



Bill Analysis

Author: Wiener, et al.

Bill Number: SB 834

SUBJECT

Suspension of Tax Exempt-Status for Nonprofit Organizations Supporting or Engaging in Illegal Activities

SUMMARY

This bill would, under the Corporation Tax Law (CTL), require the Attorney General to notify the Franchise Tax Board (FTB) of a finding that a tax-exempt organization has actively engaged in, or incited the active engagement in, illegal activities, as defined. The bill would restate the FTB's existing authority to revoke the tax-exempt status of an organization found to be in violation.

REASON FOR THE BILL

The reason for this bill is to revoke the California tax-exempt status of a tax-exempt organization actively engaged in or supporting insurrection and other illegal actions.

ANALYSIS

The bill contains a declaration from the Legislature explaining the purpose of the bill.

This bill would, under the CTL, provide that if the Attorney General determines that an organization exempt from tax has actively engaged in, or incited the active engagement in, specific crimes, the Attorney General would be required to notify the FTB of that determination. The bill identifies the following specific crimes under Title 18 of the United States Code:

- Treason (Section 2381);
- Misprision of treason (Section 2382);
- Insurrection (Section 2383);
- Seditious conspiracy (Section 2384);
- Advocating overthrow of the government (Section 2385); and
- Advocating mutiny by members of the United States military (Section 2387).

The bill would provide that upon receiving notification from the Attorney General, the FTB has authority under state law to revoke the exemption from tax for the organization.

The bill would allow the Attorney General and the FTB to prescribe rules, guidelines, procedures, or other guidance to carry out the purposes of the bill.

The bill would also provide that the authority of the FTB to revoke an exemption from tax does not constitute a change in, but is declaratory of, existing law.

Effective/Operative Date

This bill would be effective and operative January 1, 2023.

Federal/State Law

Upon application, the Internal Revenue Service (IRS) grants certain organizations tax-exempt status. California law treats federally tax-exempt IRC section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), or 501(c)(19) organizations as tax-exempt under state income tax law if the organization submits form FTB 3500A, Submission of Exemption Request, and a copy of its federal determination letter to the FTB.

Under the Internal Revenue Code (IRC), certain entities are treated as tax-exempt organizations. A tax-exempt organization can be a trust, unincorporated association, or nonprofit corporation.

California grants special status to nonprofit charitable organizations so that they may be exempt from paying state taxes. In addition, for certain nonprofit organizations, contributors may make donations that they may deduct for income tax purposes. To be exempt from state tax, an organization must be organized and operated for one or more exempt purposes listed in California's CTL.

Federal and State law allows for the suspension of the tax-exempt status, and requires suspension of tax-exempt status of an organization supporting or engaging in illegal international terrorist activity (IRC § 501(p), Cal. Rev & Tax Code § 23703.5).

Current California law prohibits an organization formed as a California corporation or qualified to do business in California that is listed by the Secretary of State (SOS) or the FTB as "suspended" or "forfeited" from establishing its exemption from state income taxes and provides that the organization will not receive an acknowledgement from the FTB of the organization's exemption until that corporation is listed by the SOS and the FTB as an "active" corporation.

Implementation Considerations

None noted.

Technical Considerations

None noted.

Policy Considerations

None noted.

LEGISLATIVE HISTORY

SB 934 (Bates, Chapter 59, Statutes of 2020) eliminated the \$25 filing fee as of January 1, 2021, for organizations applying for tax-exempt status.

AB 94 (Rodriguez & Cervantes, Chapter 104, Statutes of 2017) allows federally tax-exempt veterans' organizations under IRC section 501(c)(19) to use the streamlined method of applying for tax-exemption for state purposes.

SB 1713 (Machado, Chapter 552, Statutes of 2004) in specified conformity to federal laws, modified the membership requirement for exemption from taxation for a veteran's organization, suspended the tax-exempt status of terrorist organizations, and expanded the use of Coverdell education savings accounts with respect to distributions made on account of attendance at specified military academies.

PROGRAM BACKGROUND

Currently, in order to obtain state exemption from tax under CTL section 23701, an organization must submit a completed exemption application form to the FTB. The exemption application is required to include the organization's Articles of Incorporation, bylaws, and financial statements showing assets, liabilities, receipts, and disbursements.

Beginning in 2008, organizations that received a federal determination of tax-exempt status under IRC section 501(c)(3) could obtain state tax-exempt status using a streamlined process by submitting only a copy of the federal determination to the FTB (Revenue and Taxation Code (RTC) section 23701d(c)(1)). Beginning in 2013, the streamlined application process was extended to include organizations that received a federal determination of tax-exempt status under IRC sections 501(c)(4), 501(c)(5), 501(c)(6), or 501(c)(7).

Under the streamlined process, the FTB is allowed to revoke tax-exempt status if the organization fails to meet certain California provisions governing exempt organizations.

Also, an organization must inform the FTB of the suspension or revocation of the federal tax-exempt status and, upon receipt of the IRS notice of suspension or revocation, the FTB is allowed to suspend or revoke the organization's state tax-exempt status.

FISCAL IMPACT

This bill would not significantly impact the department's costs.

ECONOMIC IMPACT

Revenue Estimate

This bill as amended May 2, 2022, would state the FTB's authority to revoke the tax-exempt status of a nonprofit organization that the Attorney General determines to have engaged in, or incited the active engagement in, an act of conspiracy. Because of the uncertainty inherent in such an event, it is not possible to accurately forecast when such an event would occur. However, under the bill's provisions, additional revenues would likely be generated because revoked nonprofits would become subject to the corporate income and franchise tax provisions and taxed at the applicable corporate tax rate. It is estimated that each additional \$1 million of taxable income resulting from the revocation of tax exempt status would result in a revenue gain of approximately \$90,000.

This analysis does not account for changes in employment, personal income, or gross state product that could result from this bill or for the net final payment method of accrual.

LEGAL IMPACT

None noted.

APPOINTMENTS

None noted.

SUPPORT/OPPOSITION

Support

As per the Senate Floor Analyses of SB 834, dated August 22, 2022, the following organizations are in support or opposition of the bill:

- 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 (formerly Indivisible CA 34 Womens)
- Hillcrest Indivisible
- Indi Squared
- Indivisible 30/keep Sherman Accountable

Indivisible 36
Indivisible 41
Indivisible Auburn CA
Indivisible Beach Cities
Indivisible CA-3
Indivisible CA-7
Indivisible CA-25 Simi Valley Porter Ranch
Indivisible CA-29
Indivisible CA-33
Indivisible CA-37
Indivisible CA-39
Indivisible CA-43
Indivisible CA: Statestrong
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
 2 Individuals

Opposition

Two Individuals.

VOTES

Location	Date	Yes Votes	No Votes
Concurrence	August 23, 2022	31	0
Assembly Floor	August 22, 2022	59	2
Senate Floor	May 23, 2022	28	0

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