

BOE FY 2012/13 BUDGET CHANGE PROPOSAL OVERVIEW
(as of 10/13/11 - in 000's)

Budget Items	2012/13				2013/14				
	Positions	Total Cost	Revenue	Benefit/ Cost Ratio	Positions	Total Cost	Revenue	Benefit/ Cost Ratio	
BCP's - Chaptered Bills - Trailer Bills									
<p>Assembly Bill (AB) 155 - Use Tax Nexus: Assembly Bill (AB) 155 repeals amendments to Section 6203 that were made by ABx1 28, enacted on June 28, 2011, and essentially postpones the operative date until September 15, 2012, if federal legislation is not enacted that enables states to impose a use tax collection obligation on out-of-state retailers without nexus in California. AB 155 increases the cumulative sales of tangible personal property to \$1 million. If it becomes operative under the circumstances described above. This proposal replaces BOE's ABx1 28 proposal presented to the Board in September.</p> <p>This bill requires businesses engaging in online sales to pay sales tax. This bill defines a "retailer engaged in business in this state" for purposes of imposing a use tax collection obligation on that retailer, to include any retailer that has substantial nexus with California for purposes of the Commerce Clause of the United States Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty.</p>	28.3	\$3,180	-	-	30.7	\$3,197	-	-	
		GF: \$2,083 R: \$1,097				GF: \$2,094 R: \$1,103			
Total:	28.3	\$3,180	-	-	30.7	\$3,197	-	-	-

_a/ BOE has not projected revenues at this time.

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the October 25, 2011 Board Meeting

Diane G. Olson
 Diane G. Olson, Chief
 Board Proceedings Division

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

Fiscal Year 2012-13	BCP No. 6	Org. Code 0860	Department  State Board of Equalization	Priority No.
Program 30 Sales and Use Tax Program			Element All Elements	Component N/A

Proposal Title
AB 155: Use Tax Nexus

Proposal Summary

Assembly Bill (AB) 155 (Chapter 313, Statutes of 2011) both delays and amends provisions of ABx1 28 (Chapter 7, Statutes of 2011) which was enacted as part of the 2011-12 California Budget.

BOE is requesting funding and resources needed to implement the provisions of AB 155.

- \$3.2 million and 28.3 positions in FY 2012-13
- \$3.2 million and 30.7 positions in FY 2013-14
- \$3.6 million and 35.1 positions in FY 2014-15

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed
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Does this BCP contain information technology (IT) components? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, departmental Chief Information Officer must sign.	Department CIO	Date
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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
 Attach comments of affected department, signed and dated by the department director or designee.

Budget Officer	Date	Chief, Financial Mgmt. Division	Date
Deputy Director, Administration	Date	Executive Director	Date

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Technology Agency

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Date submitted to the Legislature
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State Board of Equalization

Fiscal Year 2012-13

BOARD OF EQUALIZATION – AB 155 USE TAX NEXUS

A. Proposal Summary

Assembly Bill (AB) 155 both delays and amends provisions of ABx1 28, which was enacted as part of the 2011-12 California Budget.

Specifically, AB 155:

- Repeals amendments to Section 6203 that were made by ABx1 28, enacted on June 28, 2011, and postpones the operative date of ABx1 28 until September 15, 2012 if federal legislation is not enacted that enables California to impose a use tax collection obligation on out-of-state retailers without nexus in California.
- Provides that if federal legislation is enacted on or before July 31, 2012, but California does not enact legislation on or before September 14, 2012, to conform to that federal legislation (by adopting a streamlined sales and use tax system or other legislation which conforms to the newly enacted federal law), then the provisions of ABx1 28 will revive effective January 1, 2013 (rather than September 15, 2012).
- Increases the safe harbor threshold for small retailers, limiting the affiliate nexus provision to cumulative sales of tangible personal property in excess of \$1 million, if it becomes operative under the circumstances described above. The affiliate nexus provision in ABx1 28 applied to retailers having cumulative sales of tangible personal property to California purchasers in excess of \$500,000.
- Amends section 6203 of the Revenue and Taxation Code to expand the definition of a “retailer engaged in business in this state.” The bill provides that a retailer engaged in business in California includes any retailer that has substantial nexus with this state for purposes of the commerce clause of the US Constitution and any retailer upon whom federal law permits this state to impose a use tax collection duty, with examples of application and specific exclusions.
- Expands the use tax registration requirements to certain out-of-state retailers that previously may not have been required to collect use tax on sales made to their California customers, including transactions conducted through mail order, telephone orders, or via the Internet.

If provisions of AB 155 are implemented, this bill generally provides that a “retailer engaged in business in this state” includes, under certain circumstances, but is not limited to:

- Certain retailers that are members of a commonly-controlled group and members of a combined reporting group that includes another member of the retailer’s commonly controlled group that, pursuant to an agreement with or in cooperation with the retailer, performs services in this state in connection with tangible personal property to be sold by the retailer, including design and development of tangible personal property sold by the retailer, or the solicitation of sales of tangible personal property.

- Certain retailers that have entered into an agreement under which a person in this state, for a commission or other consideration, refers potential purchasers of tangible personal property to the retailer.

Currently, proposals exist in Congress to streamline sales taxes across the fifty states. The bills, S. 1452 by Senator Dick Durbin (D-Illinois), and H.R. 2701 by Representative John Conyers (D-MI), identical and both known as the "Main Street Fairness Act," would provide uniform definitions concerning sales and use taxes to states participating in the Streamlined Sales and Use Tax Agreement, and would provide states accepting membership with the authority to collect sales tax whether or not sellers have a substantial physical presence in the states. At this time federal legislation has not been enacted and it is unknown whether or not any possibly enacted legislation will be similar to the proposed Main Street Fairness Acts. It is also unclear if a federal mandate will apply to all interstate sales without any "safe harbor" provisions.

For the purposes of this BCP, BOE will use the assumptions outlined in AB 155 utilizing an implementation date of September 15th, 2012. For various reasons, it is difficult to provide a reliable estimate of revenues associated with this measure. In order to implement AB 155, BOE requests funding of \$3.2 million and 28.3 positions in FY 2012-13, and \$3.2 million and 30.7 positions in FY 2013-14, and \$3.6 million and 35.1 positions in FY 2014-15 to implement the provisions of AB 155.

B. Background/History

Under constitutional law, states lack jurisdiction to require out-of-state retailers to collect a sales or use tax when the retailer has no substantial nexus with the taxing state. In 1992 the Supreme Court issued an opinion in *Quill Corporation v. North Dakota* (1992) 504 U.S. 298, holding that a physical presence is not required for due process concerns, but rather only minimum contacts with the taxing state. Thus, when a mail-order business purposefully directs its activities at residents of the taxing state, the Due Process Clause does not prohibit the state's requiring the retailer to collect the state's use tax. However, the Court further held that in order to survive a Commerce Clause challenge, a retailer must have substantial nexus in the taxing state before that state can require the retailer to collect its use tax.

Since the late 1990s, online shopping has taken off as an increasing number of businesses and consumers purchase increasingly diversified products on the Internet. That, combined with the states' problems with imposing a use tax collection requirement on many out-of-state retailers, has prompted many states to seek new ways to enforce their use tax laws (every state that has a sales tax imposes the use tax). In California, for example, ABx4 18 was enacted in 2009 to require all businesses that have gross receipts from business operations of at least \$100,000 annually and that are not already required to be registered with the Board of Equalization (BOE) to register and file an annual use tax return to report and pay the applicable use tax on their untaxed purchases. As of May 31, 2011, the BOE has collected over \$65 million in revenue associated with this provision.

With the increasing numbers of businesses and consumers shopping online, in the early 2000s the BOE began focusing on additional needed legislative changes to encourage voluntary compliance, and to provide a cost-effective outreach and education effort to a wider audience of purchasers.

C. State Level Considerations

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 districts. The BOE administers the state's sales and use, fuel, alcohol, tobacco, and other taxes and collects fees that fund specific state programs, which, in fiscal year 2009-10, produced \$50.7 billion for education, public safety, transportation, housing, health services, social services, and natural resource management. This proposal addresses the Legislature's intent to collect revenues related to the sales of natural gas in order to fund low-income public and energy efficiency/conservation programs.

This proposal addresses the Legislature's intent to reduce the sales and use tax gap and is consistent with the BOE's strategic plan. A December 2010 BOE estimate of uncollected use tax reveals that about \$1.145 billion goes unpaid annually (\$795 million in uncollected use tax from California consumers; \$350 million from businesses). The estimate indicates that the unpaid use tax liability owed by the average California household is \$61 per year and \$102 per year for each California business. Specifically, this proposal conforms to four of the five BOE Strategic Plan Goals:

- Maximize Voluntary Compliance in BOE's Programs
- Improve the Efficiency of BOE's Tax and Fee Programs
- Improve the BOE's Organizational Efficiency
- Create an Expanded and Responsive Infrastructure

D. Justification

AB 155 expands the definition of "retailers engaged in business" in California. The implementation of this expansion will impact numerous BOE Departments. The change resulting from this bill inherently prompts uncertainty and questions for many businesses that have not previously conducted business in California. Additionally, this issue continues to receive national attention. As with all of our programs, BOE strives to seamlessly integrate new taxpayers with the intent to receive a high level of voluntary compliance with their reporting requirements. Due to the highly sensitive topics of nexus and taxation present in this bill, it will be necessary to have staff available to handle questions, provide guidance and information to these businesses and to provide outreach and advertise the provisions of this bill to groups generally not contacted in the normal course of this agency's business.

BOE expects upwards of 2,000 new use tax accounts to be registered under the provisions of this bill. Data mining and audit staff are needed to identify those out-of-state accounts that are required to be registered, contact the businesses to ensure registration occurs and then incorporate those accounts and their reporting practices into BOE databases. Audit presence assists in ensuring voluntary compliance. To properly implement and administer the provisions of AB 155, adequate staffing is necessary.

The resources requested in this proposal allow the BOE to continue to provide high quality services to taxpayers while protecting General Fund revenues. Resources are needed in the first year to participate in discussions at the State and Federal level regarding potential federal legislation, draft regulations, answer incoming questions from taxpayers, retailers, tax practitioners, etc. and to provide outreach for these groups to explain the new laws. In addition, resources are needed in FY 2013-14 to address litigation, appeals and settlements as a result of the newly enacted legislation. Additional resources are needed in FY 2014-15 to audit newly registered out of state retailers. By FY 2014-15, it is anticipated that the call volume will

decrease, so 7.0 positions supporting the Taxpayer Information Section will expire. The following is a summary of the requested positions:

Classifications	BY 2012-13	BY+1 2013-14	BY+2 2014-15	BY+3 2015-16	BY+4 2016-17
Sales and Use Tax Department					
<i>Tax Policy Division</i>					
Business Taxes Specialist III	1.0	1.0	1.0	1.0	1.0
Business Taxes Specialist II	0.8	1.0	1.0	1.0	1.0
<i>Field Offices</i>					
Business Taxes Specialist I			2.0	2.0	2.0
Associate Tax Auditor			2.0	2.0	2.0
Office Technician			1.0	1.0	1.0
Total Sales and Use Tax Department	1.8	2.0	7.0	7.0	7.0
Legal Department					
<i>Tax and Fee Division</i>					
Tax Counsel III (Specialist)	1.0	1.0	1.0	1.0	1.0
<i>Litigation Division</i>					
Staff Services Analyst	1.0	1.0	1.0	1.0	1.0
Tax Counsel III (Specialist)		1.0	1.0	1.0	1.0
<i>Appeals Division</i>					
Tax Counsel III (Specialist)		0.5	0.5	0.5	0.5
<i>Settlement and Taxpayer Services Division</i>					
Tax Counsel III (Specialist)		0.5	0.5	0.5	0.5
Total Legal Department	2.0	4.0	4.0	4.0	4.0
External Affairs Department					
<i>Customer Service & Publishing Division</i>					
Tax Technician II	12.0	12.0	12.0	6.0	6.0
Tax Technician III	2.0	2.0	2.0	1.0	1.0
Supervising Tax Tech III	1.0	1.0	1.0	1.0	1.0
Business Taxes Rep	1.0	1.0	1.0	1.0	1.0
<i>Outreach Services Division</i>					
Business Taxes Specialist I	4.0	4.0	4.0	4.0	4.0
Audio Visual Specialist	1.0	1.0	1.0	1.0	1.0
Total External Affairs Department	21.0	21.0	21.0	14.0	14.0
Executive Department					
<i>Legislative & Research Division</i>					
Business Taxes Specialist III	2.0	2.0	1.0	1.0	1.0
Total Executive Department	2.0	2.0	1.0	1.0	1.0
Temp Help	1.5	1.7	2.1	2.1	2.1
TOTAL PERSONNEL YEARS	28.3	30.7	35.1	28.1	28.1

Position descriptions and workload justification can be found in **EXHIBIT I** (Pages 7-16).

E. Outcomes and Accountability

This proposal enables the BOE to implement the provisions of AB 155. The outcome of the increased staffing will be measured by increases in permitted businesses, revenue generated by the new registrations and the audit leads gathered. The data collected from these activities will be captured for future revenue estimation and reporting. Absent funding or additional legislation, this proposal will be implemented September 15, 2013.

F. Implementation Plan

The estimated implementation timetable assumes a FY 2012-13 start date as follows:

July 2012 – June 2013	July 2013 –On-going
<ul style="list-style-type: none">• Get infrastructure in place (PCs, printers, phones, cubicles, etc.) for staff.• Hire staff.• Train newly hired staff.• Begin integration of newly hired staff with existing staff and training workload.• Assign workload commensurate with staff level and experience.	<ul style="list-style-type: none">• Permanently establish and fill remaining positions identified in this proposal.• Train staff.

G. Supplemental Information

- None Facility/Capital Costs Equipment Contracts Other

H. Recommendation

Approve the positions as proposed.

I. Fiscal Detail

See attached fiscal detail schedules (pages 17-19).

EXHIBIT I
Position Description and Workload Justification

SALES AND USE TAX DEPARTMENT (SUTD)

1.0 Business Taxes Specialist III (BTS III)

The Streamlined Sales Project (SSTP) was established in March 2000 and was created by state governments to simplify and modernize sales and use tax collection and administration. In October 2003, the Governor approved SB 157 (Chapter 702, Statutes of 2003), enabling California to join the SSTP effort as a voting participant. The same legislation also created a Board of Governance (BOG) to represent California in all meetings concerning the new tax system. The BOG is authorized to vote on behalf of California and to represent the State in all matters pertaining to the Streamlined Sales and Use Tax Agreement (SSUTA). The BOG establishes and directs the workload goals and objectives associated with California's participation in the SSTP. The ultimate goal of this work is to collect the currently lost use tax from out-of-state retailers; thereby enhancing California's revenue generating ability.

The BTS III position will serve as the coordinator for California's participation in the SSTP. Under the direction of the Chief, Tax Policy Division, the BTS III serves as the highest level technical advisor to Board Members and their staff on matters concerning the SSTP. As the BOG representative at the multi-state SSTP implementing state and conforming state meetings, the BTS III has direct contact with members of the California Legislature in concert with the Legislative Division, nationwide high-ranking public officials, and national, state, and local government and business groups. The BTS III directs the preparation of an unprecedented, independent study of the SSUTA as it compares California's Sales and Use Tax Law, policy and procedures relating to specific industries, politically sensitive administration issues, legislation, and its potential impact on the state and local governments and businesses.

The BTS III is responsible for coordinating within the Sales and Use Tax Department (SUTD) in presenting reports on the status of California's involvement in the SSTP to the BOG and the State Legislative Committees. The BTS III will also coordinate drafting legislation for the SUTD to conform the Sales and Use Tax Law to the SSUTA. The BTS III is the primary management support and lead role in SUTD in support of the Legislative Division for the BOG and is responsible for coordinating its activities, such as setting up public meetings, compiling and distributing information requests, and identifying and establishing workload goals.

Workload Detail					
Classification	Activity	Time Measure		Ongoing Activities	
		H = Hours	Time Per Occurrence	Occurrences Per Year	Total Hours (Time per Occ. x Occ. Per yr)
Business Taxes Specialist III (BTS III)	Comprehensive Analysis: SSUTA Section Analysis, Review and Address Public Comment; Identify Impact Study Options; Complete Impact Study; Prepare Analysis, Revenue Estimate and Impact Study for BOG	H	1,080	1	1,080
	General Assignments: Analysis of amendments to the SSUTA, Attending SSTP meetings, prepare SSTP meeting summaries, SSTP surveys and requests for information, outside presentations, quarterly BOG reports, BOG meeting coordination, public information meetings, administrative and legal assistance	H	460	1	460
	Administration: Training and Management Support/Lead	H	260	1	260
	Total BTS III Hours				1,800
	Total BTS III positions requested (1,800 hours/position)				1.0

1.0 Business Taxes Specialist II (BTS II)

The BTS II position performing data analysis for SUTD will be utilized to identify those out-of-state retailers required to register, which includes researching and examining data sources and SEC filings for mergers and acquisitions to determine if new nexus is created. The BTS II will create and maintain a database of these out-of-state sellers, work with other states on registration efforts and internet outreach efforts to increase voluntary compliance. Audit leads will also be created and identified accounts will be evaluated for audit selection. The BTS II is expected to have extensive computer application knowledge including ACL and Name Search training to effectively utilize matching software and to handle voluminous amounts of data. This position will also be involved with internet outreach efforts.

Workload Detail					
Classification	Activity	Time Measure		Ongoing Activities	
		H=Hours	Percentage of Time Per Activity	Occurrences Per Year	Total Hours
BTS II	Identify and register internet sellers.	500	25%		500
	Outreach to other states and internet sellers to increase voluntary compliance.	500	25%		500
	Maintenance of internet sellers data base.	400	20%		400
	Audit selection activities for internet sellers.	300	15%		300
	Reporting activities related to program performance and compliance.	300	15%		300
	Total BTS II Hours				2,000
	Total BTS II positions requested (1,800 hours per position)				1.1

2.0 Business Taxes Specialist I (BTS I) Out-of-State District field positions

The two BTS Is will be utilized to prepare audit reports, conduct the most difficult and complex audits, typically consisting of the largest corporations in the United States, including use of specialized audit procedures and techniques to address the increase in the number of registered out-of-state retailers and the associated audit workload. The BTS I is expected to work with limited supervision and to lead and review the work of lower level auditor staff. BTS I auditors may also be involved in the appeals process related to their complex audits or field billing orders including petitions for redetermination and hearings. The table below provides the estimated workload for this position.

Workload Detail					
Classification	Activity	Time Measure		Ongoing Activities	
		H = Hours	Time Per Occurrence	Occurrences Per Year	Total Hours (Time per Occ. x Occ. Per yr)
Business Taxes Specialist I (BTS I) field auditor	Conduct BTS I level audits and prepare audit reports ⁽³⁾	H	216	14	3,024
	Total BTS I Hours				3,024
	Total BTS I Positions Requested (1,400 Hours Per Position field auditors)				2.16

(3) The average was compiled from out-of-state statistics for the last three fiscal years (Fiscal Year End 2008, 2009 & 2010). "Audits" include deficiencies, refunds, and no change audits. The number of audits selected is expected to increase by approximately 40 audits per year (26 audits at the ATA level and 14 at the BTS I level.) The average time to complete the BTS I level audits is approximately 216 hours per audit.

2.0 Associate Tax Auditors (ATA) Out-of-State District field positions

ATAs will be utilized to conduct sales and use tax audits, prepare audit reports, and conduct specialized audit procedures and techniques to address the out-of-state audit workload based on approximately 2,000 new, out-of-state registered retailers. Responsibilities include examining taxpayers' books and records and determining the appropriate amount of tax due, determining the appropriate test or statistical sampling methodology, preparing working papers to support audit findings, issuing billings as needed, and explaining audit findings to taxpayers or their representatives. ATAs will also be responsible for investigating referrals generated from these new retailers. The auditor may be involved in the appeals process related to audits or field billing orders including petitions for redetermination and hearings. The table below provides the estimated workload for these positions.

Workload Detail					
Classification	Activity	Time Measure		Ongoing Activities	
		H = Hours	Time Per Occurrence	Occurrences Per Year	Total Hours
Assoc. Tax Auditor (ATA)	Conduct ATA level audits, investigate and audit referrals, and prepare audit reports including related activities. ⁽¹⁾	H	122	26	3,172.0
	Total ATA Hours				3,172.0
	Total ATA Positions Requested (1,400 Hours Per Position)				2.2

(1) The average was compiled from out-of-state statistics for the last three fiscal years (Fiscal Year End 2008, 2009 & 2010) based upon audits performed by ATAs. "Audits" include deficiencies, refunds, and no change audits. The number of audits selected is expected to increase by approximately 40 audits per year (26 audits at the ATA level and 14 at the BTS I level.) The average time to complete these audits is approximately 122 hours per audit.

1.0 Office Technician (OT) Out-of-State District field position

OTs perform typical clerical revenue supporting functions related to the registration of out-of-state taxpayers. These clerical functions include filing, copying, answering phones, attendance coordination, maintaining personnel files, preparing miscellaneous recurring reports, and receiving and distributing mail.

Workload Detail					
Classification	Activity	Time Measure		Ongoing Activities	
		M = Measure	Time Per Occurrence	Occurrences Per Year	Total Hours
Support - OT	Provide administrative support for employees	M			1800
	Total Hours				1800
	Total OT Positions Requested (1800 Hours/Position)				1.0

LEGAL DEPARTMENT

1.0 Tax Counsel III (Legal Counsel) - Tax and Fee Programs Division

The Tax Counsel III (Specialist) within the Tax and Fee Programs Division, Business Taxes Section, will draft and assist in the preparation of new business taxes regulations or amendments to existing regulations. This individual will research and render the more complex oral and written legal advice to taxpayers and their representatives, other governmental agencies, the Board, and its staff concerning business tax matters. The individual appears before the Board to orally present the staff's position with respect to Board hearings on the more complex business taxes petitions for redetermination and claims for refund. With respect to these Board hearings, this individual researches and writes Board hearing briefs as well as reviews complex audits, including audit work papers and related materials. Other duties include drafting and assisting in drafting business taxes legislation as well as preparing or assisting in the preparation of various Board publications. This individual works closely and under the general guidance of the Assistant Chief Counsel, Tax Counsel IV, and Supervising Tax Counsel.

Activity	Cases (Yearly)	Hours/Case	Total Hrs
Draft and revise regulations, draft and revise issue and discussion papers, review and respond to submissions, prepare rulemaking documents for submission to the Office of Administrative Law	20	20	400
Prepare for, attend, and represent Department at Business Taxes Committee, Interested Parties Meetings, Public Hearings, Board hearings; meetings with staff; assist Department staff and Regulation Coordinator	20	10	200
Research and analyze statutes, regulations, and case law; draft written legal opinions	20	30	600
Appear before the Board in Board hearings; research and draft Board hearing briefs	10	40	400
Respond to inquiries from the public and staff; assist staff in preparation/revision of publications; draft legislation	20	15	300
Total legal hours			1,900
Total legal positions requested (1,800 hrs per position)			1.1

1.0 Staff Services Analyst – Litigation Division

Under the general direction of the Supervising Tax Counsel III (STC III), the SSA within the Litigation Division analyzes, evaluates and reviews subpoena requests prepared by BOE divisions and departments to coordinate processing for BOE action.

The SSA also reviews, analyzes and evaluates tax program and employment subpoenas to determine whether the subpoena meets all statutory notice requirements and if the requested records can be released under applicable law, and if applicable obtains and organizes the records from relevant departments.

The incumbent prepares correspondence transmitting subpoenaed records or advising why records cannot be released.

Activity	Time Measure	Ongoing Activities	
	Hours/ Occurrence	Occurrences per Year	Total Hours
Process subpoenas, summons, and complaints for all cases	32	52	1664
Prepare monthly and summary case reports	20	12	240
Total legal hours			1904
Total legal positions requested (1800 hours per position)			1.0

A temporary position was originally created at the request of the Sales and Use Tax Department (SUTD) to handle an expected significant increase in outgoing subpoenas used to obtain documents from taxpayers and out-of-state retailers that had failed to comply with requests for information. Given the adoption of AB 155, outgoing subpoenas, including subpoenas served on out-of-state retailers with minimum contacts and nexus in California, can be expected to continue to increase beyond the term of the current temporary position. Therefore, this resource is being requested to address the ongoing workload of the Litigation Division subpoena unit which is expected to continue to experience substantial increases as a result of the implementation of AB 155, and the related increased number of SUTD enforcement actions.

1.0 Tax Counsel III (Legal Counsel) – Litigation Division

During FY 2013/2014, with facial challenge and as-applied lawsuits against AB 155 and the implementing regulation commencing, along with lawsuits challenging the application of the retailer statute, and audit cases, the Tax Counsel (TC) III will be required to assist the TC IVs with pleadings, discovery, legal research, motion preparation, witness preparation, and related litigation tasks. The TC III will be required to supplement the other six Litigation Division attorneys available to work on general tax refund litigation.

Activity	Time Measure	Ongoing Activities	
	Hours/ Occurrence	Occurrences per Year	Total Hours
Research and analyze statutes, rules, and appellate decisions for application to assigned cases	100	11	1,100
Prepare and present documents and briefs with courts for hearings and trials related to assigned cases	50	11	550
Interview, prepare, and coordinate testimony and statements from various public and private parties related to assigned cases	30	11	330
Total legal hours			1,980
Total legal positions requested (1800 hours per position)			1.1

Under the direction of the Supervising Tax Counsel III (STC III), this position will be assigned less complex court litigation cases involving all program areas within the Board. The position holder will prepare/review all court filings, pleadings, briefs, discovery issues and other documents needed to litigate assigned cases. Other duties typically include helping to develop litigation strategy, discovery plans and witness preparation. The incumbent will work closely with the STC III, the TC IV, the Assistant Chief Counsel, Deputy Attorneys General and Attorney General staff, and in this situation, the Chief Counsel.

0.5 Tax Counsel III (Legal Counsel) – Appeals Division

The Tax Counsel III (TC III) in the Business Taxes Section of the Appeals Division will decide difficult and complex cases involving the legislation. The TC III will hold appeals conferences and independently analyze and apply legal principals to issue decisions and recommendations. TC III position will permit the appeals associated with the legislation to be effectively and efficiently processed in a timely manner without delay.

Activity	Cases (Yearly)	Hours/ Case	Total Hours
File review and preparation	20	10	200
Travel	20	.5	10
Conferences	20	1	20
Post-conference gathering	20	5	100
Research and writing	20	20	400
Board Hearings	7	4	28
Post Decision	7	20	140
Post Board Hearing	2	1	2
Total legal hours			900
Total legal position requested (1800 hours per position)			0.5

0.5 Tax Counsel III, (Legal Counsel) - Settlement and Taxpayer Services Division

The Tax Counsel III (TC III) in the Settlement and Taxpayer Services Division, will evaluate, negotiate and settle cases arising out of Department billings related to the AB 155 legislation. A TC III evaluates settlement proposals and determines the risks and costs of further administrative review and litigation in light of the strengths and weaknesses of the Department and the tax or fee payer's factual and/or legal arguments. The determined risks and costs of litigation are the basis for settlement negotiations conducted by the TC III with the tax or fee payer. The TC III holds settlement conferences and prepares the settlement agreement and Executive and Attorney General Memorandums supporting each settlement. A TC III Settlement Officer primarily works on legal issue cases but must also understand audit procedures and techniques. The TC III Settlement Officer may also be required to attend closed-session Board meetings, attend meetings with executive management, and assist legal and audit staff.

Activity	Cases (Yearly)	Hours/ Case	Total Hours
Evaluate Settlement Proposals, review Appeals' case files, negotiate settlements and prepare Executive and Attorney General Memorandums. Sales & Use Tax cases=95%	10	80	800
Assist Legal and Audit Staff	10	3	30
Attend Board and Executive Management meetings	10	7	70
Total legal hours			900
Total legal positions requested (1,800 hrs per position)			0.5

EXTERNAL AFFAIRS DEPARTMENT**Taxpayer Information Section (TIS):**

As a result of this legislation the TIS estimates an additional 148,000 calls annually for the first two years and 74,000 ongoing calls for each year thereafter. In order to handle the increase in call volumes the TIS is requesting: 12 Tax Technician IIs (6 Limited Term and 6 Permanent); 2 Tax Technician III's (1 Limited Term and 1 Permanent); 1 Supervising Tax Technician III (Permanent); and, 1 Business Taxes Representative (Permanent). The Tax Technicians will provide: answers to general questions; guidance to BOE resources; and, refer callers to the appropriate sections. The Tax Technician IIIs respond to the more difficult inquiries, and act in a lead capacity by providing guidance to the lower level technicians.

The Supervising Tax Technician III is a working supervisor that plans, organizes, directs and reviews the work of Tax Technician Is, IIs, and IIIs. The Business Taxes Representative provides: training to new tax technicians; reviews work processed by tax technicians to ensure the work complies with the appropriate sales and use tax laws, rules and guidelines provided by the BOE; handles the more complex questions concerning e-file services or other account specific questions; and, prepares written response to correspondence received by e-mail or other means.

The tables below provide the estimated workloads for these positions, the tables represent the first two years. After the first two years the call volume is estimated to reduce to 74,000 calls annually and the limited term positions will have ended.

12.0 Tax Technicians II (TT II)– 6 Permanent, F/T and 6 Limited Term F/T

Workload Detail				
Classification	Activity	Time Measure		Ongoing Activities
		M = Minute H = Hours	Occurrences Per Year	Total Hours
Tax Technician II	Answer taxpayer and public inquiries received on the BOE toll free 800 phone number concerning the new program and the application of tax.	8.9 M	148,000	21,820
	Process account maintenance requests.	12 M	300	60
	Total Tax Technician II Hours			21,860
	Total TT II Positions Needed (1,800 Hours/Position)			12.0

2.0 Tax Technicians III (TT III) – 1 Permanent, F/T and 1 Limited Term F/T

Workload Detail				
Classification	Activity	Time Measure		Ongoing Activities
		M = Minute H = Hours	Occurrences Per Year	Total Hours
Tax Technician III	Assist Tax Technicians with the more difficult taxpayer and public inquiries received on the BOE toll free 800 phone number concerning the new program and the application of tax.	11.6 M	14,800	2,860
	Answer taxpayer and public inquiries received on the BOE toll free 800 phone number concerning the new program and the application of tax.	9.1 M	5,000	760
	Assign Tax Area Codes for Business Address Changes.	15 M	200	50
	Total Tax Technician III Hours			3,670
	Total TT III Positions Needed (1,800 Hours/Position)			2.0

1.0 Supervising Tax Technician III (STT III)

Workload Detail				
Classification	Activity	Time Measure		Ongoing Activities
		M = Minute H = Hours	Occurrences Per Year	Total Hours
Supervising Tax Technician III	Supervise	H		1,800
	Total Tax Supervising Technician III Hours			1,800
	Total STT III Positions Needed (1,800 Hours/Position)			1.0

1.0 Business Taxes Representative (BTR)

Workload Detail				
Classification	Activity	Time Measure		Ongoing Activities
		M = Minute H = Hours	Occurrences Per Year	Total Hours
Business Taxes Representative	Provide training to current and new Tax Technicians.	H		870
	Develop, revise and update training materials.	H		150
	Answer Taxpayer Inquiries received by Internet email.	H		480
	Monitor and evaluate Tax Technicians for accuracy and effectiveness.	H		300
	Total Business Taxes Representative Hours			1,800
	Total BTR Positions Needed (1,800 Hours/Position)			1.0

4.0 Business Taxes Specialists

In order to ensure the most effective implementation of AB 155 or possible federal legislation, the BOE Outreach Services Division will need to develop in a comprehensive statewide outreach and education program to address compliance by both business and consumers, and to clarify any confusion about sales and use tax responsibility. The Business Taxes Services Specialists will be located at our field offices and will facilitate this ongoing statewide outreach directly to taxpayers/practitioners as well as participate in partnership activities with stakeholders, community organizations, and local, state, federal government agencies in an assigned geographical area. Outreach activities will include conducting workshops, seminars, and attending or participating in customer association conferences and meetings.

The tables below provide the estimated workloads for these positions:

4.0 Business Taxes Specialist I (BTS I)

Workload Detail				
Classification	Activity	Time Measure		Ongoing Activities
		M = Measure H = Hours	Occurrences Per Year	Total Hours
Business Taxes Specialist I	Outreach Annual Work Plan	H		320
	External Stakeholders Database Development	H		880
	Survey Creation, Compilation, Analysis, Report	H		120
	Stakeholder Meeting and Event Participation	H		2,400
	Pre-workshop planning (logistics, publicity)	H		3,744
	Conducting Workshops	H		520
	Total Business Taxes Specialist I Hours			8,080
	Total BTS I Positions Needed (1,800 Hours/Position)			4.0

1.0 Audio Visual Specialist, Outreach Services Division

As a result of this legislation, the BOE Outreach Services Division, Online and Media Services Section, will need to address the educational needs of taxpayers who are unable to attend live meetings, conferences, and seminars. The Audio Visual Specialist will do so by creating outreach tools for both businesses and consumers including public service announcements, online videos, and webinars. This type of outreach is a valuable compliance tool that presents an opportunity to educate and interact with large numbers of taxpayers at once and is also an effective preventative and remedial tool for systemic and regional noncompliance.

Workload Detail				
Classification	Activity	Time Measure		Ongoing Activities
		M = Measure H = Hours	Occurrences Per Year	Total Hours
Audio Visual Specialist	Public Service Announcements	H		320
	Video Workshops	H		1,280
	Webinars	H		320
	Total Audio Visual Specialist Hours			1,924
	Total AVS Positions Needed (1,800 Hours/Position)			1.0

EXECUTIVE DEPARTMENT**Legislative Division**

Due to the complexity, political sensitivity, potential litigation, and associated high volume of workload associated with ABx1 28 and 155, the Legislative and Research Division has identified the need of additional resources: 2.0 Business Tax Specialist (BTS) III positions. The increased workload requires the highest degree of analytical expertise, and involves drafting complex technical language, testifying before the Legislature, meeting and advising legislators and their staff, other state officials, and Board Members and their staff of the new law relating to nexus in California effective September 15, 2012 or January 1, 2013, and the alternative approach as outlined in AB 155, which contemplates federal legislation and conforming state legislation that is enacted on or before September 14, 2012, and to effectively perform these tasks.

With respect to the alternative federal legislation, it is assumed at this time that the Streamlined Sales Tax Act, will initially be explored as the solution. However, other ideas will be explored,

as well. The California State Board of Equalization, which administers the sales and use tax for State and local jurisdictions, will be the lead agency that the Legislature, the Administration, and other States will look to for leadership on both the nexus and the Streamlined Sales Tax issues.

2.0 Business Taxes Specialist III (1.0 Permanent, 1.0 2-year Limited-Term)

Classification	Activity	Time Measure		Ongoing Activities	
		H = Hours	Time Per Occurrence	Occurrences Per Year	Total Hours
BTS III	Providing technical expertise to the Legislature, Administration, Board Members and staff, and outside agencies.	H	varied	varied	1,800
	Technical drafting of complex and sensitive statutory language and correspondence on nexus and Streamlined Sales Tax issues.	H	varied	varied	800
	Preparing BOE staff legislative analysis of complex and sensitive legislative business taxes bills, including nexus, and the Streamlined Sales Tax Project and coordinating the cost and revenue estimates for the analyses.				800
	Testifying before the Legislature and BOE.	H	varied	varied	200
	Total Hours				3,600
	Total Position(s) Requested				2.0

Fiscal Summary
(Dollars in thousands)

BCP No.	Proposal Title			Program		
6	AB 155			30 Sales and Use Tax		
Personal Services	Positions			Dollars		
	BY	BY+1	BY+2	BY	BY+1	BY+2
Total Salaries and Wages ¹	28.3	30.7	35.1	\$1,477	\$1,717	\$1,948
Salary Savings	--1.3	--1.5	--1.7	-\$70	-\$81	-\$92
Net Total Salaries and Wages	27.0	29.2	33.4	\$1,407	\$1,636	\$1,856
Total Staff Benefits ²				\$537	\$624	\$708
Salary Savings				-\$27	-\$31	-\$35
Net Total Staff Benefits				\$510	\$593	\$673
Distributed Administration						
Total Personal Services	27.0	29.2	33.4	\$1,917	\$2,229	\$2,529
Operating Expenses and Equipment						
General Expense				\$340	\$98	\$137
Distributed Administration						
Printing						
Communications				\$137	\$35	\$44
Postage						
Travel-In State				\$182	\$198	\$198
Travel-Out of State				\$122	\$122	\$196
Training				\$26	\$29	\$33
Facilities Operations				\$332	\$380	\$376
Utilities				\$5	\$5	\$6
Consulting & Professional Services: Interdepartmental ³						
Consulting & Professional Services: External ³						
Data Center Services				\$70	\$75	\$85
Information Technology				\$50	\$27	\$29
Equipment ³						
Other/Special Items of Expense: ⁴						
Total Operating Expenses and Equipment				\$1,264	\$969	\$1,104
Total State Operations Expenditures				\$3,180	\$3,197	\$3,633
Fund Source	Item Number					
	Org	Ref	Fund			
General Fund	0860	001	0001	\$2,083	\$2,094	\$2,380
Special Funds ⁵						
Federal Funds						
Other Funds (Specify)						
Reimbursements	0860	001	0995	\$1,097	\$1,103	\$1,253
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				\$3,180	\$3,197	\$3,633

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.

Personal Services Detail

(Whole dollars)

BCP No.	Proposal Title						
6	AB 155						
Salaries and Wages Detail							
Classification ^{1 2}	Positions			Salary Range	Dollars		
	BY	BY+1	BY+2		BY	BY+1	BY+2
SUTD							
<u>Data Analysis Section</u>							
Business Taxes Specialist III <u>a/</u>	1.0	1.0	1.0	\$87,708	\$87,708	\$87,708	\$87,708
Business Taxes Specialist II <u>b/</u>	0.8	1.0	1.0	\$76,116	\$60,893	\$76,116	\$76,116
<u>Out-Of-State</u>							
Business Taxes Specialist I <u>c/</u>			2.0	\$70,824	\$0	\$0	\$141,648
Associate Tax Auditor <u>c/</u>			2.0	\$63,096	\$0	\$0	\$126,192
Office Technician <u>c/</u>			1.0	\$35,700	\$0	\$0	\$35,700
LEGAL							
<u>Tax and Fee</u>							
Tax Counsel III (Specialist) <u>a/</u>	1.0	1.0	1.0	\$102,960	\$102,960	\$102,960	\$102,960
<u>Litigation</u>							
Staff Services Analyst <u>a/</u>	1.0	1.0	1.0	\$43,584	\$43,584	\$43,584	\$43,584
Tax Counsel III (Specialist) <u>d/</u>		1.0	1.0	\$102,960	\$0	\$102,960	\$102,960
<u>Appeals</u>							
Tax Counsel III (Specialist) <u>d/</u>		0.5	0.5	\$102,960	\$0	\$51,480	\$51,480
<u>Settlement and Taxpayer Svs. d/</u>							
Tax Counsel III (Specialist)		0.5	0.5	\$102,960	\$0	\$51,480	\$51,480
EXTERNAL AFFAIRS							
<u>Customer Service & Publishing</u>							
Tax Technician III <u>e/</u>	2.0	2.0	2.0	\$39,240	\$78,480	\$78,480	\$78,480
Tax Technician II <u>f/</u>	12.0	12.0	12.0	\$35,088	\$421,056	\$421,056	\$421,056
Supervising Tax Technician III <u>a/</u>	1.0	1.0	1.0	\$44,664	\$44,664	\$44,664	\$44,664
Business Taxes Representative <u>a/</u>	1.0	1.0	1.0	\$46,656	\$46,656	\$46,656	\$46,656
<u>Outreach Services</u>							
Business Taxes Specialist I <u>a/</u>	4.0	4.0	4.0	\$70,824	\$283,296	\$283,296	\$283,296
Audio Visual Specialist <u>a/</u>	1.0	1.0	1.0	\$58,488	\$58,488	\$58,488	\$58,488
EXECUTIVE							
Business Taxes Specialist III <u>g/</u>	2.0	2.0	1.0	\$87,708	\$175,416	\$175,416	\$87,708
Blanket Funds:							
Overtime	0.1	0.0	2.1		0	0	0
Temporary Help	1.5	1.7	2.1		73,562	92,272	107,676
Total Salaries and Wages ³	28.3	30.7	35.1		\$1,476,763	\$1,716,616	\$1,947,852
Staff Benefits Detail					CY	BY	BY + 1
OASDI					112,991	131,351	149,022
Health/Dental/Vision Insurance					195,614	227,399	257,993
Retirement					219,010	254,597	288,849
Miscellaneous							
Workers' Compensation					886	1,030	1,169
Industrial Disability Leave					1,270	1,477	1,675
Non-Industrial Disability Leave					1,137	1,322	1,500
Unemployment Insurance					739	859	974
Other:					4,963	5,769	6,545
Total Staff Benefits ³					\$536,610	\$623,804	\$707,727
Grand Total, Personal Services					\$2,013,373	\$2,340,420	\$2,655,579

¹ Use standard abbreviations per the Salaries and Wages Supplement. Show any effective date or limited-term expiration date in parentheses if the position is not proposed for a full year or is not permanent, e.g. (exp 6-30-13) or (eff 1-1-13)

Note: Information provided should appear in the same format as it would on the Changes in Authorized Positions.

² If multiple programs require positions, please include a subheading under the classification section to identify positions by

³ Totals must be rounded to the nearest thousand dollars before posting to the Fiscal Summary.

a/ Permanent position effective 7/1/2012.

b/ Permanent position effective 9/1/2012.

c/ Permanent position effective 7/1/2014.

d/ Permanent position effective 7/1/2013.

e/ 1.0 of the 2.0 positions is a 3-yr limited term position to expire 06/30/15. The other 1.0 position is permanent.

f/ 6.0 of the 12.0 positions is a 3-yr limited term position to expire 06/30/15. The other 6.0 positions are permanent.

g/ 1.0 of the 2.0 positions is a 2-yr limited term position to expire 06/30/14. The other 1.0 position is permanent.

Supplemental Information
(Dollars in thousands)

BCP No. 6	Proposal Title AB 155
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Equipment	BY	BY+1	BY+2
Standard Complement	\$794	\$560	\$665
Total	\$794	\$560	\$665

Consulting & Professional Services			
Total			

Facility/Capital Costs			
Attorney Office	\$25	\$50	
Total	\$25	\$50	

One-Time/Limited-Term Costs Yes No

Description	BY		BY +1		BY +2	
	Positions	Dollars	Positions	Dollars	Positions	Dollars
General Expense		\$340		\$25		\$62
Communications		\$108		\$2		\$5
IT		\$32		\$3		\$4
Facilities		\$25		\$50		
Total	0.0	\$505	0.0	\$80	0.0	\$71

Full-Year Cost Adjustment Yes No

Provide the incremental change in dollars and positions by fiscal year.

Item Number	BY		BY +1		BY +2	
	Positions	Dollars	Positions	Dollars	Positions	Dollars
			2.4	\$17	4.4	\$436
Total	0.0		2.4	\$17	4.4	\$436

Future Savings Yes No

Specify fiscal year and estimated savings, including any decrease in positions.

Item Number	BY		BY +1		BY +2	
	Positions	Dollars	Positions	Dollars	Positions	Dollars
Total	0.0		0.0		0.0	