

Date of Hearing: June 28, 2022
Counsel: Mureed Rasool

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

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

SUMMARY: States that the Franchise Tax Board (FTB) to revoke the tax-exempt status of a charitable organization if the California Attorney General (AG) has determined the nonprofit engaged treason, insurrection, seditious conspiracy, or other specified crimes. Specifically, **this bill:**

- 1) 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 existing policy, 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 tax exempt status revocations, 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; and,
 - f) 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.
- 2) Requires the AG, upon determination that a tax-exempt organization has engaged in specified criminal acts, or conspiracies, or may likely violate a specified criminal act, to notify the FTB of such action.

- 3) States that, upon notification from the AG, the FTB has the authority to revoke an organization's tax exempt status.
- 4) Permits the AG and the FTB to prescribe rules, guidelines, procedures, or other guidance to effectuate these provisions.
- 5) Provides that the authority granted to the FTB to revoke tax exempt status is declaratory of, and does not constitute a change in, existing law.

EXISTING LAW:

- 1) Exempts organizations that operate for nonprofit purposes from taxes, as specified. (Rev. & Tax Code, § 23701.)
- 2) Defines "charitable organization" for the purposes of a tax exemption and provides when the tax exempt status can be revoked if the AG notifies the FTB that specified required filings were not made. (Rev & Tax Code, § 23703)
- 3) Authorizes the FTB to revoke an organization's tax-exempt status under certain circumstances, including when the organization fails to confine its activities to those that allowed it to receive the exemption. (Rev. & Tax Code, § 23777.)
- 4) Removes an organization's tax-exempt status if that organization:
 - a) Carried on propaganda or otherwise attempted to influence legislation; or
 - b) Participated or intervened in any political campaign on behalf or opposition to any candidate for public office. (Rev. & Tax Code, § 23704.6.)
- 5) Allows an organization whose exemption was revoked based on activities outside the scope of its declared purpose to reestablish its exempt status by providing satisfactory proof that the organization has:
 - a) Corrected its nonexempt activities;
 - b) Will operate in an exempt manner in the future; and,
 - c) Pay any taxes that accrued during the period the organization had its exempt status revoked. (Rev. & Tax Code, § 23778.)
- 6) Allows for the removal of tax exempt status from an organization that has been found to be a terrorist organization. (Rev & Tax Code Sec. 23703.5.)
- 7) Places the primary responsibility for supervising charitable corporations within the purview of the AG and authorizes the AG to revoke or suspend their registration for specified violations. (Gov. Code, § 12598.)
- 8) Prohibits a charitable organization from misrepresenting its purpose and specifies that a misrepresentation can occur through words, conduct, or nondisclosure of material facts.

(Gov. Code, § 12599.6.)

EXISTING FEDERAL LAW:

- 1) Exempts organizations that operate exclusively for purposes religious, charitable, scientific, literary, or other specified activities, from taxes. (26 U.S.C.S., § 501(c)(3).)
- 2) Removes an organization's tax-exempt status if that organization:
 - a) Carried on propaganda or otherwise attempted to influence legislation; or,
 - b) Participated or intervened in any political campaign on behalf or opposition to any candidate for public office. (26 U.S.C.S., § 504.)
- 3) Allows for the removal of tax exempt status from an organization that has been found to be a terrorist organization. (26 U.S.C.S., § 501(p).)

FISCAL EFFECT: Unknown.

COMMENTS:

- 1) **Author's Statement:** 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 policies⁴. 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) **Exempt entities:** Federal law allows an organization to apply with the Internal Revenue Service (IRS) for tax-exempt status when the 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. (26 U.S.C.S, § 501(c)(3).) To keep exempt status, entities must operate within their defined charitable purpose. According to the IRS, “A section 501(c)(3) organization will jeopardize its exemption if it ceases to be operated exclusively for exempt purposes. An organization will be operated exclusively for exempt purposes only if it engages primarily in activities that accomplish the exempt purposes specified in section 501(c)(3). An organization will be disqualified if more than an insubstantial part of its activities does not further an exempt purpose.” (*Life Cycle of a Public Charity – Jeopardizing Exemption*. IRS. <[- Refrain from participating in the political campaigns of candidates for local, state, or federal office;
 - Restrict its lobbying activities to an insubstantial part of its total activities;
 - Ensure that its earnings do not benefit any private shareholder or individual;
 - Not operate for the benefit of private interests such as those of its founder, the founder's family, its shareholders or persons controlled by such interests;
 - Not operate 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;
 - Not provide commercial-type insurance as a substantial part of its activities;
 - Not have purposes or activities that are illegal or violate fundamental public policy;
 - Satisfy annual filing requirements. \(*IRS on Charities*.\)](https://www.irs.gov/charities-non-profits/charitable-organizations/life-cycle-of-a-public-charity-jeopardizing-exemption#:~:text=A%20section%20501(c)(,501(c)(3).> [as of Jun. 22, 2022] (<i>IRS on Charities</i>).) A 501(c)(3) organization must:</p>
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In addition to loss of the organization's tax-exempt status, 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. (*Ibid.*) A tax-exempt organization that does not file a required annual return or notice for three consecutive years automatically loses its tax-exempt status. (*Ibid.*)

California generally conforms to the tax-exempt status provided by the IRS. (*SB 834 Analyses*. FTB. <<https://www.ftb.ca.gov/tax-pros/law/legislation/2021-2022/SB834-030922-040622-041822-050222.pdf>> [as of Jun. 22, 2022] (*FTB SB 834 Analysis*).) However, state law permits the 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. (Rev. & Tax Code, § 23777.)

The AG regulates charities and the professional fundraisers who solicit on their behalf. (*Charities*. AG.

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donations contributed by Californians are not misapplied and squandered through fraud or other means. (*Ibid.*)

- 3) **January 6, 2021, and the Tax Exempt Organization Oath Keepers’ Plot to Commit Sedition:** According to the United States Department of Justice, “Thursday, Jan. 6, 2022, marks one year 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.” (*One Year Since the Jan. 6 Attack on the Capitol*. US Department of Justice (US DOJ). <<https://www.justice.gov/usao-dc/one-year-jan-6-attack-capitol>> [as of Jun. 22, 2022].)

As of Dec. 30, 2021, the criminal charges filed in connection with the Capitol riot are as follows:

- More than 225 defendants have been charged with assaulting, resisting, or impeding officers or employees, including over 75 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 Jan. 6 at the Capitol, including about 80 U.S. Capitol Police and about 60 from the Metropolitan Police Department.
- Approximately 640 defendants have been charged with entering or remaining in a restricted federal building or grounds.
- Approximately 40 defendants have been charged with conspiracy, either: (a) conspiracy to obstruct a congressional proceeding, (b) conspiracy to obstruct law enforcement during a civil disorder, (c) conspiracy to injure an officer, or (d) some combination of the three.
- Approximately 165 individuals have pleaded guilty to a variety of federal charges, from misdemeanors to felony obstruction, many of whom will face incarceration at sentencing.
- Approximately 145 have pleaded guilty to misdemeanors. Twenty have pleaded guilty to felonies. (*One Year Since the Jan. 6 Attack on the Capitol*. US Department of Justice (US DOJ). <<https://www.justice.gov/usao-dc/one-year-jan-6-attack-capitol>> [as of Jun. 22, 2022].)

The attack on the US Capitol was in connection to former President Donald Trump’s continuous claims that the 2020 presidential elections were fraudulent; commenting on what occurred on January 6, 2021, ex-President Trump tweeted, “These are the things and events that happen when a sacred landslide election victory is so unceremoniously & viciously stripped away from great patriots who have been badly & unfairly treated for so long. Go home with love & in peace. Remember this day forever!” (*Did Trump Tweet ‘Stay Peaceful’ on Day of Capitol Riot?* Snopes. <<https://www.snopes.com/fact-check/trump-peaceful-capitol/>> [as of Jun. 22, 2022].) Since then more than fifty lawsuits alleging election fraud or irregularities that were brought by ex-President Trump and his allies have been dismissed by state and federal judges, including some judges who were appointed by Trump. (*Fack check: Courts have dismissed multiple lawsuits of alleged electoral fraud presented by Trump campaign*. Reuters. <<https://www.reuters.com/article/uk-factcheck-courts-election/fact-check-courts-have-dismissed-multiple-lawsuits-of-alleged-electoral-fraud-presented-by->

[trump-campaign-idUSKBN2AF1G1](#)> [as of Jun. 22, 2022].) The United States Supreme Court, including three justices appointed by ex-president Trump, repeatedly denied post-election lawsuits alleging fraud. (*Supreme Court Kills Last Trump Election Lawsuit*. Forbes. (2021) <<https://www.forbes.com/sites/alisondurkee/2021/03/08/supreme-court-kills-last-trump-election-lawsuit/?sh=232641a17637>> [as of Jun. 22, 2022].)

In terms of the Oath Keepers organization and their role during the attack on the Capitol, the United States Department of Justice has stated that the Oath Keepers are a large but loosely organized collection of individuals, some of whom are associated with militias, with a focus on recruiting current and former military, law enforcement, and first-responder personnel. (*Leader of North Carolina Chapter of Oath Keepers Pleads Guilty to Seditious Conspiracy and Obstruction of Congress for Efforts to Stop Transfer of Power Following 2020 Presidential Election*. US DOJ. (2022) <<https://www.justice.gov/opa/pr/leader-north-carolina-chapter-oath-keepers-pleads-guilty-seditious-conspiracy-and-obstruction>> [as of Jun. 22, 2022] (*US DOJ on Oath Keepers*).)

In total, ten members of the Oath Keepers, including their founder and leader, Elmer Rhodes, have been charged with seditious conspiracy. (*Id.*) As of May 4, 2022, three of those members have plead guilty to seditious conspiracy and obstruction. (*Ibid.*) The most recent member to plead guilty was William Wilson, the regional leader from a North Carolina chapter. (*Ibid.*) He admitted under oath that he agreed to take part in a plan to, “use force to prevent, hinder and delay the execution of the laws of the United States governing the transfer of presidential power.” (*Ibid.*)

On January 5, 2021, Wilson drove to Washington D.C. with an AR-15 style rifle, 9-millimeter pistol, approx. 200 rounds of ammunition, body armor, a camo combat uniform, pepper spray, a large walking stick for use as a weapon, and a pocketknife. (*Ibid.*) He stayed in a hotel with other Oath Keeper leaders, they stored their weapons there and were prepared to retrieve them if called upon to do so. (*Ibid.*) Prosecutors said that members of the group discussed a “QRF” or quick reaction staging force to place firearms and other weapons to use in case of “worst case scenarios.” (*Oath Keepers leader Stewart Rhodes tried to contact Trump during the January 6 Capitol attack, court documents reveal*. CBS News. (2022) <<https://www.cbsnews.com/news/oath-keepers-stewart-rhodes-donald-trump-january-6-court-documents/>> [as of Jun. 22, 2022].) Wilson bypassed barricades to enter the capitol armed with a pocketknife, while also wearing a neck gaiter and beanie hat to mask his appearance. (*US DOJ on Oath Keepers*.) He later threw his cellphone into the Atlantic Ocean to prevent law enforcement from discovering that he participated in the conspiracy. (*Ibid.*) Wilson faces up to 20 years for seditious conspiracy and obstruction of an official proceeding. (*Ibid.*)

According to the IRS, the Oath Keepers received tax-exempt status on June 4, 2018. (*Oath Keepers United*. IRS.

<<https://apps.irs.gov/app/eos/detailsPage?ein=830769850&name=Oath%20Keepers%20United&city=Salem&state=VA&countryAbbr=US&dba=&type=CHARITIES,%20DETERMINATIONLETTERS&orgTags=CHARITIES&orgTags=DETERMINATIONLETTERS>> [as of Jun. 22, 2022].) The current status of the group is unclear.

Currently, the FTB and AG could already suspend an organization’s tax-exempt status if the organization was engaged in illegal activities or activities outside of the scope of its stated

purpose. (Rev. & Tax Code, § 23777, § 23704.6; Gov. Code, § 12598.) For the most part this bill simply restates that and does not result in any substantial assistance to existing law. In fact, this bill states that it is declarative of existing law as it pertains to the authority of the FTB.

This sentiment has been noted by the FTB in its analysis of the bill. (*FTB SB 834 Analysis.*) The FTB did state that this bill, “would create differences between federal and California tax treatment of the entity, as an entity 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.” (*FTB SB 834 Analysis.*)

The Senate Governance and Finance Committee also, in analyzing a previous but mostly similar version of the bill, stated, “The Committee may wish to consider the need for the bill when the authority to revoke an exempt organization’s status for the illegal activities listed in the bill already exists.” It has been made clear above that members of certain organizations, such as the Oath Keepers, had conspired to and committed acts of sedition on Jan. 6, 2021. However, it is also clear that the AG and the FTB has the authority to revoke an organization’s tax exempt status for such activities.

- 4) **Argument in Support:** According to the *Anti-Defamation League*, “In keeping with our mission, ADL has particular expertise in tracking and exposing extremist threats across the ideological spectrum through our Center on Extremism (COE). In the wake of the January 6th 2021 attack on the U.S. Capitol, and the rising tide of hate and extremism across the country, 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. Last year, we released a report on this topic, and also wrote a letter to the IRS to express our concern.

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 in the first instance; engaging in self-dealing by paying their leaders excessive salaries; and/or diverting funds to enrich friends and family members at the expense of the tax-exempt entity itself. In addition, hateful groups with tax-exempt status may be using that status to raise money for violent and/or illegal purposes.

There are many reasons extremist groups may seek 501(c)(3) or (c)(4) tax-exempt status with the IRS. This status allows groups to raise money or financing while avoiding state and federal income and unemployment taxes. In some cases, 501(c)(3) or (c)(4) organizations can sidestep property taxes, state income taxes, sales taxes, and employment taxes as well.

But perhaps most importantly, contributions to 501(c)(3) organizations are always tax-deductible. Some donors may also view tax-exempt status as government endorsement, which gives 501(c)(3)’s increased credibility. In some cases, this can have serious consequences, particularly if these organizations are in fact operating for the sole purpose of spreading white supremacist or anti-government hate. Tax-exempt status can also give extremist groups undeserved access to charity fundraising tools like Facebook Donations, Amazon Smiles and Charity Navigator’s “giving basket” function...”

REGISTERED SUPPORT / OPPOSITION:**Support**

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 29
Indivisible CA Statestrong
Indivisible Ca-25 Simi Valley Porter Ranch
Indivisible Ca-3
Indivisible Ca-33
Indivisible Ca-37
Indivisible Ca-39
Indivisible Ca-43
Indivisible Ca-7
Indivisible Ca29
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 Private Individuals

Opposition

None Submitted

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