

Date of Hearing: June 13, 2022

ASSEMBLY COMMITTEE ON REVENUE AND TAXATION  
Jacqui Irwin, Chair

SB 834 (Wiener) – As Amended May 2, 2022

Majority vote. Fiscal committee.

**SENATE VOTE:** 28-0

**SUBJECT:** Tax-exempt status: insurrection

**SUMMARY:** Authorizes the Franchise Tax Board (FTB) to revoke the tax-exempt status of a charitable organization if the California Attorney General's Office (AG) has determined the nonprofit engaged in certain criminal conspiracies or acts. Specifically, **this bill:**

- 1) Authorizes the FTB to revoke the tax-exempt status of a charitable organization if the organization has engaged in, or incited the active engagement of, any criminal conspiracies or acts defined under Sections 2381, 2382, 2383, 2384, 2385, or 2387 of Title 18 of the United States Code (U.S.C.), as determined by the AG.
- 2) Requires the AG, upon determination that an organization has engaged in any of the specified criminal acts, to notify the FTB of such action.
- 3) Permits the AG and the FTB to prescribe rules, guidelines, procedures, or other guidance to carry out this bill.
- 4) Provides that the authority granted to the FTB by this bill is declaratory of, and does not constitute a change in, existing law.
- 5) Finds and declares that:
  - a) California grants special status to nonprofit charitable organizations by exempting them from state taxes and allows state income tax deductions for donations made by contributors to certain nonprofits. These tax benefits are extended by the State, at the expense of its taxpayers, to support charitable organizations and the important work they do;
  - b) However, as the United States (U.S.) Supreme Court held in *Bob Jones University v. United States* (1983) 461 U.S. 574, 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;
  - c) The federal government has defined the crimes of treason, misprision of treason, insurrection, seditious conspiracy, advocating the overthrow of the government, and advocating mutiny by members of the U.S. military;

- d) It is the existing policy of the State of California, and within the authority of the FTB, to apply the same common law principles articulated in *Bob Jones University v. United States* (1983) 461 U.S. 574 to the granting of tax-exempt status under California law;
- e) There is well-established procedure for exercising the authority clarified in this bill, including the procedure for investigating and remedying the misuse of funds by a charitable organization under the Supervision of Trustees and Fundraisers for Charitable Purposes Act (Government Code Section 12580 *et seq.*); and,
- f) Consistent with this policy, the Legislature finds that the FTB has authority under state law to revoke the exempt status of nonprofit organizations inciting or actively engaged in the offenses listed in this bill.

**EXISTING FEDERAL LAW:**

- 1) Provides that all income from whatever source derived is considered taxable income, unless specifically excluded.
- 2) Exempts certain types of nonprofit organizations from federally-imposed income taxes if the entity is organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, education, or other specified purposes that meet certain requirements.
- 3) Allows a deduction for amounts contributed to qualifying charitable organizations with tax-exempt status, limited to certain percentages of adjusted gross income based on the type of donation and the receiving organization.
- 4) Allows for the suspension of an organization's tax-exempt status, if the organization fails to meet certain criteria, and requires suspension of an organization's tax-exempt status if the organization is supporting or engaging in illegal international terrorist activity.
- 5) Makes criminal the acts of treason (U.S.C. Section 2381), misprision of treason (U.S.C. Section 2382), rebellion or insurrection (U.S.C. Section 2383), seditious conspiracy against (U.S.C. Section 2384), or advocating the overthrow of (U.S.C. Section 2385), the government, and interfering with the loyalty, morale, or discipline of the U.S. armed forces (U.S.C. Section 2387).

**EXISTING STATE LAW:**

- 1) Exempts the income of various types of nonprofit organizations from tax.
- 2) Allows the FTB to suspend exempt status, if the organization fails to meet California provisions governing exempt organizations or the organization's federal exempt-status is revoked or suspended, and requires suspension of this status in the case of an organization supporting or engaging in illegal international terrorist activity.
- 3) Conforms, with certain modifications, to the federal charitable contribution deduction.
- 4) Requires nonprofit organizations to submit an application to the FTB to obtain California "tax-exempt" status.
- 5) Requires the FTB to review applications and issue a determination.

- 6) Establishes the Supervision of Trustees and Fundraisers for Charitable Purposes Act, which grants the AG the authority to oversee registered charitable organizations to ensure that funds received are properly managed and devoted to charitable programs (Government Code Section 12580 *et seq.*).

**FISCAL EFFECT:** The FTB notes that this bill could result in an unknown revenue increase, as revoked nonprofits would become subject to corporate income and franchise tax provisions, and be taxed at the applicable corporate rate.

**COMMENTS:**

- 1) The author has provided the following statement in support of this bill:

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 U.S. 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 U.S. 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, explicit 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 U.S. 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 fundraise.

- 2) The Anti-Defamation League, writing in support of this bill, states, in part,

In the wake of the January 6<sup>th</sup>, 2021 attack on the U.S. Capitol, and the rising tide of hate and extremism across the county, we have become increasingly concerned about the ways in which extremist and hateful groups operating as "charitable" non-profits may be abusing their tax exempt status to further their violent or hateful objectives...As indicated in our report, after a cursory investigation, we uncovered evidence that a range of groups may be making misrepresentations in their tax filings in order to secure tax-exempt status...[SB 834] sends a clear message that organizations that engage in serious crimes against our democracy should not be permitted to operate in California for charitable purposes.

3) Committee Staff Comments:

- a) *Department of Justice (DOJ) Investigation:* As noted by the U.S. DOJ, Friday, May 6, 2022 marked 16 months since the attack on the U.S. Capitol that disrupted a joint session of Congress in the process of affirming the [2020] presidential election results. The DOJ notes that approximately 255 defendants have been charged with assaulting, resisting, or impeding officers or employees, 85 of whom have been charged with using a deadly or dangerous weapon or causing serious bodily injury to an officer. Additionally, the DOJ states that more than 700 defendants have been charged with entering or remaining in a restricted federal building or grounds<sup>1</sup>.
- b) *Tax exempt-organizations:* Under current federal and state law, tax-exempt organizations must operate within the organization's charitable purpose, as defined in its articles of incorporation provided to the Internal Revenue Service (IRS) and the FTB. The IRS states that a charitable organization "must be organized and operated exclusively for exempt purposes," that none of its earnings may inure to any private shareholder or individual, and may not participate in any political campaign activity nor attempt to influence legislation as a substantial part of its activities. Should a tax-exempt charitable organization violate any of these restrictions, the organization jeopardizes its status as tax exempt. Additionally, according to the IRS, "If, to carry out its program, an organization violates applicable canons of ethics, disrupts the judicial system, or engages in any illegal action, the organization will jeopardize its exemption." A tax-exempt organization must file an annual return or notice. If the organization fails to do so for three consecutive years, the tax-exempt status is automatically revoked.

The FTB notes that most California laws addressing the tax-exempt status of organizations are patterned after the Internal Revenue Code, but provides a separate process for obtaining tax-exempt status; and state law authorizes the FTB to make its own determination regarding an organization's tax-exempt status. Generally, an organization must apply to the FTB and, upon approval by the FTB, is provided a letter acknowledging the organization's tax-exempt status. The FTB may revoke an organization's status if it is not organized or operated in accordance with state or federal law.

- c) *What does this bill do?* This bill requires the AG to notify the FTB if the AG has determined that an entity granted tax-exempt status has engaged in specified criminal

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<sup>1</sup> DOJ, <https://www.justice.gov/usao-dc/16-months-jan-6-attack-capitol>

acts. This bill authorizes the FTB to revoke the tax-exempt status of an organization upon notification from the AG.

- d) *Disparate state and federal tax treatment:* Generally, California tax law conforms to federal tax law, as conformity simplifies the preparation of returns and facilitates compliance with the law. The FTB notes in its analysis that his bill could create differences between federal and California tax treatment of a charitable organization, as an organization could be considered exempt at the federal level but not at the state level. Such a difference could cause uncertainty for the organization and potential donors.
- e) *Implementation consideration:* The FTB notes in its analysis that this bill does not address whether an organization that has its tax-exempt status revoked is barred from applying for a reinstatement of its tax-exempt status in subsequent tax years. The author and Committee may wish to specify whether an organization that has had its tax-exempt status revoked may apply for that status again in future tax years.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Anti-Defamation League  
 All Rise Alameda  
 Building the Base Fact-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 29  
 Indivisible, CA StateStrong  
 Indivisible, CA 25, Simi Valley/Porter Ranch  
 Indivisible, CA 3  
 Indivisible, CA 7  
 Indivisible, CA 33  
 Indivisible, CA 37  
 Indivisible, CA 39  
 Indivisible, CA 43  
 Indivisible, Claremont/Inland Valley  
 Indivisible, Colusa County  
 Indivisible, East Bay

Indivisible, El Dorado Hills  
Indivisible, Elmwood  
Indivisible, Euclid  
Indivisible, Livermore  
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, Orchard City  
Indivisible, Peninsula  
Indivisible, Petaluma  
Indivisible, Sacramento  
Indivisible, San Bernardino  
Indivisible, San Francisco  
Indivisible, San Francisco Peninsula and CA 14  
Indivisible, San Fernando Valley  
Indivisible, San Jose  
Indivisible, San Pedro  
Indivisible, Santa Barbara  
Indivisible, Santa Cruz County  
Indivisible, Sausalito  
Indivisible, Sebastopol  
Indivisible, Sonoma County  
Indivisible, South Bay, Los Angeles  
Indivisible, Stanislaus  
Indivisible, Suffragists  
Indivisible, Tehama  
Indivisible, Ventura  
Indivisible, Windsor  
Indivisible, Yolo  
Indivisible, San Diego Central  
Indivisible, San Diego Downtown  
Indivisible, Sherman Oaks  
Indivisible, Vallejo-Benicia  
Mill Valley Community Action Network  
Mountain Progressives  
Nothing Rhymes with Orange  
Orinda Progressive Action Alliance  
Our Revolution Long Beach  
RiseUp  
Rooted in Resistance  
The Resistance, Northridge

Together We Will, Contra Costa  
Venice Resistance  
Together We Will/Indivisible, Los Gatos  
Venice Resistance  
Women's Alliance, Los Angeles  
Yalla Indivisible

**Opposition**

None on file

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