

STATE OF CALIFORNIA
 Budget Change Proposal - Cover Sheet
 DF-46 (REV 05/11)

FISCAL YEAR 2013-14	BCP NO. 8	ORG. CODE 0860	DEPARTMENT State Board of Equalization	PRIORITY NO. 8
PROGRAM All Programs			ELEMENT All Elements	COMPONENT N/A

PROPOSAL TITLE
 AB 2323 State Board of Equalization: Publish Opinions

PROPOSAL SUMMARY

The Board of Equalization (BOE) requests \$455K in Fiscal Year (FY) 2012-13 and \$476K ongoing for 2.5 permanent positions to implement the provisions of Assembly Bill (AB) 2323. AB 2323 was signed by Governor Brown on September 29, 2012.

REQUIRES LEGISLATION <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	CODE SECTION(S) TO BE ADDED/AMENDED/REPEALED
--	---

DOES THIS BCP CONTAIN INFORMATION TECHNOLOGY (IT) COMPONENTS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO <i>IF YES, DEPARTMENTAL CHIEF INFORMATION OFFICER MUST SIGN.</i>	DEPARTMENT CIO	DATE
--	-----------------------	-------------

FOR IT REQUESTS, SPECIFY THE DATE A SPECIAL PROJECT REPORT (SPR) OR FEASIBILITY STUDY REPORT (FSR) WAS APPROVED BY THE CALIFORNIA TECHNOLOGY AGENCY, OR PREVIOUSLY BY THE DEPARTMENT OF FINANCE.

FSR SPR **PROJECT NO.** **DATE:**

IF PROPOSAL AFFECTS ANOTHER DEPARTMENT, DOES OTHER DEPARTMENT CONCUR WITH PROPOSAL? YES NO

BUDGET OFFICER	DATE	CHIEF, FINANCIAL MANAGEMENT	DATE
DEPUTY DIRECTOR, ADMINISTRATION	DATE	EXECUTIVE DIRECTOR	DATE

DEPARTMENT OF FINANCE USE ONLY

ADDITIONAL REVIEW: CAPITAL OUTLAY ITGU FSCU OSAE CALSTARS TECHNOLOGY AGENCY

BCP TYPE: POLICY WORKLOAD BUDGET PER GOVERNMENT CODE 13308.05

PPBA	DATE SUBMITTED TO THE LEGISLATURE
-------------	--

STATE BOARD OF EQUALIZATION
Legal Department
AB 2323 – State Board of Equalization: Publish Opinions
Fiscal Year 2013-14

A. Proposal Summary

The Board of Equalization (BOE) requests \$455K in Fiscal Year (FY) 2012-13 and \$476K ongoing for 2.5 permanent positions to implement the provisions of Assembly Bill (AB) 2323.

AB 2323 (Perea), (adds Section 40 to the Revenue and Taxation Code, relating to taxation), effective January 1, 2013, requires the BOE to publish and make available on its Internet website a formal written opinion, a written memorandum opinion, or a written summary decision made by the BOE, in which the amount in controversy is \$500,000 or more, within "120 days" from the date of the decision, and to include specified information in the published opinion. Appeals impacted by AB 2323 will include many of the most complex and important tax controversies faced by the BOE.

The bill requires the BOE to prepare a more comprehensive legal opinion or decision than what is currently prepared in many appeals, and it requires each covered BOE opinion or decision be published on the BOE website for review by other taxpayers and include factual background, legal issue or issues presented, applicable law, analysis, disposition, and the names of adopting BOE members. The provisions of AB 2323 result in increased workload that cannot be absorbed by existing staff without severely jeopardizing revenue acceleration of moving appeals cases through the process. AB 2323 was signed by Governor Brown on September 29, 2012.

B. Background/History

The BOE administers the sales and use tax and various excise taxes; sets values for property for state-assesses; monitors the property tax assessment practices of county assessors; reviews, equalizes and adjusts assessments of certain land owned by local government entities; and hears appeals of personal income and corporation taxes administered by the Franchise Tax Board (FTB). The California Constitution establishes that the BOE consists of 5 voting members: the Controller and four members elected at gubernatorial elections from districts for 4-year terms.

Under Section 15606 of the Government Code, the BOE is required to keep a record of all its proceedings. Consistent with that provision, the BOE makes available the minutes of all BOE hearings and publishes the minutes on the BOE's website.

The BOE's Rules for Tax Appeals (California Code of Regulations, Title 18, § (Rule) 5000 et seq.), promulgated through the rulemaking process, provides rules for drafting and adopting written opinions. These rules are based on the California Rules of Court for publishing appellate court decisions.

C. State Level Considerations

The BOE collects taxes and fees that provide approximately 35.6 percent of the annual revenue for state government and essential funding for counties, cities, and special taxing districts. The BOE administers the state's sales and use tax, fuel, alcohol, tobacco, and other taxes and collects fees that

fund specific state programs, which, in FY 2009-10, produced \$50.7 billion for education, public safety, transportation, housing, health services, social services, and natural resource management.

The BOE strives to offer transparency to all taxpayers and stakeholders. In an effort to be a more transparent agency, the BOE uses a variety of means to make information more easily accessible to taxpayers and interested parties. In recent years, the BOE has made significant strides in these efforts and will continue to do so.

D. Justification

AB 2323's requirements are not limited to any specific areas of tax law and therefore will apply to many types of appeals, including franchise and income tax appeals, property tax appeals, sales and use tax appeals, special tax appeals, and local tax reallocation appeals. Where the amount in controversy equals or exceeds \$500,000, AB 2323 will require the preparation and adoption of a legal decision or opinion containing the following:

- Findings of fact,
- Legal issue or issues presented,
- Applicable law,
- Analysis,
- Disposition,
- And identification of adopting board members.

The foregoing required decisions will need to be submitted to the Board for review, discussion and adoption at a public meeting, and publication on the BOE's website, all within AB 2323's 120-day deadline. In order for staff and Board Members to satisfy these requirements, transcripts of relevant proceedings will need to be prepared promptly for review by staff and Board Members.

Franchise and Income Tax

Corporate and individual taxpayers who dispute a final determination by the FTB may appeal that determination to the BOE. When an appeal from an FTB determination is resolved by the BOE, taxpayers typically receive either a Summary Decision or, where a decision follows an oral hearing, a short-form decision known as a "Letter Decision." In some cases, the Board will issue a precedential Formal Opinion. The primary impact of AB 2323 in this area will be to require, in matters where an oral hearing is held, the preparation of a full written decision, containing factual findings and legal analysis that can be adopted by the BOE at a public meeting within the 120-day deadline imposed by AB 2323. Under AB 2323, decisions may be issued in the form of Summary Decisions, which are not precedential, or Formal Opinions, which are precedential. Due to the requirement that all covered decisions be published on the BOE's website, additional time will be required to prepare, revise and present Summary Decisions and Formal Opinions for adoption in a form that provides appropriate guidance to the public.

BOE Tax and Fee Programs

Taxpayers and fee payers who disagree with denials of claims for refund, determinations, or property tax valuations issued by the Sales and Use Tax Department or the Property and Special Taxes and Fees Department of the BOE may appeal such actions to the elected members of the BOE which may involve hundreds and millions of dollars. Under AB 2323, decisions may be issued in the form of Summary Decisions, which are not precedential, or Memorandum Opinions, which are precedential. The primary impact of AB 2323 in this area will be to require, in matters on the adjudicatory and oral hearing calendar, the preparation of a full written decision, containing factual findings and legal analysis

that can be adopted by the BOE at a public meeting within the 120-day deadline imposed by AB 2323. Due to the requirement that all covered decisions be published on the BOE's website, additional time will be required to prepare, revise and present Summary Decisions and Memorandum Opinions for adoption in a form that provides appropriate guidance to the public.

It is estimated that, across the above tax programs, AB 2323 will cover approximately 32 decisions annually. Based on the bill's content requirements and the expedited timeframe, this workload cannot be addressed without additional resources.

E. Outcomes and Accountability

Workload Measure	Projected Outcomes		
	2011-12	2012-13	2013-14
Decisions published on Internet within 120 days	n/a	16	32

F. Analysis of All Feasible Alternatives

Alternative 1: Provide Resources to Implement the Provisions of AB 2323

Under this alternative, the BOE requests \$455,000 in FY 2012-13 and \$476,000 in FY 2013-14 and ongoing to establish 1.0 Tax Counsel III, 1.0 Tax Counsel IV and 0.5 Hearing reporter positions to address the increased workload created by AB 2323. (See Exhibit I – Workload Detail/Work Activity Table for Requested Positions).

Pros:

- Does not require the redirection of existing staff, causing a delay in the resolution of other appeal cases.
- Allows BOE to fully implement AB 2323.
- Ensures mandated workload is performed timely.
- Enables BOE to improve service and promote trust and confidence with the taxpayer.

Cons:

- Requires a budget augmentation.

Alternative 2: Use Existing Resources to Implement the Provisions of AB 2323

Under this alternative, additional resources are not requested. This alternative will cause a delay in the resolution of current appeal cases, as the BOE will have to re-prioritize its workload to timely address the provisions of AB 2323.

Pros:

- Does not require a budget augmentation.

Cons:

- Requires the redirection of staff causing delays in service to taxpayers on appeal cases that do not meet the \$500,000 threshold.
- Delays the resolution and potential revenue collection of appeal cases under \$500,000.
- Diminishes the trust and confidence with the taxpayer as appeal cases are delayed.

G. Implementation Plan

AB 2323 takes effect on January 1, 2013. A November 1, 2012 start date is requested for the 2.5 positions to allow for the hiring process and necessary training by the bill's effective date.

H. Supplemental Information

NONE FACILITY/CAPITAL COSTS EQUIPMENT CONTRACTS OTHER _____

I. Recommendation

Alternative 1 is recommended. With the approval of this alternative, it allows the BOE to fully implement AB 2323. It ensures mandated workload is performed timely without the need to redirect existing staff from revenue acceleration activity. It reduces the possibility of delays in the resolution of the current appeals case workload, and it enables the BOE to improve service and promote trust and confidence with the taxpayer.

Workload Detail

Exhibit I – Work Activity Tables for Requested Positions

The following provides a summary of the positions being requested along with a description of their job duties.

1.0 Tax Counsel III (Legal Counsel) – Appeals Division

The Appeals Division will employ one Tax Counsel III to review the evidence and applicable law in order to draft and review decisions and opinions that are required to be prepared and published in compliance with AB 2323.¹ The Tax Counsel III will primarily be responsible for impacted appeals involving sales tax, use tax, and special taxes. The Tax Counsel III may also be responsible for, or assist with, local tax reallocation matters and franchise and income tax matters as needed to comply with AB 2323. The Tax Counsel III is responsible for completing the decision or opinion without delay to ensure compliance with the 120-day deadline prescribed by AB 2323 and for reviewing policies and procedures and providing legal advice in connection with AB 2323.

Activity	Occurrences (Yearly)	Hours per Occurrence	Total Hours
Review briefing, evidence and record, research applicable law, and draft or review proposed decision or opinion	22	60	1,320
Respond to inquiries from public, staff, and Board Members regarding decision or opinion	22	15	330
Preparation for presentation at public Board meeting where decision or opinion will be discussed, and adopted or returned to staff for further development	22	10	220
Review and provide legal counsel regarding policies and procedures in connection with AB 2323 (such as confidentiality issues)	Ongoing	Ongoing	10
Total Tax Counsel III Hours			1,880
Total Tax Counsel III Positions (1,800 Hours/Position)			1.05

¹ AB 2323 appeals, by definition, involve an amount in controversy of \$500,000 or more and, therefore, tend to be more complex and time-consuming than other appeals.

Exhibit I – Work Activity Tables for Requested Positions

1.0 Tax Counsel IV (Legal Counsel) – Appeals Division

The Appeals Division will employ one Tax Counsel IV to review the evidence and applicable law in order to draft and review decisions and opinions required to be prepared and published in compliance with AB 2323.² The Tax Counsel IV will primarily be responsible for impacted appeals involving franchise tax, income tax and property tax, which tend to be more complex than impacted appeals in sales tax, use tax and special tax. The Tax Counsel IV may also be responsible for, or assist with, sales tax, use tax, special taxes and local tax reallocation matters as needed to comply with AB 2323. The Tax Counsel IV is responsible for completing the decision or opinion without delay to ensure compliance with the 120-day deadline prescribed by AB 2323 and for review in policies and procedures and providing legal advice in connection with AB 2323.

Activity	Occurrences (Yearly)	Hours per Occurrence	Total Hours
Review briefing, evidence and record, research applicable law, and draft or review proposed decision or opinion	10	125	1,250
Address inquiries from public, staff, and Board Members regarding decision or opinion	10	30	300
Preparation for and/or presentation at public Board meeting where decision or opinion will be discussed, and adopted or returned to staff for further development	10	25	250
Review and provide legal counsel regarding policies and procedures in connection with AB 2323 (such as confidentiality issues)	Ongoing	Ongoing	20
Total Tax Counsel IV Hours			1,820
Total Tax Counsel IV Positions (1,800 Hours/Position)			1.02

0.5 Hearing Reporter – Board Proceedings Division

The Board Proceedings Division will need a 0.5 additional Hearing Reporter position to expedite the preparation of transcripts as required to be prepared and published in compliance with AB 2323.³ The Hearing Reporter will be responsible for or assist with transcripts related to impacted appeals involving sales, use, and special taxes as well as franchise, income, and property taxes, which tend to be more complex than impacted sales tax, use tax or special tax appeals; and local tax reallocation matters as needed to comply with AB 2323. The Hearing Reporter is responsible for completing these transcripts expeditiously to ensure compliance with the 120-day deadline prescribed by AB 2323.

Activity	Occurrences (Yearly)	Hours per Occurrence	Total Hours
Transcription of AB 2323 appeals	32	20	640
Attend Board Appeal Hearings	32	8	288
Total Hearing Reporter Hours			928
Total Hearing Reporter Positions (1800 Hours/Position)			0.52

² Ibid.

³ Ibid.

DF-46 (REV 05/11)							
Fiscal Summary							
(Dollars in thousands)							
BCP No.	Proposal Title				Program		
8	AB 2323 BOE Publish Opinions				All Programs		
Personal Services		Positions			Dollars		
		CY	BY	BY + 1	CY	BY	BY + 1
Total Salaries and Wages ¹		1.7	2.5	2.5	\$171	\$248	\$248
Total Staff Benefits ²					\$62	\$90	\$90
Distributed Administration					\$33	\$35	\$35
Total Personal Services		1.7	2.5	2.5	\$266	\$373	\$373
Operating Expenses and Equipment							
General Expense					\$38	\$8	\$8
Distributed Administration					\$8	\$9	\$9
Printing							
Communications					\$7	\$4	\$4
Postage							
Travel-In State					\$26	\$26	\$26
Travel-Out of State							
Training					\$4	\$4	\$4
Facilities Operations					\$84	\$34	\$34
Utilities					\$1	\$1	\$1
Consulting & Professional Services: Interdepartmental ³							
Consulting & Professional Services: External ³							
Data Center Services					\$8	\$8	\$8
Information Technology					\$13	\$9	\$9
Equipment ³							
Other/Special Items of Expense: ⁴							
Total Operating Expenses and Equipment					\$189	\$103	\$103
Total State Operations Expenditures					\$455	\$476	\$476
Fund Source		Item Number					
		Org	Ref	Fund			
General Fund		0860	001	0001	\$455	\$476	\$476
Special Funds ⁵							
Federal Funds							
Other Funds (Specify)							
Reimbursements		0860	001	0995			
Total Local Assistance Expenditures							
Fund Source		Item Number					
		Org	Ref	Fund			
General Fund							
Special Funds ⁵							
Federal Funds							
Other Funds (Specify)							
Reimbursements							
Grand Total, State Operations and Local Assistance					\$455	\$476	\$476

¹ Itemize positions by classification on the Personal Services Detail worksheet.
² Provide benefit detail on the Personal Services Detail worksheet.
³ Provide list on the Supplemental Information worksheet.
⁴ Other/Special Items of Expense must be listed individually. Refer to the Uniform Codes Manual for a list of standard titles.
⁵ Attach a Fund Condition Statement that reflects special fund or bond fund expenditures (or revenue) as proposed.

Supplemental Information						
<i>(Dollars in thousands)</i>						
BCP No.	Proposal Title					
8	AB 2323 BOE Publish Opinions					
Equipment				CY	BY	BY +1
Standard Complement				\$141	\$58	\$58
Total				\$141	\$58	\$58
Consulting & Professional Services						
Total						
Facility/Capital Costs						
Facility				\$84	\$34	\$34
Capital Costs				\$1	\$1	\$1
Total				\$85	\$35	\$35
One-Time/Limited-Term Costs	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>		
Description	BY		BY +1		BY +2	
	Positions	Dollars	Positions	Dollars	Positions	Dollars
General Expense		\$38				
Communications		\$3				
Information Technology		\$4				
	0.0	\$45	0.0		0.0	
Full-Year Cost Adjustment	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>		
<i>Provide the incremental change in dollars and positions by fiscal year.</i>						
Item Number	BY		BY +1		BY +2	
	Positions	Dollars	Positions	Dollars	Positions	Dollars
Total	0.0		0.0		0.0	
Future Savings	Yes	<input type="checkbox"/>	No	<input type="checkbox"/>		
<i>Specify fiscal year and estimated savings, including any decrease in positions.</i>						
Item Number	BY		BY +1		BY +2	
	Positions	Dollars	Positions	Dollars	Positions	Dollars
Total	0.0		0.0		0.0	