STATE OF CALIFORNIA
BUDGET CHANGE PROPOSAL - COVER SHEET
FOR FISCAL YEAR 2012-13
DF-46 (WORD Version)(REV 07/06)
Please report dollars in thousands.

Department of Finance
915 L Street
Sacramento, CA 95814
IMS Mail Code: A-15

BCP # ABX1 28	PRIORITY NO.	ORG. CODE 0860	DEPARTMENT State Board of Equalization
PROGRAM 30 Sales and Use Tax Program	ELEMENT ALL ELEMENTS	COMPONENT	

TITLE OF PROPOSED CHANGE
ABx1 28: Use Tax Nexus

SUMMARY OF PROPOSED CHANGES

The passage of Assembly Bill (AB) x1 28 as part of California's 2011-2012 budget bill implements the Legislature's intent to close the $1.145 billion use tax gap. This bill will amend 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. The bill expands the use tax registration requirements to certain out-of-state retailers that previously were not required to collect use tax on sales made to their California customers. Such transactions are generally conducted either through mail order, telephone orders, or via the Internet.

BOE is requesting funding and resources needed to implement the provisions of ABx1 28.

- $4.8 million and 37.0 positions in FY 2012-13
- $4.5 million and 40.0 positions in FY 2013-14

AB 155 has recently been amended to repeal and reenact the provisions of ABx1 28 with an urgency clause that will require a two-thirds vote. If this law is passed, the referendum should no longer be valid. BOE will revise fiscal summaries if AB 155 is passed.

REQUIRES LEGISLATION	CODE SECTION(S) TO BE AMENDED/ADDED	BUDGET IMPACT—PROVIDE LIST AND MARK IF APPLICABLE
☐ YES ☒ NO		☐ ONE-TIME COST ☐ FUTURE SAVINGS ☒ FULL-YEAR COSTS ☒ REVENUE

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

DOES THIS BCP CONTAIN INFORMATION TECHNOLOGY (IT) COMPONENTS? YES ☐ OR NO ☒

IF YES, DEPARTMENT CHIEF INFORMATION OFFICER SIGNATURE DATE

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

DATE PROJECT # FSR ☐ OR SPR ☐

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.

DEPARTMENT OF FINANCE ANALYST USE
(ADDITIONAL REVIEW)

CAPITAL OUTLAY ☐ OTROS ☐ FSCU ☐ OSAE ☐ CALSTARS ☐

DATE SUBMITTED TO THE LEGISLATURE: PPBA:

STATE BOARD OF EQUALIZATION
Fiscal Year 2011-12
ABX1 28 USE TAX NEXUS

A. Nature of Request

The passage of Assembly Bill (AB)x1 28 as part of California's 2011-2012 budget bill implements the Legislature's intent to close the $1.145 billion use tax gap. This bill 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. The bill expands the use tax registration requirements to certain out-of-state retailers that previously were not required to collect use tax on sales made to their California customers. Such transactions are generally conducted either through mail order, telephone orders, or via the Internet.

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.

For the purposes of the state's 2011-2012 Budget, Budget Committee estimates indicate that General Fund revenues from this bill will generate $200 million in its first year. For various reasons, it is difficult to provide a reliable estimate of revenues associated with this measure. The BOE requests funding of $4.8 million and 37.0 positions in FY 2012-13, and $4.5 million and 40.0 positions in FY 2013-14.

AB 155 has recently been amended to repeal and reenact the provisions of ABx1 28 with an urgency clause that will require a two-thirds vote. If this law is passed, the referendum should no longer be valid. BOE will revise fiscal summaries if AB 155 is passed.

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 and held that satisfying due process concerns does not require a physical presence, but rather requires 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 on-line, in the early 2000's 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

The BOE is charged by the State Constitution and by statute with, amongst other tasks, administering the state's sales and use tax, fuel, alcohol and tobacco taxes as well as collecting fees to fund numerous specific state programs. Successful administration of these tax and fee programs has resulted in the collection of 32 percent of the State's annual revenue. 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
Through continued field presence, the BOE will continue the outreach programs in educating California's diverse taxpayer base, and provide them with the information and materials they need to comply with their legal responsibilities. Additionally, this program provides an opportunity to gather information on areas of non-compliance which can be analyzed to develop approaches (such as enhanced partnerships with other governmental agencies) to address areas of concern. Outreach to consumers and companies regarding ABx1 28 also creates more visibility to our other use tax programs such as ABx4 18's reporting requirements for service businesses as well as SB 86's "look-up" table on FTB's state income tax returns.

Improve the Efficiency of BOE's Tax and Fee Programs
Through a visible presence in the business community, the BOE will continue enhancing communications with our external customers to allow prompt and accurate responses to their issues and questions, and improve existing feedback methods to ensure their concerns are heard and addressed. Feedback from business owners enables the BOE to continually

assess changes in the business environment to evaluate and modify processes and services to ensure that taxpayer expectations and needs are met or exceeded.

Improve the BOE's Organizational Efficiency
This bill promotes cooperative working relationships with district staff, other departments within the BOE, and other agencies and stakeholder organizations, through the sharing and analysis of data and resources, as appropriate. The business model for this program promotes a collaborative voluntary compliance and enforcement effort within the district field offices in SUTD, the ID, and other BOE departments. ABX1 28 will also provide opportunities for the exchange of value added data between the FTB and local taxing jurisdictions.

Create an Expanded and Responsive Infrastructure
In conjunction with the Federal/State Steering Committee on Bridging the Tax Gap, the BOE is working to expand our external partnerships with the Franchise Tax Board (FTB), the Employment Development Department (EDD), Economic Employment Enforcement Coalition (EEEC), and other local taxing jurisdictions. The goal of this partnership is to explore, use, and share best practices that capitalize on the development and implementation of successful data exchange models and applications.

D. Justification

ABx1 28 expands the definition of "retailers engaged in business" in California. The implementation of this expansion will impact numerous BOE Departments. To properly implement and administer the provisions of ABx1 28, adequate staffing is necessary. 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. As such, 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. Further, due to the highly sensitive topics of nexus and taxation present in this bill, BOE expects the statute to be litigated and therefore must have legal counsel positions and expert witnesses to handle this workload. BOE expects approximately 2,000 new use tax accounts to be registered under the provisions of this bill. Accordingly, 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.

The resources requested in this proposal allow the BOE to continue to provide high quality services to taxpayers while protecting General Fund revenues. The following is a summary of the requested positions:

Classifications	BY 2012-2013	BY+1 2013-2014
SUTD		
Data Analysis Section		
Business Taxes Specialist II	1.0	1.0
Out-Of-State		
Business Taxes Specialist I	0.5	1.0
Associate Tax Auditor	0.5	2.0
Legal		
Litigation		
Tax Counsel IV	2.0	2.0
Tax Counsel	1.0	2.0
Staff Services Analyst	1.0	1.0
Appeals		
Tax Counsel IV	1.0	1.0
Legal Secretary	1.0	1.0
Tax and Fee		
Tax Counsel III(Specialist)	2.0	2.0
Settlement and Taxpayer Services		
Tax Counsel III(Specialist)	1.0	1.0
External Affairs		
Customer Service & Publishing Div.		
Tax Technician II	12.0	12.0
Tax Tech III	2.0	2.0
Supervising Tax Tech III	1.0	1.0
Business Taxes Rep	1.0	1.0
Outreach Services		
Business Taxes Specialist I	4.0	4.0
Audio Visual Specialist	1.0	1.0
Executive		
Board Proceedings		
Associate Govt. Prog. Analyst	1.0	1.0
Staff Services Analyst	1.0	1.0
Legislative & Research		
Business Taxes Specialist III	1.0	1.0
Temp Help	2.0	2.0
TOTAL PERSONNEL YEARS	37.0	40.0

E. Outcomes and Accountability

This proposal enables the BOE to implement the provisions of ABx1 28. 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 July 1, 2012.

G. Timetable

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

July 2012 – June 2013	July 2013 –On-going
• Get infrastructure in place (PCs, printers, phones, cubicles, etc.) for staff. • Hire personnel. • Train newly hired staff. • Begin integration of newly hired staff with existing staff and training workload. • Assign workload commensurate with staff level and experience.	• Permanently establish and fill remaining positions identified in this proposal. • Train staff.

H. Recommendation

Approve the positions as proposed.

I. Fiscal Detail

See attached "Fiscal Detail" schedules.

EXHIBIT I
Position Description and Workload Justification

(Exhibit I, Page 1 of 11)

SALES AND USE TAX DEPARTMENT (SUTD)

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.

The table below provides the workload related to this position.

Workload Detail					
		Time Measure		Ongoing Activities	
Classification	Activity	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

1.0 Business Taxes Specialist I (BTS I) Out-of-State District field position
The BTS I 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					
	Time Measure	Time Measure		Ongoing Activities	
Classification	Activity	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	12	2,592
	Total BTS I Hours				**2,592**
	Total BTS I Positions Requested (1,400 Hours Per Position field auditors)				**1.8**

(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 38 audits per year (26 audits at the ATA level and 12 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					
	Time Measure	Time Measure		Ongoing Activities	
Classification	Activity	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 38 audits per year (26 audits at the ATA level and 12 at the BTS I level.) The average time to complete these audits is approximately 122 hours per audit.

Legal Department

2.0 Tax Counsel IVs

The Litigation Division will employ two Tax Counsel IVs, one to litigate on behalf of the BOE and the other to assist our Legislative and Research Division with the legal issues surrounding ABX1 28.

The Tax Counsel IV (TC IV) within the Litigation Division (LD) will litigate the most complicated and significant business tax lawsuits involving the most complex tax law issues and litigation strategies. This position will serve as the highest-level tax counsel to the Board and will work collaboratively with the Attorney General's office to defend the Board.

1.0 Tax Counsel IV-Litigation

	Time Measure	Ongoing Activities	
Activity	**Hours Per Occurrence**	**Occurrences per Year**	**Total Hours**
Research and analyze statutes, rules, and appellate decisions for application to assigned cases.	100	5	500
Prepare and present documents and briefs with courts for hearings and trials related to assigned cases.	200	5	1,000
Interview, prepare, and coordinate testimony and statements from various public and private parties related to assigned cases.	60	5	300
Total legal hours			1,800
Total legal positions requested (1,800 hours per position)			1.0

Due to the complexity, political sensitivity, potential litigation, and associated high volume of workload associated with ABx1 28, the Legal Department has identified the need of Tax Counsel IV to work collaboratively with the Legislative and Research Division. The increased workload requires the highest degree of analytical and legal 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, and to effectively perform these tasks as necessary on a three year limited-term basis.

1.0 Tax Counsel IV- Legislative Liaison

Legal Department and Legislative and Research Division Workload Detail					
		Time Measure		Ongoing Activities	
Classification	**Activity**	**H = Hours**	**Time Per Occurrence**	**Occurrences Per Year**	**Total Hours**
Tax Counsel IV	Providing legal expertise to elected officials and staff, and outside parties related to complex legislative issues, including nexus.	H	varied	varied	800
	Analyzing, evaluating, and responding to legally complex issues related to nexus proposals and inquiries	H	varied	varied	800
	Testifying before Legislature and BOE - and reporting to the Chief Counsel as a subject matter expert on nexus legislation	H	varied	varied	200
	Total Hours				**1,800**
	Total Number of Positions Needed (3-Year Limited Term)				**1.0**

1.0 Tax Counsel (TC)

During FY 2011/2012, with facial challenge lawsuits to ABx1 28 and the implementing regulation being filed, as well as lawsuits challenging the application of the retailer statute, the TC will be required to assist the TC IVs and the TC IIIs with discovery, legal research, motion preparation, witness preparation, and related litigation tasks. The TC will be required to supplement the other five LD attorneys available to work on general tax refund litigation (apart from the retailer litigation).

The Tax Counsel (TC) within the Litigation Division is the entry level tax litigation position. 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 Tax Counsel III (TC III), STC III, the TC IV, the Assistant Chief Counsel, Deputy Attorney General Staff, and possibly in this situation the Chief Counsel.

	Time Measure	**Ongoing Activities**	
Activity	**Hours Per 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

1.0 Tax Counsel (TC)

During FY 2013/2014, with facial challenge and as-applied lawsuits against ABx1 28 and the implementing regulation still in progress, the lawsuits challenging the application of the retailer statute continuing, and audit cases commencing, the TC will be required to assist the TC IVs and the TC IIIs with discovery, legal research, motion preparation, witness preparation, and related litigation tasks. The TC will be required to supplement the other six LD attorneys (including the TC position described above) available to work on general tax refund litigation (apart from the retailer litigation).

	Time Measure	**Ongoing Activities**	
Activity	**Hours Per 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 (1,800 hours per position)			1.1

The Tax Counsel within the Litigation Division is the entry level tax litigation position. 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 TC III, STC III, the TC IV, the Assistant Chief Counsel, Deputy Attorney General Staff, and possibly in this situation the Chief Counsel.

1.0 Staff Services Analyst (SSA)
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 for transmitting subpoenaed records or advising why records cannot be released.

	Time Measure	**Ongoing Activities**	
Activity	**Hours Per Occurrence**	**Occurrences per Year**	**Total Hours**
Process subpoenas, summons, and complaints for all cases.	32	52	1,664
Prepare monthly and summary case reports	20	12	240
Total legal hours			1,904
Total legal positions requested (1,800 hours per position)			1.0

The position requested will make permanent the current limited term position which is due to expire on June 30, 2012. The workload of the subpoena unit is expected to increase substantially due to the additional litigation caseload resulting from ABx1 28, as well as the ongoing increase of subpoena workload, due in part to the adoption of Regulation 1698.5, which authorizes the Board under specified circumstances to subpoena necessary records from taxpayers who fail to provide these records.

1.0 TC IV (Legal Counsel)-Appeals
It is anticipated that this legislation is highly litigious and thus extremely complex. The Tax Counsel IV in the Appeals Division will decide the most complicated and significant business tax cases involving the most complex tax laws. This position will serve as the highest level tax counsel advisor and technical resource to the elected five-member Board and will act as a lead and instruct, review, and direct the work of other Tax Counsel positions.

Activity	Cases (Yearly)	Hours/ Case	Total Hours
File review and preparation	20	10	200
Travel	20	0.5	10
Conferences	20	3	60
Post-conference gathering	20	5	100
Research and writing	20	60	1,200
Lead /Review/Board Hearings	20	10	200
Post Decision	20	1	20
Post Board Hearing	20	1	20
Total legal hours			1,810
Total legal position requested (1,800 hours per position)			1.0

1.0 Legal Secretary- Appeals

The Legal Secretary in the Appeals Division will provide direct secretarial and administrative support for multiple attorneys and/or conference holders including the full range of basic and complex secretarial duties. The Legal Secretary in the Appeals Division will prepare, review, and edit a variety of intricate legal documents involving significant dollar amounts and, various tax and fee programs to multiple parties and state agencies.

Activity	Cases (Yearly)	Hours/ Case	Total Hours
Review and Finalize	20	10	200
Indexing	20	10	200
Clerical Duties	20	25	500
General Support for Legal Nexus matters	20	39	780
Prepare monthly statistical data	20	6	120
Total legal hours			1,800
Total legal positions requested (1,800 hours per position)			1.0

2.0 Tax Counsel III (Legal Counsel)- Tax and Fee

The Tax Counsel III (Specialist) within the Tax and Fee Programs Division, Business Taxes Section, will draft and assist in the preparation of new complex 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 Tax Counsel III (Specialist) 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. Other duties include preparing or assisting in the preparation of various Board publications, including but not limited to, Tax Information Bulletins and Tax Tip Pamphlets. 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 Hours
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	30	600
Research and analyze statutes, regulations, and case law for application to various assignments.	10	30	300
Prepare for, attend, and represent Department at Business Taxes Committee, Interested Parties Meetings, Public Hearings, Board hearings; meetings with staff.	20	20	400
Respond to inquiries from the public and staff.	20	20	400
Assist Department staff and Regulation Coordinator.	20	10	200
Total legal hours			1,900
Total legal positions requested (1,800 hours per position)			1.1

Tax and Fees Program Division, Business Taxes Section, One Tax Counsel III (TC III) - Legal Counsel Year 2

The Tax Counsel III (Specialist) within the Tax and Fee Programs Division, Business Taxes Section, 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. This 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 preparing or assisting in the preparation of various Board publications, including but not limited to, Tax Information Bulletins and Tax Tip Pamphlets. 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 Hours
Research and analyze statutes, regulations, and case law; draft written legal opinions.	30	30	900
Appear before the Board in Board hearings; research and draft Board hearing briefs.	15	40	600
Respond to inquiries from public and staff; assist staff in preparation/revision of publications.	20	20	400
Total legal hours			1,900
Total legal positions requested (1,800 hours per position)			1.1

1.0 Tax Counsel III, (Legal Counsel), Year 2- Settlement and Taxpayer Services

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 ABx1 28 legislation. Addition of the (1) TC III position will permit the settlement cases associated with the legislation to be effectively and efficiently processed in a timely manner and the associated revenues

accelerated through the appeals and settlement processes without delay. 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%.	57	27	1,539
Evaluate Settlement Proposals, review Appeals' case files, negotiate settlements and prepare Executive and Attorney General Memorandums. Special Taxes and Fees cases=5%.	3	27	81
Assist Legal and Audit staff.	50	1.8	90
Attend Board and Executive Management meetings.	12	7.5	90
Total legal hours			1,800
Total legal positions requested (1,800 hours per position)			1.0

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); I 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 technician's; reviews work processed by tax technician's 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				
		Time Measure		Ongoing Activities
Classification	**Activity**	**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				
		Time Measure		Ongoing Activities
Classification	**Activity**	**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				
		Time Measure		Ongoing Activities
Classification	**Activity**	**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				
		Time Measure		Ongoing Activities
Classification	Activity	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 this 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 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				
		Time Measure		Ongoing Activities
Classification	Activity	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				
		Time Measure		Ongoing Activities
Classification	Activity	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

Board Proceedings Division:

The Board Proceedings Division requests the following two support positions. These positions are needed in anticipation of increased audits, which will increase the workload in the Tax and Fee Case Management section and Workload Planning Section to handle the increase in conferences and Board hearings.

1.0 Associate Governmental Program Analyst (AGPA)

Classification	Activity	Hours	Time Per Occurrence	Occurrences Per Year	Total Hours
AGPA	Annual Workload Plan	H	28.8	4	115
	Board Meeting Reference Coordinator	H	1.7	12	20
	Review of Board Meeting Material	H	14.5	12	174
	Board Meeting Materials Distribution (coordination between BPD and Departments, Day-of-Binders, posting agenda to Internet, PRA/IPA requests)	H	14.4	30	432
	Public Agenda Notice (Preparation, Proofing and Editing)	H	13.5	12	162
	Board Meeting Attendance	H	7	30	210
	Lead and Training Sergeant of Arms	H	1.25	30	38
	Board Directives	H	2.7	30	68
	Transcripts	H	6.25	12	75
	Approved calendars – obtain signatures and distribution	H	1.5	12	18
	Back-up to Contribution Disclosure Analyst	H	6.6	12	80
	Back-up to Vote Recorder	H	1.3	30	40
	Miscellaneous: • Correspondence, phone, e-mail • Reports • Staff meetings • Special Projects				 190 24 120 53
	Total Hours				**1,819**
	Total Number of Positions Needed				**1.0**

1.0 Staff Services Analyst

Tax and Fee Case Management Workload Detail					
		Time Measure		Ongoing Activities	
Classification	Activity	H = Hours	Time Per Occurrence	Occurrences Per Year	Total Hours
SSA	New Conferences	H	1.5	177	265
	Postponements/Reschedules	H	.30	774	387
	Withdrawals	H	.75	22	17
	Settlements	H	.30	450	45
	Misc. – Phone calls, emails, Staff meetings, reports, training, reviewing, special projects, Research	H	1.0	1338	1,338
	Total Hours				**2,052**
	Total Number of Positions Needed				**1.0**

Legislative Division

Due to the complexity, political sensitivity, potential litigation, and associated high volume of workload associated with ABx1 28, Legislative and Research Division has identified the need of additional resources on a three-year, limited term basis: one Business Tax Specialist III position. 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, and to effectively perform these tasks.

1.0 Business Taxes Specialist III

		Time Measure		Ongoing Activities	
Classification	Activity	H = Hours	Time Per Occurrence	Occurrences Per Year	Total Hours
BTS III	Providing technical expertise to elected officials and staff, and outside agencies.	H	varied	varied	900
	Technical drafting of complex and sensitive correspondence and statutory language on nexus issues.	H	varied	varied	400
	Preparing BOE staff legislative analysis of complex and sensitive legislative business taxes bills, including nexus, and coordinating the cost and revenue estimates for the analyses.				400
	Testifying before the Legislature and BOE.	H	varied	varied	100
	Total Hours				**1,800**
	Total Position(s) Requested				**1.0**

BCP No. ABx1 28
DATE: 9/9/11

STATE OF CALIFORNIA
BUDGET CHANGE PROPOSAL--FISCAL DETAIL
STATE OPERATIONS
FISCAL YEAR 2012-13
(Dollars in Thousands)

Title of Proposed Change: ABx1 28 Use Tax Nexus

Program/Element/Component: Sales Tax Program

	PERSONNEL YEARS					
	CY 2011-12	BY 2012-13	BY + 1 2013-14	CY 2011-12	BY 2012-13	BY + 1 2013-14
TOTAL SALARIES AND WAGES _a/		37.0	40.0		$2,183	$2,384
Salary Savings		-1.8	-1.9		-104	-114
NET TOTAL SALARIES AND WAGES		35.2	38.1		2,079	2,270
Staff Benefits_a/					791	866
Distributed Administration_b/						
TOTAL PERSONAL SERVICES					$2,870	$3,136
OPERATING EXPENSE AND EQUIPMENT						
General Expense					$459	$107
Distributed Administration						
Printing						
Communications					155	46
Postage						
Travel--In-State					191	191
Travel--Out-of -State					95	132
Training					47	51
Facilities Operations					591	464
Consulting & Professional Services: Interdepartmental						
Consulting & Professional Services: External					200	200
Office of Technology Services					99	104
Data Processing					68	34
Equipment						
Other Items of Expense: (Specify Below)						

_a/ See page [illegible] of [illegible] for itemized staff benefits and classification detail

_b/ Represents Distributed Administration costs resulting from this BCP. The Distributed Administration costs for existing BOE programs will reflect a corresponding decrease which will be addressed in the Planning Estimate process.

BCP No. ABx1 28

		CY 2011-12	BY 2012-13	BY + 1 2013-14
TOTAL OPERATING EXPENSE AND EQUIPMENT			$1,905	$1,329
TOTAL EXPENDITURES (State Operations)			$4,775	$4,465
Source of Funds				
General Fund	(0001)		$3,104	$2,902
Special Funds:				
Breast Cancer Fund	(0004)			
State Emergency Telephone	(0022)			
Motor Vehicle Fuel Account	(0061)			
Occupational Lead Prevention Fund	(0070)			
Childhood Lead Poisoning Prev. Fund	(0080)			
Cig. and Tobacco Prod. Surtax Fund	(0230)			
Oil Spill Prevention and Admin. Fund	(0320)			
Integrated Waste Management	(0387)			
Underground Storage Tank Fund	(0439)			
Energy Resources Programs Account	(0465)			
CA. Children and Families First Trust Fund	(0623)			
Federal Trust Fund	(0890)			
Timber Tax Fund	(0965)			
Gas Consumption Surcharge Fund	(3015)			
Water Rights Fund	(3058)			
Elec. Waste Recovery and Recycling Acct.	(3065)			
Cig. and Tobacco Prod. Compliance Fund	(3067)			
Federal Funds				
Other Funds				
Reimbursements	(0995)		$1,671	$1,563
Net Total Augmentation (Source of Funds)			**$4,775**	**$4,465**

BCP No. ABx1 28

DETAIL OF STAFF BENEFITS AND PERSONAL SERVICES

Staff Benefits Detail:	CY 2011-12	BY 2012-13	BY + 1 2013-14
		(Whole Dollars)	
OASDI		$167,000	$182,376
Health Insurance		288,340	315,481
Retirement		322,826	353,213
Workers' Compensation		1,308	1,429
Industrial Disability Leave		1,872	2,049
Non-Industrial Disability Leave		1,676	1,834
Unemployment Insurance		1,089	1,191
Other		7,315	8,004
TOTAL		$791,424	$865,577

Classification		Positions CY 2011-12	Positions BY 2012-13	Positions BY + 1 2013-14	Salary Range [a]	Amount CY 2011-12	Amount BY 2012-13	Amount BY + 1 2013-14
Legal								
Litigation								
Tax Counsel IV	[c]		2.0	2.0	$113,784		$227,568	$227,568
Tax Counsel	[c]		1.0	2.0	75,012		$75,012	$150,024
Staff Services Analyst	[b]		1.0	1.0	43,344		$43,344	$43,344
Appeals								
Tax Counsel IV	[b]		1.0	1.0	113,784		$113,784	$113,784
Legal Secretary	[b]		1.0	1.0	41,496		$41,496	$41,496
Tax and Fee								
Tax Counsel III (Specialist)	[b]		2.0	2.0	102,960		$205,920	$205,920
Settlement and Taxpayer Services								
Tax Counsel III (Specialist)	[b]		1.0	1.0	102,960		$102,960	102,960
SUTD								
Data Analysis Section								
Business Taxes Specialist II	[b]		1.0	1.0	76,116		$76,116	76,116
Out-Of-State								
Business Taxes Specialist I	[e]		5	1.0	70,824		$35,412	70,824
Associate Tax Auditor	[f]		5	2.0	63,099		$31,548	126,192
Executive								
Associate Gov. Program Analyst	[b]		1.0	1.0	58,488		$58,488	58,488
Business Taxes Specialist III	[g]		1.0	1.0	87,708		$87,708	87,708
Staff Services Analyst	[b]		1.0	1.0	43,344		$43,344	43,344
External Affairs								
Business Taxes Rep	[b]		1.0	1.0	46,656		$46,656	46,656
Business Taxes Specialist I	[b]		4.0	4.0	70,824		$283,296	283,296
Supervising Tax Tech III	[b]		1.0	1.0	44,664		$44,664	44,664
Tax Technician II	[b]		6.0	6.0	35,088		$210,528	210,528
Tax Technician II	[b]		6.0	6.0	35,088		$210,528	210,528
Tax Technician III	[b]		1.0	1.0	39,240		$39,240	39,240
Tax Technician III	[h]		1.0	1.0	39,240		$39,240	39,240
Audio Visual Specialist	[b]		1.0	1.0	58,488		$58,488	58,488
Blanket Funds:								
Overtime (Various)			(.1)				5,865	1,931
Temporary Help			2.0	2.0			101,951	101,951
TOTAL SALARIES AND WAGES			37.0	40.0			$2,183,156	$2,384,290

[a] The salary is the mid-step of the salary range for the stated classification

[b] Permanent Positions effective 7/1/2012

[c] 1.0 permanent position effective 7/1/2012, 1.0 permanent position effective 7/1/2013

[d] 1.0 3-yr LT position effective 7/1/2012 to 6/30/2015 and 1.0 permanent position effective 7/1/2012

[e] 1.0 permanent position effective 1/1/2013

[f] 1.0 position effective 1/1/2013 and 1.0 permanent position effective 7/1/2013

[g] 1.0 3-yr LT position effective 7/1/2012 to 6/30/2015

[h] 3-yr LT positions effective 7/1/2012 to 6/30/2015