

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 10/20)

Fiscal Year 2021-22	Business Unit 7730	Department Franchise Tax Board	Priority No. 3
Budget Request Name 7730-025-BCP-2021-A1		Program 6300	Subprogram Click or tap here to enter text.

Budget Request Description
 Increasing Litigation Costs

Budget Request Summary

The Franchise Tax Board (FTB) requests an augmentation of \$2,000,000 to its litigation budget with the Attorney General's (AG) Office to defend against increasing tax refund lawsuits for the 2021-22 fiscal year. FTB has continued to see increased litigation efforts with very complex tax matters. FTB is seeking this increase to ensure we can adequately protect the state's interest in these cases.

Requires Legislation <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Code Section(s) to be Added/Amended/Repealed Click or tap here to enter text.	
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 Click or tap here to enter text.	Date Click or tap to enter a date.

For IT requests, specify the project number, the most recent project approval document (FSR, SPR, S1BA, S2AA, S3SD, S4PRA), and the approval date.

Project No. Click or tap here to enter text. **Project Approval Document:** Click or tap here to enter text.

Approval Date: Click or tap to enter a 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.

Prepared By <i>Lynn Chau</i>	Date Click or tap to enter a date.	Reviewed By Click or tap here to enter text.	Date Click or tap to enter a date.
Department Director Click or tap here to enter text.	Date Click or tap to enter a date.	Agency Secretary Click or tap here to enter text.	Date Click or tap to enter a date.

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE Dept. of Technology

PPBA Click or tap here to enter text.	Date submitted to the Legislature Click or tap to enter a date.
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A. Budget Request Summary

The Franchise Tax Board (FTB) requests an augmentation of \$2,000,000 to its litigation budget with the Attorney General's (AG) Office to defend against increasing tax refund lawsuits for the 2021-22 fiscal year. FTB has continued to see increased litigation efforts with very complex tax matters. FTB is seeking this increase to ensure we can adequately protect the state's interest in these cases.

B. Background/History *(Provide relevant background/history and provide program resource history. Provide workload metrics, if applicable.)*

Over the past ten years, FTB has continued to see more and more litigation arising out of complex laws, non-conformity at the federal level, class action lawsuits and suits by high net worth individuals, among others. As the result, FTB is seeking to augment its litigation budget with the AG's Office in order to defend these lawsuits and protect the interests of the state.

FTB and the AG's Office are aware of the increasingly complex and varied tax refund suits which are being filed against FTB, in which the AG's Office is representing the FTB. The Attorney General's Office has advised FTB that in order to adequately protect the state's interests and defend FTB, FTB needs to increase its budget to cover the expenses associated with the addition of four experienced lawyers and an analyst from the AG Office. The Attorney General's Office has also advised that they anticipate that the staffing will cost \$1.7 million starting in fiscal year 2021-22. Because of the increasing complexity of these cases, expert witnesses are often needed to explain the intricacies to the court hearing the matter. The Attorney General's Office has also advised FTB that it will need a budget for these expert witness fees, which has an estimated annual cost of \$300,000. Hence the request for a budget augmentation of \$2 million.

C. State Level Consideration

The Attorney General is responsible for the majority of FTB's litigation under Article V, Section 13 of the California Constitution. The Attorney General's Office has indicated it will generally undertake the defense on behalf of FTB in these various lawsuits and has requested that FTB provide it with a written assurance that it has the budget resources to pay for those services.

D. Justification

Based on the increasingly complex and varied litigation, FTB needs to augment its litigation budget with the AG's Office as stated above.

These complex cases often involve extensive written and oral discovery which the AG/FTB must respond to. There may also be multiple law and motion matters before the court, which the AG/FTB must vigorously defend. In addition to seeking a refund of tax, many of these lawsuits also seek to recover attorney's fees under the Revenue and Taxation Code or the Private Attorney General doctrine. If FTB were to lose a case, and attorney's fees are awarded against FTB, the court can award fees in excess of \$1 million or more, dependent on the facts and circumstances.

Analysis of Problem

E. Outcomes and Accountability *(Provide summary of expected outcomes associated with Budget Request and provide the projected workload metrics that reflect how this proposal improves the metrics outlines in the Background/History Section.)*

If this budget request is approved, the AG/FTB expects it will be able to successfully defend ongoing litigation matters and avoid having to pay millions of dollars in tax refunds and attorney's fees.

F. Analysis of All Feasible Alternatives

Alternative #1 - Provide an augmentation of \$2,000,000 to support FTB's defense of the State's interests in these increasing number of lawsuit.

This alternative will potentially save the General Fund from multi-million dollar tax refunds, other claims for compensation and substantial awards of attorney's fees.

Alternative #2 – Do not provide additional resources.

The FTB does not have discretionary resources to fund these increased costs. Failure to adequately fund these costs could result in withdrawal from litigation meaning the State is subject to losing multi-million dollar tax refund lawsuits, incurring other claims for compensation and substantial award of attorney's fees or FTB would be required to modify our existing operations to cover the costs or request a mid-year budget augmentation to ensure sufficient funds are available.

G. Implementation Plan

July 1, 2021 - Increase in budget authority.

H. Supplemental Information *(Describe special resources and provide details to support costs including appropriate back up.)*

None.

I. Recommendation

Alternative #1 is recommended. This will allow FTB to have a defense team in place that will protect the interests of the state of California. If FTB is unsuccessful, such litigation could cost California's General Fund millions of dollars and may provide precedence for other taxpayers to challenge California's authority and methods for determining and collecting taxes.

