

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

<b>Fiscal Year</b> 2022-23	<b>Business Unit</b> 7730	<b>Department</b> Franchise Tax Board	<b>Priority No.</b> 1
<b>Budget Request Name</b> 7730-032-BCP-2022-A1		<b>Program</b> 6280	<b>Subprogram</b> 6280010/6280019

**Budget Request Description**  
 Legal Workload Growth

**Budget Request Summary**

The Franchise Tax Board (FTB) requests \$4.64M in General Fund for 16 permanent positions, 10 position upgrades, and unfunded needs for staff salaries in FY 2022-23; \$4.49M in 2023-24 and ongoing to address increased volume and complexity in tax appeal, protest, and litigation workloads.

<b>Requires Legislation</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>Code Section(s) to be Added/Amended/Repealed</b>	
<b>Does this BCP contain information technology (IT) components?</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <i>If yes, departmental Chief Information Officer must sign.</i>	<b>Department CIO</b>	<b>Date</b>

**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.**                      **Project Approval Document:**  
**Approval 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.*

<b>Prepared By</b>	<b>Date</b>	<b>Reviewed By</b>	<b>Date</b>
<b>Department Director</b>	<b>Date</b>	<b>Agency Secretary</b>	<b>Date</b>

**Department of Finance Use Only**

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

<b>PPBA</b>	<b>Date submitted to the Legislature</b>
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## Analysis of Problem

### A. Budget Request Summary

The Franchise Tax Board (FTB) requests \$4.64M in General Fund for 16 permanent positions, 10 position upgrades, and unfunded needs for staff salaries in FY 2022-23; \$4.49M in 2023-24 and ongoing to address increased volume and complexity in tax appeal, protest, and litigation workloads.

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

FTB's Legal Division is organized into four Subject Matter Bureaus: General Tax and Administration, Technical Resources, Multistate and Business Entity, and Litigation and Settlement. The General Tax Administration and Procedure Bureau is divided into two bureaus: The General Tax Bureau, and Tax Administration and Procedure Bureau, the latter of which handles the largest volume of tax appeals for the department. The Technical Resources Bureau provides legislative and legal ruling advice. The Multistate and Business Entity Bureau is divided into the Multistate Tax Bureau, and Business Entity Tax Bureau, which also handle tax appeals as well as docketed protest case work. The Litigation and Settlement Bureau is divided into the Litigation Bureau, which represents the department in personnel matters, general counsel issues, and assists the Attorney General in tax litigation as well as bankruptcy matters; and the Settlement Bureau, which negotiates settlements of disputed tax matters including those on appeal or under protest.

The Legal Division represents FTB in appeals before the Office of Tax Appeals (OTA) and administers FTB's Docketed Protest program. Taxpayers have statutory rights to file protests of proposed assessments issued by FTB's Audit Division and to file appeals of disputed determinations of taxes to the OTA. The Revenue and Taxation Code provides authority for taxpayers to file administrative appeals from, among other things, protest determinations from deficiency assessments or denial of claims for refund by the FTB (Rev. & Tax Code sections 18533, 19006, 19041, 19042, 19043.5, 19045, 19085, 19104, 19141.6, 19324, 19331, 19343 and 21013). Appeals and protests are mandatory workloads for the Legal Division.

**Increased Workloads:** Since OTA's inception, FTB has received a more than 50% increase in the number of income tax appeals; this increase is expected to continue. In January of 2021, FTB, at OTA's request, adopted a new procedure simplifying the filing of an appeal that has also increased FTB's workloads resulting in insufficient staffing levels to manage the appeals inventory.

**Enhanced Complexity:** There is increasing complexity in matters pending before the OTA and matters in docketed protest. Additionally, novel constitutional arguments and class action lawsuits brought against the FTB in California Superior Court, Federal Court, and other-state courts, have caused additional complexities. As a result, the Legal Division needs higher level attorney positions to preserve taxpayers' rights to a timely appeal and to address developing and complex issues with appropriately experienced staff.

**Insufficient Salary Funding:** FTB's legal division is predominantly composed of staff who have a number of years of state service and are paid at the highest salary level for their classification. Over the last several years, to balance salary costs with the budget, the division has kept vacancies open longer than the three month hiring period to ensure all salaries for existing staff are covered within the existing budget. FTB reviewed the salaries paid to legal staff and compared this to the budgeted funds to cover these salaries. FTB found these positions are funded at first or mid step, but many of the staff in the positions are paid at the top step creating an ongoing unsustainable funding gap.

**Resource History**  
(Dollars in thousands)

<b>Program Budget</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>
Authorized Expenditures	21,627	23,795	25,510	27,077	27,787
Actual Expenditures	22,467	23,962	26,229	27,567	25,931
Revenues	-	-	-	-	-
Authorized Positions	149.0	150.0	152.0	154.0	153.0
Filled Positions	141.9	141.7	139.1	142.3	144.4
Vacancies	7.1	8.3	12.9	11.7	8.6

**C. State Level Consideration**

FTB is responsible for administering the income tax program on behalf of the State of California. California's income tax program is a voluntary-based program relying on taxpayers to correctly self-report their income tax. Through these efforts, FTB collects approximately 82 percent of the General Fund revenue, equating to \$170.2 billion; and processes 25.9 million returns annually.<sup>1</sup>

FTB administration of California's income tax laws is facilitated by a committed focus to fulfilling FTB's Strategic Plan. Within the Strategic Plan, FTB's Mission is "to help taxpayers file timely and accurate tax returns, and pay the correct amount to fund services important to Californians". To accomplish this mission, FTB established four Strategic Goals and Strategies, and has proven successful by considering them while maintaining our Foundational Principles and Values. This request supports two of FTB's Strategic Goals and Strategies - Effective Compliance and Operational Excellence.

**Goal 2: Effective Compliance** states the FTB will "Fairly administer the law to ensure taxpayers file and pay the correct amount". The appeal and protest processes play a vital role in ensuring that taxpayers file timely returns and pay the correct amount of tax.

- Strategy 2.2: Improve data, information, and knowledge sharing with the tax community and government partners.
- Strategy 2.3: Improve case selection and timeliness in all compliance programs.

**Goal 4: Operational Excellence** states the FTB will "Optimize our processes, products, services, and resources to better serve our internal and external customers." FTB works with the OTA to process appeals. In order to provide the level of service to both OTA and taxpayers, FTB must ensure it has adequate resources.

Strategy 4.1: Manage budgeted resources at the enterprise level and use performance metrics to meet short-and long-term goals.

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<sup>1</sup> Revenue figures based on the 2020-21 Cash Report reported in the Department of Finance's July 2021 Finance Bulletin. Due to the filing extension of April 15, 2020 to July 2020, the total revenue collected was higher than previous years.

## D. Justification

FTB is requesting resources to be able to address the workload increases due to the change in processes and complexity of cases received. If FTB is unable to provide adequate staffing to handle this increasing workload, the fair and timely consideration of income tax appeals will suffer, jeopardizing taxpayers' rights to a timely resolution. These delays will frustrate the Legislature's intent in establishing the OTA (Chap. 16, sec. 2, Laws 2017 [AB 102]) and will result in the failure to meet case deadlines, creating a revenue impact to the General Fund. Failure to address novel arguments on constitutional law and class action status will result in devastating adverse court decisions invalidating California tax laws. Finally, the additional funding requested to cover existing salary levels will allow the division to hire staff quickly and cover position upgrade costs allowing for the appropriate classification levels to address existing and emerging complex issues and support suitable levels of service to FTB staff and external partners.

### **Increased Workloads**

The OTA appeal workload and the docketed protest workloads are mandatory workloads. Taxpayers are entitled to protest the results of an audit and to a timely appeal before the OTA.

Effective January 1, 2021 FTB includes Form 1037 *Request for Appeal Before the Office of Tax Appeals* with every FTB notice provided to a taxpayer with appeal rights. At the request of OTA, the form was developed to ease the statutory right to the appeal process for taxpayers. Since March 2021, and as a result of the new form, the OTA has reported more than a 40% increase in the number of appeal requests received. OTA estimates valid appeals will continue to increase significantly due to the recent publication and FTB anticipates up to a 40% increase in valid appeals during Fiscal Year 2021-22 in correlation to OTA's increase.

The Tax Administration and Procedure Bureau works approximately 85% of appeals received from OTA, including the recent increased volume of appeals. In the past, staff were able to absorb the initial increase in workloads observed when OTA was established by filing requests for deferral and assigning appeals to staff in other bureaus who primarily focus on docketed protests; however, these are no longer sustainable options to continue. The new form creates a need for additional staff in order to process appeal cases in a timely manner.

The increased appeals workload is coming in at all complexity levels. The lowest complexity subject matter areas are worked by the bureau's Legal Analysts. In addition to working their own low complexity issue appeals, the Legal Analysts in the Dispute Management Section provide support to approximately 50% of the appeals worked by the Tax Counsels. The support offered by the Legal Analysts include ordering and interpreting federal tax information from the Internal Revenue Service for use in appeals, providing lower complexity audit computations for liability adjustments made during appeal, and generating pro forma returns to demonstrate tax computations to taxpayers on appeal.

The remaining appeals worked by the bureau encompass low, medium, and high complexity appeals which are worked by Tax Counsels, Tax Counsel IIIs, and Tax Counsel IVs, respectively.

### **Tax Administration and Procedure Bureau**

*Assistant Chief Counsel – One permanent position*

*Tax Counsel IV – Two permanent positions*

*Tax Counsel III – Three permanent positions,*

*Tax Counsel – Three permanent positions*

*Legal Analyst – One permanent position*

### **General Tax Bureau**

*Tax Counsel III – Two permanent positions*

The additional Tax Counsel, Tax Counsel III, Tax Counsel IV, and Legal Analyst positions are necessary work and resolve the increase in appeals from OTA.

Under the existing General Tax Administration and Procedure Bureau, FTB will create a new bureau requiring an additional Assistant Chief Counsel. The current Assistant Chief Counsel of the Tax Administration and Procedure Bureau supervises 29 direct reports; adding eight new attorneys further exacerbates an already existing span of control issue. The new positions must be assigned to this bureau as the increase in appeals falls under the bureau's subject matters and specialized knowledge. Authorizing this position ensures the Assistant Chief Counsel will train and develop employees as well as assess the effectiveness of employees which is expected of every supervisor. The addition of an Assistant Chief Counsel will reduce the span of control and allow the managers to effectively lead, coach, and support their staff.

### **Technical Resources Bureau**

*Legal Secretary – Two permanent positions*

*Staff Services Analyst – Two permanent positions*

The two legal secretaries will provide administrative support in processing additional appeal workload and preparing final documents. The positions will proofread, edit, and prepare exhibit documents for briefs. The historical increase in the appeal workload from OTA's inception created the need for additional secretaries so appeals are correctly prepared and filed promptly.

The two staff services analysts will complete the new appeal intake process from the OTA. The positions will review and assign appeals to the appropriate bureaus in the Legal Division, process and respond to correspondence, and assist with finalizing completed appeals.

If the requested position authority and funding are denied, and alternatives are not provided, the Legal Division's ability to timely meet its obligations will be adversely affected to the detriment of the State and taxpayers. The result would likely be noticed in the timing of payments of tax rightly owed to the state and loss of cases.

### **Enhanced Complexity**

As noted below, FTB has seen an increase in complex issues for research and resolution both for cases pending before the OTA and for technical issues needing guidance.

OTA has established many complex procedural changes to the appeals process since its inception. This has increased the average appeal time by 35 hours for each case. New complexities include a 30% reduction in the amount of time FTB has to file its opening brief, new evidentiary requirements, and additional prehearing conferences and briefings.

FTB now has sixty days to complete the following: create case file; perform initial analysis and review of case issues; and write and file an opening brief. The sixty day period for completing these tasks is a reduction from the ninety days allowed under the BOE's appeal process. Additional communication with the taxpayer to receive a copy of the jurisdictional document, constrains time allotted for brief preparation, and may result in FTB requesting extensions from OTA and unintentionally delaying the timely resolution of taxpayer disputes.

OTA processes utilize the rules of evidence to assign weight to the evidence provided by the parties. This rule has greatly increased the complexity of resolving appeal cases and requires that attorneys with advanced litigation and rules of evidence knowledge are available for completion or consultation.

When the Administrative Law Judges determine the case is fully developed, it moves either to the hearing process, if requested, or the decision process. The lead Administrative Law Judge orders the parties to submit a prehearing conference statement to summarize their understanding of the issues in the case, the evidence submitted, and the duration of their presentations at the oral hearing. The prehearing conference statement and the prehearing conference were not part of BOE's appeal process, therefore these new requirements add more complex and protracted workloads for FTB's attorney staff and increases the amount of work FTB secretaries must do in editing, formatting, and filing the materials with OTA.

Additionally, OTA has adopted procedures for making cases precedential. In this process, any party can write a memo to request a decision be made precedential or request a decision identified as "pending precedential" by OTA not be made precedential. Designating OTA opinions as precedential is noteworthy as it creates binding authority for FTB as well as OTA. Each case requires an analysis as to the value of publishing the decision as precedential and/or working with opposing counsel who wishes to pursue or not pursue a precedential decision. This process has created new work for FTB's attorneys, the support staff and secretaries that did not exist previously.

Finally, in nonfiler cases pending before OTA, OTA has adopted the procedure allowing taxpayers to present evidence of income and expenses without submitting a tax return during an appeal. FTB continues to take the position that a taxpayer must file a return or show that a return is not required in a filing enforcement case in order to show error in FTB's assessment. OTA's shift creates an additional level of complexity as FTB must audit income and expense information as to accuracy and completeness without a return during an appeal since an audit is not possible during a pending appeal.

FTB would note the following technical issues showing increased complexity:

### **Multistate Tax Bureau**

*Tax Counsel IV – One upgraded position*

*Tax Counsel III – One upgraded position*

The upgraded Tax Counsel III and IV positions will address an increasingly complex allocation and apportionment workload, regulatory and ruling work, and an increasingly complex multistate controversy facing the FTB at the protest, appeal, and litigation level. The primary responsibilities include conducting docketed protest hearings, and drafting appellate briefs in the most complex controversies which includes challenges to California's single sales sourcing regime, market-based sourcing rules, and alternative apportionment methodologies.

### **Business Entity Tax Bureau**

*Tax Council IV – One upgraded position*

The upgraded Tax Counsel IV position will address an increasingly complex income tax workload involving Limited Liability Companies, California incorporation of Sub-Chapter C, S, and K of the Internal Revenue Code, and evolving issues relating to abusive tax avoidance transaction and improper Tax Shelters at the protest, appeal, and litigation level. The primary responsibilities include drafting appellate briefs in the most complex controversies involving partnerships, S-Corporations, and other pass-through-entity tax entities.

### **Litigation Bureau**

*Tax Counsel IV – One upgraded position*

The upgraded Tax Counsel IV position will address an increasingly complex litigation workload and landscape facing the FTB. The primary responsibilities include responding to constitutional challenges to the validity of Proposition 39, constitutional challenges to California's taxation of Trusts, and California's taxation of Regulated Investment Companies. FTB continues to be at the forefront of new legal challenges including: at least three novel class action law suits; challenges to the Single Sales Factor apportionment methodology; and proper sourcing rules of California source income taxable to non-residents. Additionally, we have seen increased complexity in administrative items such as procurement, diversity, remote work, and new HR standards.

### **Technical Resources Bureau**

*Tax Counsel IV – One upgraded position*

The Tax Counsel IV upgraded position will complete the most complex legislative proposals and work with external agencies on inquiries related to legislation of which there is an

increasing volume of proposals. In addition, the Tax Counsel IV will draft the most complex regulatory projects undertaken by the FTB as well as coordinate joint regulatory projects with external agencies.

### General Tax Bureau

*Tax Counsel IV – One upgraded position*

*Tax Counsel III – One upgraded position*

The upgraded Tax Counsel IV and Tax Counsel III positions will address an increasingly complex credits workload. In addition, the positions will concentrate on an increasingly complex landscape on issues such as the Internal Revenue Code (IRC) 1031 like-kind exchanges as well as other technical areas subject to recent (or future) changes in law at either the federal or state levels. FTB foresees both added complexity and additional protests and appeals related to these workloads.

### Tax Administration and Procedure Bureau

*Tax Counsel IV – One upgraded position*

*Tax Counsel III – Two upgraded positions*

The upgraded Tax Counsel IV position will address the increased complexity of nonresident, real estate, and backup withholding workloads. The domestic pass-through entity withholding regulation project creates additional complexities in withholding for domestic pass-through entities and will require work at a higher level for attorneys who work on withholding issues. Additionally, FTB is noting increased complexity in the interest abatement and "doing business" fields.

### Insufficient Salary Funding

**Salary Levels for Senior Classifications:** FTB has a substantial amount of Tax Counsel IV, Attorney V, and Assistant Chief Counsel staff in the maximum salary range. Generally, these positions are funded at the first or mid salary step causing a significant gap in budgeted salaries versus salaries actually paid. FTB does not see this trend changing.

During a study, FTB looked at the basic funding structure for the legal staff. While FTB is not immune to staff seeking new opportunities at their own choice or when they are heavily recruited by California tax firms, for those that choose to pursue careers with FTB and give back to FTB and the State, they tend to reach the last step of their salary range. All attorney positions received prior to 2001-02 (71 percent of existing positions) are funded at the first step of the salary range. The remaining 29 percent of existing positions are funded at the mid-level step of the salary range and consist primarily of Tax Counsel IV positions.

FTB conducted a study from 2016-17 forward and found a substantial amount of senior staff are funded at the maximum salary step.

*Legal Division*

Percentage at Max Range	Tax Counsel	Tax Counsel III	Tax Counsel IV	Attorney V	Assistant Chief Counsel
2020-21	12%	29%	75%	100%	83%
2019-20	5%	26%	69%	59%	62%
2018-19	5%	25%	75%	88%	63%
2017-18	5%	41%	75%	97%	100%
2016-17	22%	35%	72%	100%	78%

As noted, most of these positions are funded at the first step leaving FTB to absorb a large unfunded portion of actual salaries paid to staff. FTB is no longer able to absorb these costs without additional funding. In recent years, FTB has funded these costs by increasing the vacancy rate or time to fill positions. With increasing workloads, and complexities occurring as

well which leads to longer resolution time for cases, FTB can no longer afford to leave positions vacant to fund these unfunded salaries.

To eliminate this funding gap and ensure timely hiring, FTB is asking for \$1.2 million dollars in increased funding.

**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.)*

Approval of this proposal will ensure timely resolution of taxpayer disputes at docketed protest and at appeal, as envisioned by the Legislature when it created the OTA. It will allow staff to dedicate the required attention and legal skills necessary to address the complicated workload handled by FTB's Legal Division and will aid the Department in collecting the correct amount of tax necessary to fund services vital to California.

The management of resources and fiscal oversight received from this proposal will be the responsibility of the Legal Division's Chief Counsel.

PENDING BOARD APPROVAL



## F. Analysis of All Feasible Alternatives

**Alternative 1:** Approve the FTB request of \$4.64M in General Fund for 16 permanent positions, 10 position upgrades, and unfunded needs for staff salaries in FY 2022-23; \$4.49M in 2023-24 and ongoing to address increased volume and complexity in tax appeal and protest workload.

*Pros:*

- Address appeals in a timely manner;
- Decrease interest costs for taxpayers;
- Prevent missed briefing deadlines and increased extension requests;
- Ensure attorneys obtain necessary support staff to conduct business;
- Direct resources to high-priority workloads such as petitions for rehearing, precedential consideration requests, and closing protests;
- Defend FTB's position in appeals and protests to produce the best outcomes for the state and protect the state's revenue in such appeals;
- Distribute work across additional staff at the appropriate classification.

*Cons:*

- Increases FTB's expenditure and allocation from the General Fund.

**Alternative 2:** Approve \$4.64M in General Fund, 5 permanent support staff positions, 10 three-year limited-term Tax Counsel series positions, 1 three-year limited-term Assistant Chief Counsel position, and funding for 10 permanent position upgrades and unfunded salary costs in FY 2022-23; \$4.49M in 2023-24 and 2024-25, and \$2.07M in 2025-26 and ongoing to address increased volume and complexity in tax appeal and protest workload.

*Pros:*

- Temporarily address the current increased inflow of appeals without committing permanent resources;
- Ensure attorneys obtain necessary support staff to conduct business;
- Temporarily address all appeals in a timely manner;
- Temporarily prevents missed briefing deadlines and increased extension requests;
- Temporarily direct resources to high-priority workloads such as petitions for rehearing, precedential consideration requests, and closing protests;
- Temporarily ensure workloads are assigned to the appropriate classification.

*Cons:*

- Increases FTB's expenditure and allocation from the General Fund;
- Requires additional evaluation of appeals levels and a subsequent request for permanent positions in three fiscal years. FTB does not expect volumes to decrease and a future BCP is expected.

**Alternative 3:** Do not approve.

*Pros:*

- No increase of FTB's expenditure and allocation from the General Fund.

*Cons:*

- Increased extension requests and missed deadlines leading to lost revenue;

- Hinders the legislative intent for the creation of OTA;
- Create backlog of work from staff redirection;
- Prevent FTB Legal from providing adequate support to other areas of the Department;
- Increase overtime pay to qualifying staff in order to meet deadlines.

### **G. Implementation Plan**

- June 2022 – Prepare documents to establish permanent positions for approval by the FTB Budget Officer and forward to Department of Finance.
- June 2022 – Department of Finance notifies FTB of position approval.
- July 2022 – Permanent positions are established and FTB begins hiring.

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

None.

### **I. Recommendation**

FTB recommends Alternative 1: Approve \$4.64M in General Fund for 16 permanent positions, 10 position upgrades, and unfunded needs for staff salaries in FY 2022-23; \$4.49M in 2023-24 and ongoing to address increased volume and complexity in tax appeal and protest workloads.

It will accomplish the following:

- Allow for timely administration of income tax appeals, benefiting taxpayers and the state with more timely resolution of tax disputes;
- Prevent missed deadlines and requests for extensions;
- Decrease interest costs for taxpayers;
- Allow staff to work other high priority workloads, such as petitions for rehearing, precedential opinion reconsiderations, regulations, legal rulings, and docketed protests;
- Distribute work across additional staff at the appropriate classification.

**BCP Fiscal Detail Sheet**

BCP Title:

BR Name:

Budget Request Summary

Personal Services

PENDING BOARD APPROVAL



**2022-23 Legal Workload Growth  
Workload Measure**

**Attachment I**

<b>Tax Counsel</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>
Cases Received (Volume)	818	972	1,062	806	984	1,042	1,042	1,042	1,042	1,042	1,042
Avg Cases Prior to New Form (Volume)	-	-	-	-	-	878	878	878	878	878	878
Projected Increase in New Cases Due to New Form	-	-	-	-	-	164	164	164	164	164	164
Average Hours/Case	-	-	-	-	-	122	122	122	122	122	122
Additional Hours Need	-	-	-	-	-	20,008	20,008	20,008	20,008	20,008	20,008
<b>Staff Services Analyst</b>	<b>2016-17</b>	<b>2017-18</b>	<b>2018-19</b>	<b>2019-20</b>	<b>2020-21</b>	<b>2021-22</b>	<b>2022-23</b>	<b>2023-24</b>	<b>2024-25</b>	<b>2025-26</b>	<b>2026-27</b>
New Appeals Received (Volume) <sup>1</sup>	818	1,018	1,133	882	1,059	1,376	1,376	1,376	1,376	1,376	1,376
PIT Appeals Pre-work & Analysis (Hours)	833	1,981	2,081	1,981	2,081	2,624	2,498	2,498	2,498	2,498	2,498
PIT Appeals Creation (Hours)	555	1,110	1,388	1,110	1,328	1,670	1,665	1,665	1,665	1,665	1,665
PIT Research & Analysis (Hours)	185	370	463	367	413	477	555	555	555	555	555
Special Projects (Hours)	93	93	93	93	-	-	278	278	278	278	278
Corporate Appeals Back-up (Hours)	185	-	185	-	-	-	555	555	555	555	555
<b>Legal Secretary</b>											
Appeal Cases <b>Received</b> (Volume) <sup>2</sup>	818	972	1,062	806	984	1,042	1,042	1,042	1,042	1,042	1,042
Appeal Work (Hours)	4,163	4,163	4,625	7,863	7,863	7,863	7,863	7,863	7,863	7,863	7,863
Scheduling Hearings & Conferences (Hours)	925	925	925	1,388	1,388	1,388	1,388	1,388	1,388	1,388	1,388
Document Preparation, Editing, & Correspondence (Hours)	1,388	1,388	925	1,388	1,388	1,388	1,388	1,388	1,388	1,388	1,388
<b>Legal Analyst</b>											
Appeal Case Support (Volume) <sup>3</sup>	409	486	531	403	492	521	521	521	521	521	521
Dispute Management Appeals (Volume) <sup>4</sup>	123	146	159	121	148	156	156	156	156	156	156
Appeals Analysis, Resolution, & Computation (Hours)	6,662	6,766	6,367	6,088	5,627	8,013	8,880	8,880	8,880	8,880	8,880
General Research & Other Duties (Hours)	1,547	1,997	1,555	1,226	729	1,373	2,220	2,220	2,220	2,220	2,220

<sup>1</sup>Intakes all appeals from OTA

<sup>2</sup>Receives workload from attorneys

<sup>3</sup>Reflects a portion of the attorney cases - not additional incoming appeals

<sup>4</sup>Assigned lowest complexity cases from intake desk

Section Title	Classification	Resource Type	Duration	Effective Date	Tasks (workloads)	Total Hours	New Positions Requested	Risks/Impacts (if position(s) not approved)
Legal Division	Assistant Chief Counsel	Permanent	Ongoing	07/01/2022	<p>The Assistant Chief Counsel is the Bureau Director and is required to:</p> <ul style="list-style-type: none"> <li>Organize and direct the activities of the staff in the Bureau to ensure consistent application of the law in protests and appeals before the Office of Tax Appeals</li> <li>Advise legal staff and senior management and helps to formulate policies consistent with the tax laws administered by the bureau</li> <li>Advise programs throughout the Department to ensure consistent application of the law</li> <li>Proactively considers regulations and legislation that may benefit the programs administered by the Department</li> </ul>	1,850	1	<ul style="list-style-type: none"> <li>Large ratio of attorneys to manager (Assistant Chief Counsel) will create a span of control concern and will impact the manager's ability to train and develop new attorneys</li> <li>With the increased number and complexity of appeals, there will be less review, resulting in inconsistent positions on appeal before the Office of Tax Appeals, impacting the programs administered by the Department</li> <li>Programs either not following the law or taking inconsistent positions on the law</li> </ul>
Legal Division	Tax Counsel IV	Permanent	Ongoing	07/01/2022	<p>The Tax Counsel IV position is a senior attorney level position required to:</p> <ul style="list-style-type: none"> <li>Independently represent the Franchise Tax Board in hearings for the most complex cases of precedential significance</li> <li>Determine how the appeal strategy, including developing facts, interpreting &amp; applying the law, and drafting appellate briefs</li> <li>Lead teams addressing technical interpretations of tax law &amp; implementation of new laws</li> <li>Develop legislative proposals, manage regulation efforts, draft formal legal guidance, &amp; advise department executive management</li> <li>Provide support in analyzing, drafting, &amp; presenting pleadings, briefing, &amp; arguments to the Office of the Attorney General at trial in Superior Court</li> <li>Review &amp; approve work of subordinate Tax Counsels on areas of specialization</li> </ul>	3,700	2	<ul style="list-style-type: none"> <li>Other senior attorneys will perform more Lead Attorney reviews and mentorship which delays administration of docketed protests and/or settlements</li> <li>Delayed collection of tax revenue for the state</li> </ul>

2022-23 Legal Workload Growth  
Position Metrics

Attachment II

Section Title	Classification	Resource Type	Duration	Effective Date	Tasks (workloads)	Total Hours	New Positions Requested	Risks/Impacts (if position(s) not approved)
Legal Division	Tax Counsel III	Permanent	Ongoing	07/01/2022	The Tax Counsel III position is a journeyman level attorney position required to: <ul style="list-style-type: none"> <li>Analyze, draft, &amp; argue complex tax cases in administrative appeal hearings before the Office of Tax Appeals</li> <li>Act as lead technical counsel in numerous areas of tax law</li> <li>Provide assistance in analyzing, drafting, &amp; presenting pleadings, briefing, &amp; arguments to the Office of Attorney General at trial in Superior Court</li> <li>Review work of subordinate staff attorneys on areas of specialization</li> </ul>	9,250	5	<ul style="list-style-type: none"> <li>Delayed administration of cases</li> <li>Senior Tax Counsels will increase time working OTA appellate workloads with hard deadlines which decreases annual closure rates of protests &amp;/or settlement matters</li> <li>Delayed collection of tax revenue for the state</li> </ul>
Legal Division	Tax Counsel	Permanent	Ongoing	07/01/2022	The Tax Counsel is an entry level attorney position required to: <ul style="list-style-type: none"> <li>Provide technical counsel of tax law for specific provisions of the California Revenue and Taxation Code</li> <li>Analyze, draft, &amp; argue less complex tax appeal cases in hearings before the Office of Tax Appeals</li> <li>Act as hearing officer in docketed protests</li> </ul>	5,550	3	<ul style="list-style-type: none"> <li>Delayed administration of cases</li> <li>Senior Tax Counsels will increase time working OTA appellate workloads with hard deadlines which decreases annual closure rates of protests &amp;/or settlement matters</li> <li>Delayed collection of tax revenue for the state</li> </ul>
Legal Division	Legal Analyst	Permanent	Ongoing	07/01/2022	The Legal Analyst position is required to: <ul style="list-style-type: none"> <li>Provide case analysis &amp; legal research</li> <li>Write briefs &amp; recommendations for case resolution</li> <li>Draft stipulations, apply law summaries, analyze taxpayer accounts &amp; federal tax information</li> <li>Prepare pro-forma tax returns using Turbo Tax &amp; resolve complex account problems</li> </ul>	1,850	1	<ul style="list-style-type: none"> <li>Delayed administration of cases</li> <li>Senior Tax Counsels will increase time working OTA appellate workloads with hard deadlines which decreases annual closure rates of protests &amp;/or settlement matters</li> <li>Delayed collection of tax revenue for the state</li> </ul>
Legal Division	Legal Secretary	Permanent	Ongoing	07/01/2022	The Legal Secretary position is required to: <ul style="list-style-type: none"> <li>Assist attorneys with preparing &amp; processing of Office of Tax Appeal briefs</li> <li>Prepare case correspondence &amp; confidential settlement communications</li> <li>Provide case document proofreading &amp; editing</li> <li>Schedule hearings, conferences &amp; interested party meetings</li> </ul>	3,700	2	<ul style="list-style-type: none"> <li>Other support staff will perform secretary duties which cause delays with mandatory filing deadlines</li> </ul>



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Legal Division	Staff Services Analyst	Permanent	Ongoing	07/01/2022	The Staff Services Analyst position is required to: <ul style="list-style-type: none"> <li>Analyze new Personal Income Tax (PIT) appeals for compliance with statutory &amp; regulatory requirements</li> <li>Provide guidance to Office of Tax Appeals legal staff concerning jurisdictional, due process, &amp; accounting issues</li> <li>Research, interpret &amp; apply rules &amp; regulations, &amp; policies &amp; procedures</li> <li>Obtain necessary files, forms &amp; notices</li> <li>Conduct Taxpayer Information (System) (TI) &amp; Taxpayer Folder (TPF) research for division attorneys</li> <li>Provide Personal Income Tax (PIT), penalty &amp; interest computations to Legal staff</li> <li>Perform TI transactions to apply correct tax, penalty &amp; interest on appeals</li> </ul>	3,700	2	<ul style="list-style-type: none"> <li>Delayed administration of case workloads</li> <li>Prolonged delays in workloads will decrease annual closure rates of protests &amp;/or settlement matters</li> <li>Delayed intake of appeals will decrease allotted time to file briefs which will cause requests for additional time</li> <li>Legislative goal of timely resolution of appeals will not be met</li> </ul>
						<b>29,600</b>	<b>16</b>	