: 21

SENATE GOVERNANCE & FIN. COMMITTEE: 4-0, 4/20/22
AYES: Caballero, Durazo, Hertzberg, Wiener
NO VOTE RECORDED: Nielsen

SENATE PUBLIC SAFETY COMMITTEE: 4-0, 4/26/22
AYES: Bradford, Kamlager, Skinner, Wiener
NO VOTE RECORDED: Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/19/22
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SUBJECT: Tax-exempt status: insurrection

SOURCE: Author

DIGEST: This bill allows the Attorney General and the Franchise Tax Board to determine that an organization is no longer eligible for tax-exempt status if it has engaged in acts of criminal conspiracy, as specified.

ANALYSIS:

Existing law:

- 1) Conforms, generally, to provisions of federal law that afford tax-exempt status for federal tax purposes when the Internal Revenue Service (IRS) determines that an entity is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, educational, or other specified purposes and that meet certain other requirements.

- 2) Permits Franchise Tax Board (FTB) to determine independently if an exempt organization preforms the actions required to maintain their tax-exempt status, and revoke its status for state purposes if it does not, for state tax purposes.
- 3) Provides, upon approval, that these entities are tax exempt, meaning that the net income of the organization is not subject to the corporation tax, and taxpayers can deduct contributions to the organization from taxable income for Personal Income tax purposes.
- 4) Requires entities to operate within their defined charitable purpose to maintain this status by conforming specifically to Internal Revenue Code 501(c)(3), which provides that IRS may revoke its exemption if it ceases to be operated exclusively for exempt purposes.
- 5) Provides that an organization is operated exclusively for exempt purposes only if it engages primarily in activities that accomplish the exempt purposes specified in Section 501(c)(3), and lists specific activities does not further an exempt purpose, including:
 - a) Refraining from participating in the political campaigns_of candidates for local, state, or federal office;
 - b) Restricting its lobbying activities to an insubstantial part of its total activities;
 - c) Ensuring that its earnings do not benefit any private shareholder or individual;
 - d) Operating for the benefit of private interests such as those of its founder, the founder's family, its shareholders or persons controlled by such interests;
 - e) Operating for the primary purpose of conducting a trade or business that is not related to its exempt purpose, such as a school's operation of a factory;
 - f) Providing commercial-type insurance as a substantial part of its activities;
 - g) Having purposes or activities that are illegal or violate fundamental public policy;
 - h) Failing to satisfy annual filing requirements.
- 6) States that activities that constitute any personal gain by one of the organization's members, or misuse of the organization's assets may result in the imposition of penalty excise taxes on individuals benefiting from excess benefit transactions and loss of the organization's tax-exempt status. A tax-exempt organization that does not file a required annual return or notice for three consecutive years automatically loses its tax-exempt status.

- 7) Allows the California Attorney General's Office (AG) to regulate charities and the professional fundraisers who solicit on their behalf.

This bill:

- 1) Authorizes the AG to make a finding that a tax-exempt organization has actively engaged in, or incited the active engagement in, acts or conspiracies defined as criminal under specified federal law, and likely to produce imminent violation of that federal law under one or more of these sections:
 - a) Section 2381: Treason;
 - b) Section 2382: Misprison of Treason;
 - c) Section 2383: Rebellion or Insurrection;
 - d) Section 2384: Seditious Conspiracy;
 - e) Section 2385: Advocacy Overthrow of Government;
 - f) Section 2387: Activities Affecting Armed Forces Generally.
- 2) Requires the AG to notify FTB of such a finding,
- 3) States, upon receipt of the notification, that FTB has authority to revoke the tax-exempt status of the organization found to be in violation.
- 4) States that FTB's authority to revoke an exemption from tax, as specified, does not constitute a change in, but is declaratory of, existing law.
- 5) Allows the AG and the FTB to prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of this bill.

Background

January 6, 2021 Capitol riot. According to the United States Department of Justice¹, "Wednesday, April 6, 2022, marked 15 months since the attack on the U.S. Capitol that disrupted a joint session of the U.S. Congress in the process of affirming the presidential election results. The government continues to investigate losses that resulted from the breach of the Capitol, including damage to the Capitol building and grounds, both inside and outside the building. According to a May 2021 estimate by the Architect of the Capitol, the attack caused approximately \$1.5 million worth of damage to the U.S. Capitol building."

To date, the criminal charges filed in connection with the Capitol riot are as follows:

¹ [15 Months Since the Jan. 6 Attack on the Capitol \(justice.gov\)](https://www.justice.gov/15-months-since-the-jan-6-attack-on-the-capitol)

- More than 250 defendants have been charged with assaulting, resisting, or impeding officers or employees, including over 85 individuals who have been charged with using a deadly or dangerous weapon or causing serious bodily injury to an officer.
- Approximately 140 police officers were assaulted January 6 at the Capitol, including about 80 U.S. Capitol Police and about 60 from the Metropolitan Police Department.
- Approximately 10 individuals have been arrested on a series of charges that relate to assaulting a member of the media, or destroying their equipment, on January 6.
- Approximately 695 defendants have been charged with entering or remaining in a restricted federal building or grounds.

According to a February 2022 article reported by NPR², “The nonprofit Patriot Freedom Project became one of the most prominent groups supporting the “political prisoners” criminally charged in the Jan. 6, 2021 attack on the U.S. Capitol.” This group has applied for non-profit status with the IRS, the status of that application is unknown.

The United States Department of Justice reported³ that on January 3, 2022, “the federal grand jury in the District of Columbia returned an indictment charging 11 defendants with seditious conspiracy and other charges for crimes related to the breach of the U.S. Capitol on January 6.” According to court documents, among those charged is Elmer Stewart Rhodes III, the founder and leader of the “Oath Keepers.” The Oath Keepers group was granted tax exempt status by the IRS in 2019. That status of that tax-exempt status today is unclear.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Senate Appropriations Committee:

- The Department of Justice indicates that it would incur first-year costs of \$719,000, and about \$1 million annually thereafter, to implement the provisions of this bill (General Fund).
- FTB would incur minor and absorbable administrative costs.

² [Controversial nonprofit for Jan. 6 riot defendants makes changes after criticism : NPR](#)

³ [Leader of Oath Keepers and 10 Other Individuals Indicted in Federal Court for Seditious Conspiracy and Other Offenses Related to U.S. Capitol Breach | OPA | Department of Justice](#)

- FTB further notes that this bill could result in an unknown revenue increase, as revoked nonprofits would (1) become subject to corporate income and franchise tax provisions, and (2) be taxed at the applicable corporate tax rate. FTB estimates that each additional \$1 million dollars of taxable income resulting from the revocation of tax-exempt status would result in a General Fund revenue gain of \$90,000.”

SUPPORT: (Verified 5/19/22)

All Rise Alameda
Anti-Defamation League
Building the Base Face to Face
Change Begins With Me Indivisible Group
Cloverdale Indivisible
Contra Costa MoveOn
Defending Our Future: Indivisible in CA
East Valley Indivisibles
El Cerrito Progressives
Feminists in Action
Hillcrest Indivisible
Indi Squared
Indivisible 30/Keep Sherman Accountable
Indivisible 36
Indivisible 41
Indivisible Auburn CA
Indivisible Beach Cities
Indivisible CA: StateStrong
Indivisible CA-25 Simi Valley Porter Ranch
Indivisible CA-29
Indivisible CA-3
Indivisible CA-33
Indivisible CA-37
Indivisible CA-39
Indivisible CA-43
Indivisible CA-7
Indivisible Claremont/Inland Valley
Indivisible Colusa County
Indivisible East Bay
Indivisible El Dorado Hills
Indivisible Elmwood
Indivisible Euclid

Indivisible Lorin
Indivisible Los Angeles
Indivisible Manteca
Indivisible Marin
Indivisible Media City Burbank
Indivisible Mendocino
Indivisible Normal Heights
Indivisible North Oakland Resistance
Indivisible North San Diego County
Indivisible OC 46
Indivisible OC 48
Indivisible Peninsula and CA-14
Indivisible Petaluma
Indivisible Sacramento
Indivisible San Bernardino
Indivisible San Francisco
Indivisible San Jose
Indivisible San Pedro
Indivisible Santa Barbara
Indivisible Santa Cruz County
Indivisible Sausalito
Indivisible Sebastopol
Indivisible SF
Indivisible Sonoma County
Indivisible South Bay LA
Indivisible Stanislaus
Indivisible Suffragists
Indivisible Ventura
Indivisible Windsor
Indivisible Yolo
Indivisible: San Diego Central
Indivisibles-Sherman Oaks
Livermore Indivisible
Mill Valley Community Action Network
Mountain Progressives
Nothing Rhymes With Orange
Orchard City Indivisible
Orinda Progressive Action Alliance
Our Revolution Long Beach
Riseup

Rooted in Resistance
San Diego Indivisible Downtown
SFV Indivisible
Tehama Indivisible
The Resistance Northridge-Indivisible
Together We Will Contra Costa
Together We Will/Indivisible - Los Gatos
Vallejo-Benicia Indivisible
Venice Resistance
Women's Alliance Los Angeles
Yalla Indivisible
Two individuals

OPPOSITION: (Verified 5/19/22)

Two individuals

ARGUMENTS IN SUPPORT: According to the author, “SB 834 revokes the California tax-exempt status of a nonprofit organization if the Attorney General determines that the nonprofit has actively engaged in or incited treason, misprision of treason, insurrection, seditious conspiracy, advocating overthrow of the government or the government of any State, or advocating mutiny by members of the military or naval forces of the United States. If the Attorney General finds that a nonprofit organization has incited or actively engaged in an act that is directed and likely to imminently violate one or more of these crimes, they shall notify the Franchise Tax Board (FTB), who shall revoke the nonprofit’s tax-exempt status.

“On January 6, 2021, pro-Trump extremists and insurrectionists – incited by the ‘Big Lie’ (the fraudulent notion that the 2020 election was stolen) and then-President Donald Trump – breached the United States Capitol. Five people were killed and hundreds were injured as a result of this insurrection. A variety of individuals and organizations – including nonprofits participated in the events on January 6th. Nonprofits raised millions of tax-free dollars off the ‘Big Lie’ that the 2020 presidential election was stolen.

“SB 834 fills an important gap. While the FTB is currently directed to suspend the tax-exemption of a nonprofit supporting international terrorism, there is no clear authority concerning nonprofits that support insurrection. SB 834 will ensure that nonprofit organizations engaged in insurrection-related offenses will be held to the same standard as those that engage in or support international terrorist activity, and also have their exemption revoked.

“As the United States Supreme Court held in *Bob Jones University v. United States* (1983), it is permissible for the IRS to deny tax-exempt status to a private school with explicitly racist policies. The Court held that entitlement to tax exemption depends on meeting certain common-law standards of charity, namely, that a nonprofit organization seeking tax-exempt status must serve a public purpose and not be contrary to established public policy.

“Tax-exempt status is a privilege, not a right. Organizations that engage in, or incite the active engagement of insurrection-related offenses – both of which are illegal – should not be given this special status to help them fundraiser.”

ARGUMENTS IN OPPOSITION: According to an email message received by an individual, “the cancel culture is carried away with silencing freedom of expression and stretching the meaning of insurrection to advance their agenda. I see no benefit from the proposed bill. The bill provides that the state Franchise Tax Board can deny or suspend the tax-exempt status of any non-profit wherein the state has determined that the non-profit is (or has) engaged in some form on insurrection (certain organizations, e.g. NRA, CRPA, etc.) might be considered part of this group and thus denied their California rightful tax-exempt status.”

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5/21/22 15:39:17

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