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# SENATE COMMITTEE ON PUBLIC SAFETY

Senator Steven Bradford, Chair  
2021 - 2022 Regular

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**Bill No:** SB 834                      **Hearing Date:** April 26, 2022  
**Author:** Wiener  
**Version:** April 18, 2022  
**Urgency:** No                                      **Fiscal:** Yes  
**Consultant:** MK

**Subject:** *Tax-exempt status: insurrection*

## HISTORY

**Source:** Author

**Prior Legislation:** None

**Support:** All Rise Alameda; Anti-defamation League; Building the Base Face to Face; Change Begins With Me; Cloverdale Indivisible; Contra Costa MoveOn; Defending Our Future; 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-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 San Bernardino; 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

**Opposition:** None known

## PURPOSE

***The purpose of this bill is to allow the Attorney General and Franchise Tax Board to determine that an organization is no longer eligible for tax exempt status because they have engaged in acts of criminal conspiracy.***

*Existing law* provides that organizations which are organized and operated for nonprofit purposes within the provisions of a specific section of this article, or are defined in Section 23701h (relating to certain title-holding companies) or Section 23701x (relating to certain title-holding companies), are exempt from corporate taxes. (Rev & Tax Code Sec. 23701)

*Existing law* defines “charitable organization” for the purposes of a tax exemption and provides when the tax exempt status can be revoked if the Attorney General notifies the Franchise Tax Board (FTB) that specified required filings were not made. (Rev & Tax Code Sec. 23703)

*Existing law* allows for the removal of tax exempt status from an organization that has been found to be a terrorist organization by the IRS. (Rev & Tax Code Sec. 23703.5)

*Existing US Code* provides that “whoever, owing allegiance to the United States, levies war against them or adheres to their enemies, giving them aid and comfort within the United States or elsewhere, is guilty of treason” (18 U.S. Code Sec. 2381)

*Existing US Code* provides “whoever, owing allegiance to the United States and having knowledge of the commission of any treason against them, conceals and does not, as soon as may be, disclose and make known the same to the President or to some judge of the United States, or to the governor or to some judge or justice of a particular State, is guilty of misprision of treason” (18 U.S. Code Sec. 2382)

*Existing US Code* provides “whoever incites, sets on foot, assists, or engages in any rebellion or insurrection against the authority of the United States or the laws thereof, or gives aid or comfort thereto, shall be fined under this title or imprisoned not more than ten years, or both; and shall be incapable of holding any office under the United States.”(18 U.S. Code Sec. 2383)

*Existing US Code* makes it illegal for “two or more persons in any State or Territory, or in any place subject to the jurisdiction of the United States, conspire to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, or to oppose by force the authority thereof, or by force to prevent, hinder, or delay the execution of any law of the United States, or by force to seize, take, or possess any property of the United States contrary to the authority thereof...”(18 U.S. Code Sec. 2384)

*Existing US Code* provides it is illegal to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence, or by the assassination of any officer of any such government; to, with intent to cause the overthrow or destruction of any such government, print, publishes, edits, issues, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or to organize or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any

such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, knowing the purposes thereof” (18 U.S. Code Sec. 2385)

*Existing US Code* makes it illegal, with intent to interfere with, impair, or influence the loyalty, morale, or discipline of the military or naval forces of the United States: advise, counsel, urge, or in any manner causes or attempts to cause insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States; or distribute or attempt to distribute any written or printed matter which advises, counsels, or urges insubordination, disloyalty, mutiny, or refusal of duty by any member of the military or naval forces of the United States. (18 U.S. Code Sec. 2387)

*Existing case law*, the Supreme Court determined in *Bob Jones University v. United States*, 461 U.S. 574 (1983), that the Internal Revenue Service (IRS) may deny tax-exempt status to institutions whose policies are “contrary to established public policy,” even if those policies are based on religious beliefs.

*This bill* provides that if the Attorney General determines that a tax exempt organization has actively engaged in any of the acts or conspiracies defined as criminal, as specified, under the US Code that is directed to, and likely to produce, imminent violation of one or more of the specified sections, the Attorney General shall notify the FTB of that determination.

*This bill* provides that upon receiving notification from the Attorney General, the FTB has authority under state law to revoke the exemption from tax for that organization.

*This bill* provides that the Attorney General and the FTB may prescribe rules, guidelines, and procedures, or other guidance to carry out the purpose of this section.

*This bill* provides that the authority of the FTB to revoke an exemption from tax, does not constitute a change in, but is declaratory of existing law.

*This bill* makes the following uncodified legislative findings and declarations:

- 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. These tax privileges, for both in-state and foreign nonprofits, are extended by the State of California, at the expense of its taxpayers, to support charitable organizations and the important work they do in our communities.
- However, as the United States 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.
- The federal government has defined the crimes of treason (Section 2381 of Title 18 of the United States Code), misprision of treason (Section 2382 of Title 18 of the United States Code), insurrection (Section 2383 of Title 18 of the United States Code), seditious conspiracy (Section 2384 of Title 18 of the United States Code), advocating overthrow of the government (Section 2385 of Title 18 of the United States Code), and advocating mutiny by members of the United States military (Section 2387 of Title 18 of the United States Code).

- It is the existing policy of the State of California, and within the authority of the Franchise Tax Board, 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.
- Consistent with this policy, the Legislature finds that the Franchise Tax Board has authority under state law to revoke the exempt status of nonprofit organizations inciting or actively engaged in the offenses listed above in subdivision (c).
- Because of the importance of this policy, the Legislature is not only clarifying existing legal authority but specifying procedures related to the exercise of that authority.

## COMMENTS

### 1. Need for This Bill

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<sup>4</sup>. 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. Removal of charitable tax exempt status.**

Under existing law current corporations are determined to be charitable and exempt from taxes. A corporation can lose its tax exempt status if they fail to file the correct paperwork or if they are found to be a terrorist organization under federal law. The Supreme Court determined in *Bob Jones University v. United States*, 461 U.S. 574 (1983), that the Internal Revenue Service (IRS) may deny tax-exempt status to institutions whose policies are “contrary to established public policy,” even if those policies are based on religious beliefs and the FTB has the authority to apply the same reasoning when looking at tax exempt status in California.

This bill clarifies that the FTB can revoke tax exempt status when a corporation has been found by the Attorney General to commit federal offenses relating to treason, insurrection and related offenses. The bill provides that upon such determination the Attorney General shall notify the FTB that an organization has engaged in, or incited engagement in any of the acts or conspiracies described in the US Code sections on treason and insurrection. The FTB then has the authority to revoke the charitable tax-exempt status. The bill states that it is declaratory of existing law.

## **3. Argument in Support**

The Anti-Defamation League supports this bill stating:

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.

For all of these reasons, it is critically important that we do more to prevent extremist groups from abusing their tax-exempt status. ADL accordingly applauds Senator Wiener for giving this issue priority attention through the introduction of SB 834. This bill sends a clear message that organizations that engage in some of the most serious crimes against our democracy should not be permitted to operate in California for charitable purposes.