

2012/13 SPRING FINANCE LETTERS OVERVIEW
(as of 01/04/12 - in 000's)

Budget Items

2012/13

2013/14

	Positions	Total Cost	Revenue	Benefit/ Cost Ratio	Positions	Total Cost	Revenue	Benefit/ Cost Ratio
BCPs - Chaptered Bills - Trailer Bills								
SFL #1: Centralized Revenue Opportunity System (CROS) Project	156.7	\$22,402 GF: \$13,889 R: \$7,093 SF: \$1,640	\$38,754	1.7:1	242.1	\$43,345 GF: \$25,970 R: \$13,500 SF: \$3,875	\$66,529	1.5:1
SFL #2: Department of Justice (DOJ) Billable Services Budget Augmentation	0.0	\$678 GF \$678	\$37,000	54.5:1	0.0	\$678 GF \$678	\$37,000	54.5:1
TOTAL	156.7	\$ 23,080	\$ 75,754		242.1	\$ 44,023	\$ 103,529	

DRAFT

STATE BOARD OF EQUALIZATION



BOARD APPROVED

At the 1/11/2012 Board Meeting

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

STATE OF CALIFORNIA
Spring Finance Letter Proposal - Cover Sheet
 DF-46 (REV 05/11)

Fiscal Year 2012-13	SFL No. 2	Org. Code 0860	Department State Board of Equalization	Priority No. 2
Program 15-County Assessment Standards, 30-Sales and Use Tax, and 45-Cigarette and Tobacco Product Tax Programs			Element 15.20, 30.30, 45.30	Component

Proposal Title
Department of Justice (DOJ) Billable Services Budget Augmentation

Proposal Summary
 This proposal requests an augmentation of \$678,000 (General Fund) for FY 2012-13 and ongoing to support the Board of Equalization total Department of Justice (DOJ) billable services budget at a \$2.2 million level. The DOJ Legal Services Budget provides critical resources necessary to effectively litigate the growing and increasingly complex tax and fee related damage claims being made against the State of California in lawsuits. BOE estimates that the minimum potential impact on revenues is approximately \$37 million. Successful litigation of several of these cases will also protect California revenues into the future. The potential risk factor for the proposal is approximately 54.5:1.

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 No	Code Section(s) to be Added/Amended/Repealed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 <i>If yes, departmental Chief Information Officer must sign.</i>	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 Management 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

STATE BOARD OF EQUALIZATION

Fiscal Year 2012-13

Department of Justice (DOJ) Billable Services Budget Augmentation

A. Proposal Summary

This proposal requests an augmentation of \$678,000 (General Fund) for FY 2012-13 and ongoing to support the Board of Equalization total Department of Justice (DOJ) billable services budget at a \$2.2 million level. The DOJ Legal Services Budget provides critical resources necessary to effectively litigate the growing and increasingly complex tax and fee related damage claims being made against the State of California in lawsuits. BOE estimates that the minimum potential impact on revenues is approximately \$37 million. Successful litigation of several of these cases will also protect California revenues into the future. The potential risk factor for the proposal is approximately 54.5:1.

B. Background

By statute, the Department of Justice must represent BOE on a majority of cases, unless a conflict of interest is present. BOE is aware of approximately 13 larger cases and 37 ongoing smaller cases that will need to be represented by DOJ in FY 2012-13, including trials in two very significant lawsuits involving tens of millions of dollars. FY 2012-13 will see the beginning of the on-line and out-of-state retailer litigation, which will surface even if federal or state legislation is passed. Resources for DOJ representation in this litigation were not included in BOE's FY 2012-13 Budget Change Proposal per Department of Finance direction.

Under the general direction of the BOE Chief Counsel, BOE's Legal Department furnishes legal services to the elected Board, Executive Director, and the staff of the BOE with respect to the BOE's actions. The Department's Litigation Division advises and represents the BOE in tax and fee litigation. In this capacity, while a Deputy Attorney General generally will be counsel of record, Legal Department attorneys work closely with assigned Deputy Attorney Generals as the tax and substantive law experts in tax refund and other lawsuits in order to ensure that the BOE's positions are accurately and persuasively presented in court while also adequately representing the BOE.

If this augmentation is not provided, BOE believes that there is a substantial likelihood that the DOJ billings will go over budget in FY 2012-13, necessitating a deficiency request.

C. State Level Considerations

The BOE collects taxes and fees that provide approximately 35.6 percent of the annual revenue for state government and essential funding for counties, cities, and special districts. The BOE administers the state's sales and use taxes, fuel, alcohol, tobacco, and other taxes and collects fees that fund specific state programs, which, in FY 2009-10, produced \$50.7 billion for education, public safety, transportation, housing, health services, social services, and natural resource management.

D. Justification

The BOE will be requiring increased expenditures of legal fees concerning several complex cases in FY 2012-13 based on information available to BOE at this time including the following:

- A very large consolidated sales and use tax case involving tens of millions of dollars will go to trial, likely requiring two full-time Deputy Attorney Generals a year of preparation.
- Another tax refund matter will be argued in the Supreme Court, requiring substantial preparation time.
- Several other major statewide cases also will be very active, including both state-assessed property tax cases and local tax cases.
- Litigation work as the result of AB 155 involving the on-line and out-of-state retailer nexus issue where at least another \$200 million of annual general tax revenues is at stake.
- The *Nortel* decision will generate additional litigation.

It is important to note that many of the lawsuits pending against the Board do not specify the damages requested; and some of the lawsuits pending have potential precedential impact for the State of California.

The potential minimum revenue at risk is approximately \$37 million. Actual revenues at risk are more likely in the hundreds of millions of dollars. In order to devote the substantial time and resources needed to aggressively defend the state against such lawsuits, BOE is requesting that our DOJ Legal Services Budget for FY 2012-13 be augmented by \$678,000 (GF).

Failure to adequately fund DOJ will result in legal work products that are either untimely or below the highest standards of legal representation, which could result in future tax revenue loss if lawsuits are not aggressively defended. Denial of this proposal will increase the financial risks to the BOE, and to General Fund and Special Funds programs. If funding is not provided, litigation may not occur timely or effectively and/or BOE may be forced to approach DOF with a deficiency request for the additional funding in FY 2012-13. In the event that BOE does not spend its entire DOJ Legal Services Budget, any savings will automatically revert back to the General Fund.

E. Outcomes and Accountability

The Legal Department keeps detailed records of each lawsuit filed against the Board, the attorney or attorneys assigned to each such lawsuit, the damages or refunds sought, and the ultimate outcome of each such lawsuit. Therefore, records will be available on a long-term basis with respect to the number of lawsuits filed against the Board, the number of lawsuits handled by each BOE/DOJ attorney, the amounts of money at issue, and DOJ's success rate in defending the state in these lawsuits. This data will provide full accountability with respect to the funding requested and expenditures incurred for each case.

F. Analysis of All Feasible Alternatives

Alternative 1 – Augment BOE’s budget by \$678,000, bringing BOE’s total DOJ billable services budget to \$2.2 million to provide DOJ critical resources to effectively litigate on behalf of BOE and the State of California.

This alternative requests a budget augmentation of \$678,000 to properly fund DOJ with the resources to litigate.

Pros:

- Protects an estimated \$37 million in revenues at stake, as well as potentially hundreds of millions in future state and government revenues at risk, due to tax refund and related damage claims filed against the state.
- Mitigates financial risks and/or financial losses to the State’s General Fund.
- Will protect against the significant revenue loss to the State’s General Fund that would occur if these cases are not effectively litigated.
- Significantly reduces the potential for judgments against the BOE and the State of California as a result of an omission or error of fact or law.
- Provides adequate funding to defend costly litigation.
- Prevents the long-term effects of underfunding and resulting BOE requests for deficiency funding on an ongoing basis, which would not be an effective use of BOE and DOF resources.

Cons:

- Requires expenditures of \$678,000 to fund estimated DOJ expenditures.

Alternative 2 – Augment BOE’s budget by \$472,000 to maintain current DOJ funding level of \$1,994,000.

This alternative requests \$472,000 in funding in order to maintain DOJ funding at its current level of \$1,994,000. This puts BOE and DOF at risk of untimely and ineffective litigation, and potentially making a deficiency request to DOF.

Pros:

- No additional funding beyond FY 2011-12 DOJ funding levels is needed.
- Ensures the majority of the litigation work will be funded.

Cons:

- Possible deficiency request if BOE overspends in this category.
- The hours required to litigate these cases could potentially leave BOE with a substantial shortfall in funding necessary to meet current and projected future litigation demands.

Alternative 3 – Do nothing.

BOE’s current budget of \$1,522,000 remains and BOE does not receive additional funding for DOJ litigation work.

Pros:

- No additional funding needed.

- No immediate fiscal impact to General Fund or Special Funded Tax Programs.

Cons:

- Will not protect an estimated \$37 million in revenues at stake, as well as potentially hundreds of millions in future state and government revenues at risk, due to tax refund and related damage claims filed against the state.
- Will not mitigate financial risks and/or financial losses to the State's General Fund.
- Will not protect against the significant revenue loss to the State's General Fund that would occur if these cases are not effectively litigated.
- Will not significantly reduce the potential for judgments against the BOE, and the State of California.
- May result in significant revenue loss to the State's General Fund, as well as Special Funds programs, if these cases are not effectively litigated. If these cases are not adequately defended, sources of future revenue will not be protected, and tax revenue streams may be lost or materially reduced.
- A deficiency request is almost certain.
- The hours required to litigate these cases could potentially leave BOE with a substantial shortfall in funding necessary to meet current and projected future litigation demands.

G. Implementation Plan

Currently BOE is anticipating that 13 larger and 37 smaller cases will go to trial or otherwise be resolved in FY 2012-13. These cases will require the support of DOJ.

H. Supplemental Information

- NONE FACILITY/CAPITAL COSTS EQUIPMENT CONTRACTS
 OTHER

I. Recommendation

Alternative 1 is recommended. This alternative would augment BOE's budget by \$678,000 to fund current DOJ tax refund litigation. By providing these additional resources to fund BOE's contract with DOJ, the state will be able to litigate and protect over \$37 million revenues, as well as potentially hundreds of millions in state and local government tax revenues. Moreover, successfully litigating the cases of the present will also further protect California revenues into the future.

Fiscal Summary
(Dollars in thousands)

SFL No. 2	Proposal Title DOJ Billable Services Budget Augmentation			Programs 15-County Assessment Standards, 30-Sales and Use Tax, and 45-Cigarette and Tobacco Product Tax Programs		
Personal Services		Positions			Dollars	
	CY	BY	BY + 1	CY	BY	BY + 1
Total Salaries and Wages ¹	0.0	0.0	0.0			
Salary Savings	-0.0	-0.0	-0.0			
Net Total Salaries and Wages	0.0	0.0	0.0			
Total Staff Benefits ²						
Salary Savings						
Net Total Staff Benefits						
Distributed Administration						
Total Personal Services	0.0	0.0	0.0			
Operating Expenses and Equipment						
General Expense						
Distributed Administration						
Printing						
Communications						
Postage						
Travel-In State						
Travel-Out of State						
Training						
Facilities Operations						
Utilities						
Consulting & Professional Services: Interdepartmental ³					\$678	\$678
Consulting & Professional Services: External ³						
Data Center Services						
Information Technology						
Equipment ³						
Other/Special Items of Expense: ⁴						
Total Operating Expenses and Equipment					\$678	\$678
Total State Operations Expenditures					\$678	\$678
Fund Source		Item Number				
		Org	Ref	Fund		
General Fund	0860	001		0001	\$678	\$678
Special Funds ⁵						
Federal Funds						
Other Funds (Specify)						
Reimbursements	0860	001		0995		
Total Local Assistance Expenditures						
Fund Source		Item Number				
		Org	Ref	Fund		
General Fund						
Special Funds ⁵						
Federal Funds						
Other Funds (Specify)						
Reimbursements						
Grand Total, State Operations and Local Assistance					\$678	\$678

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

Supplemental Information

(Dollars in thousands)

BCP No.	Proposal Title
2	DOJ Billable Services Budget Augmentation

Equipment	CY	BY	BY +1
Standard Complement			
Total			

Consulting & Professional Services

Interdepartmental consulting - DOJ Litigation Services		\$678	\$678
Total		\$678	\$678

Facility/Capital Costs

Total			

One-Time/Limited-Term Costs Yes No

Description	BY		BY +1		BY +2	
	Positions	Dollars	Positions	Dollars	Positions	Dollars
Total	0.0		0.0		0.0	

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
Total	0.0		0.0		0.0	

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	