

STATE OF CALIFORNIA
Budget Change Proposal- Cover Sheet
 DF-46 (REV 03/13)

Fiscal Year 2014/15	BCP No. 7	Org. Code 7730	Department Franchise Tax Board	Priority No. 7
Program Tax Programs			Element N/A	Component N/A

Proposal Title
 Asset Forfeiture Accounts

Proposal Summary

The Franchise Tax Board (FTB) is requesting Budget Act Authority of \$1,000 per fiscal year with provisional language to increase this amount upon approval by the Department of Finance and 30 day notification to the Joint Legislative Budget Committee, which will enable FTB to utilize the funds deposited in our Special Deposit Fund - Asset Forfeiture Accounts. FTB's Criminal Investigation Bureau currently participates in three Asset Forfeiture Programs and our Special Deposit Fund balance is \$325,529 as of July 31, 2013. FTB will use these funds for costs associated with criminal investigation law enforcement activities, such as additional training and equipment. Without Budget Act Authority, we do not have the authority to spend the funds currently in these accounts.

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 No	Code Section(s) to be Added/Amended/Repealed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.

<input type="checkbox"/> FSR <input type="checkbox"/> SPR	Project No.	Date:
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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	Date	Reviewed By	Date
Department Director	Date	Agency Secretary	Date

Pending Board Approval

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS Technology Agency

BCP Type: Policy Workload Budget per Government Code 13308.05

PPBA	Date submitted to the Legislature
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A. Proposal Summary

The Franchise Tax Board (FTB) is requesting Budget Act Authority of \$1,000 per fiscal year with provisional language to increase this amount upon approval by the Department of Finance and 30 day notification to the Joint Legislative Budget Committee, which will enable FTB to utilize the funds deposited in our Special Deposit Fund - Asset Forfeiture Accounts. FTB's Criminal Investigation Bureau currently participates in three Asset Forfeiture Programs and our Special Deposit Fund balance is \$325,529 as of July 31, 2013. FTB will use these funds for costs associated with criminal investigation law enforcement activities, such as additional training and equipment. Without Budget Act Authority, we do not have the authority to spend the funds currently in these accounts.

B. Background/History

Asset Forfeiture Programs encompass the seizure and forfeiture of assets from individuals and organizations engaged in criminal activities. After codified due process has been given, seized assets are forfeited and converted into currency which is then distributed to law enforcement agencies that participated on the task force. Any federal, state, or local law enforcement agency that directly participates in an investigation or prosecution that results in asset forfeiture may request an equitable share of the net proceeds. Common goals of Asset Forfeiture Programs include:

- Deprive criminals of property used in or acquired through illegal activities.
- Encourage joint operations among federal, state and local law enforcement agencies, as well as foreign countries.
- Protect the rights of the individual.
- Strengthens law enforcement.

In May 2011, the Department of Finance (DOF) approved FTB's request to establish a Special Deposit Fund in order for FTB's Criminal Investigation Bureau to participate in Equitable Sharing Agreements with Federal and State agencies that perform asset forfeitures. FTB participates in the following Asset Forfeiture Programs:

- **United States, Department of Justice (US DOJ)** – Federal law¹ authorizes the Attorney General to share federally forfeited property with participating state and local law enforcement agencies. The exercise of this authority is discretionary and limited by statute. The Attorney General is not required to share property in any case.
- **United States, Department of the Treasury (US DOT)** – Federal law² authorizes the Secretary of the Treasury to share federally forfeited property with participating federal, state, and local law enforcement agencies. The exercise of this authority is discretionary. The Secretary of the Treasury is not required to share property in any case.
- **California, Department of Justice (CA DOJ)** – State laws³ govern seizure/forfeiture of property and the authority of law enforcement agencies to seize property. State law also provides for the distribution of funds, provisions for audit, and the publishing of an Annual Report by the CA Attorney General.

¹ 21 U.S.C. § 881(e)(1)(A) and (e)(3), 18 U.S.C. § 981(e)(2), and 19 U.S.C. § 1616a.

² 18 U.S.C. § 981(e), 19 U.S.C. § 1616a(c) and 31 U.S.C. § 9703 (a)(1)(G) and 9703(h)

³ Health and Safety Code (HSC) §11469 through 11493

Analysis of Problem

Each program requires a separate account with distinct fund details within the Special Deposit Fund. The specific fund details are:

Fund Code	Account
0942 255	US DOJ Asset Forfeiture Account
0942 256	US DOT Asset Forfeiture Account
0942 257	CA Asset Forfeiture Account

C. State Level Considerations

This proposal supports FTB's mission to fairly and effectively administer the State's tax system. The FTB mission is "to provide the services and information to help taxpayers file accurate and timely tax returns and pay the proper amount owed. To accomplish this mission, we develop knowledgeable and engaged employees, administer and enforce the law with fairness and integrity, and responsibly manage the resources allocated to us." This proposal also supports FTB's Strategic Plan Goals for Effective Enforcement and Operational Excellence.

D. Justification

FTB's Criminal Investigation Bureau participates on several Federal, State, and Local task forces to investigate suspected refund fraud, failure to file tax returns and the filing of false or fraudulent tax returns. The program's efforts play a major role in bringing individuals and business entities involved in the underground economy into compliance with the California tax laws and, in turn, reducing the tax gap. FTB's Criminal Investigation Bureau has entered into Equitable Sharing Agreements with the US Department of Justice, US Department of Treasury, and the CA Department of Justice. FTB participates in these Asset Forfeiture Programs as a second tier agency. As a second tier agency, FTB is not responsible for doing the civil asset forfeiture proceeding nor is FTB responsible for storing or disposing of any assets. Participation in these task forces allows FTB to receive an equitable share of assets seized in criminal activities in which FTB provided assistance.

Per the Equitable Sharing Agreements FTB has signed, equitably shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency. Shared resources shall not be used to replace or supplant the resources of the state or local law enforcement agency. The recipient agency must benefit directly from the sharing. In determining whether supplantation has occurred, the US Department of Justice and the US Department of Treasury will examine the law enforcement agency's budget as a whole and allow agencies to use equitable sharing funds for any permissible purpose as long as shared funds increase the entire law enforcement budget. The US Department of Justice and the US Department of Treasury may terminate sharing with law enforcement agencies that are not permitted by their governing authorities to benefit directly from equitable sharing.

All funds FTB receives from participation in these Asset Forfeiture Programs are kept and accounted for separately from the General Fund. As of July 31, 2013, the current balances for each of the accounts are provided below:

Fund Code	Account	Balance
0942 255	US DOJ Asset Forfeiture Account	\$ 41,241.04
0942 256	US DOT Asset Forfeiture Account	\$279,995.39
0942 257	CA Asset Forfeiture Account	\$4,293.05
Total		\$325,529.48

Analysis of Problem

FTB is requesting Budget Act Authority of \$1,000 per fiscal year with provisional language to increase this amount upon approval by the Department of Finance and 30 day notification to the Joint Legislative Budget Committee, which will enable FTB to utilize account funds. The following provisional language would be included in the 2014/15 budget bill under FTB's main appropriation item (7730-001-0001):

Upon approval of the Director of Finance, the amount available for expenditure in this item may be augmented by the amount of any additional resources available in the Special Deposit Fund. Any such approval shall be accompanied by the approval of a spending plan submitted by the Franchise Tax Board providing a listing of intended purchases. Any augmentation shall be authorized no sooner than 30 days following the transmittal of the approval to the Chairperson of the Joint Legislative Budget Committee or not sooner than whatever lesser time the chairperson of the joint committee, or his or her designee, may determine.

If Budget Act Authority is not established, FTB will be unable to spend the funds in these accounts and the funds will sit idle. Funds are expected to be expended as they are received and US DOT guidelines state the funds may not be retained longer than two years.

Per the Equitable Sharing Agreements FTB has signed, permissible uses of Asset Forfeiture funds are for costs associated with criminal investigation law enforcement activities including:

- **Law enforcement training** – The training of investigators, prosecutors, and law enforcement support personnel in any area that is necessary to perform official law enforcement duties.
- **Law enforcement equipment and operations** – The purchase or lease of body armor, firearms, radios, cellular telephones, computer equipment, software to be used in support of law enforcement purposes, vehicles (e.g., patrol vehicles, surveillance vehicles), electronic surveillance equipment, uniforms, travel, transportation, supplies, leasing or purchase of other types of equipment that support law enforcement activities. Forensic labs and equipment and related training and certification expenses are also permissible.
- **Law enforcement facilities and equipment** – The costs associated with basic and necessary facilities, their construction, updating, remodeling, furniture, safes, file cabinets, telecommunications equipment, etc., that are necessary to perform office law enforcement duties.
- **Asset accounting and tracking** – The costs associated with the accounting, auditing, and tracking of revenues and expenditures of equitable shared cash, proceeds, and tangible property.

Authorized expenditures will follow procurement standards and rules established by the Department of General Services, the State Administrative Manual, and the Public Contract Code.

E. Outcomes and Accountability

Reporting requirements have been established to ensure effective management, promote public confidence in the integrity of the Equitable Sharing Program, and protect the Asset Forfeiture Program against potential waste, fraud, and abuse. The FTB Asset Forfeiture Coordinator will be responsible for ensuring compliance with all reporting and audit requirements.

Standard accounting procedures and internal controls (e.g., tracking share requests and receipts, electronically depositing shares (US DOJ), restrictively endorsing checks upon receipt (US DOT), depositing shares into a separate revenue account or accounting code) have been implemented to track equitably shared monies. FTB's Fiscal Accounting Section monitors the asset forfeiture funds. In addition, all expenditures from the Special Deposit Fund will be posted to FTB's year-end financial statements.

State and local law enforcement agencies that receive federally shared cash and proceeds are required to perform an audit consistent with the Single Audit Act Amendments of 1996 and OMB Circular A-133,

Analysis of Problem

Audits of States, Local Governments and Non-Profit Organizations. Per those guidelines, agencies that expend more than \$500,000 in federal funds (e.g., Justice and/or Treasury forfeiture funds, grants, cooperative agreements) per fiscal year are required to conduct an external audit. In such circumstances, an independent accounting firm may be contracted to perform the required audit. Copies of this audit must be retained by the law enforcement agency. Forfeiture funds may be used to pay the fees associated with conducting such audits.

State and local law enforcement agencies shall retain for a period of at least five years all documents and records pertaining to their participation in the DOJ Equitable Sharing Program.

F. Analysis of All Feasible Alternatives

Alternative 1 – Provide Budget Act Authority of \$1,000 per fiscal year with provisional language to increase this amount upon approval by the Department of Finance and notification of the Joint Legislative Budget Committee, which will enable FTB to utilize the funds deposited in our Special Deposit Fund - Asset Forfeiture Accounts. FTB will use these funds for costs associated with criminal investigation law enforcement activities, such as additional training and equipment.

Alternative 2 – Provide Budget Act Authority up to \$500,000 per fiscal year with a post reporting requirement to the Department of Finance and the Joint Legislative Budget Committee. At the end of each fiscal year, FTB will submit a report providing details on all expenditures from the Special Deposit Fund – Asset Forfeiture Accounts.

Alternative 3 – Provide Budget Act Authority up to \$500,000 per fiscal year with a 30-day notification to the Department of Finance and the Joint Legislative Budget Committee on planned expenditures from the Special Deposit Fund – Asset Forfeiture Accounts. This reporting allows the Department of Finance and the Joint Legislative Budget Committee an opportunity to review planned expenditures before they are made.

Alternative 4 – Provide Budget Act Authority in FY 2014/15 of \$325,529 to allow FTB to use the funds deposited in our Special Deposit Fund – Asset Forfeiture Accounts. FTB will use these funds for the expenses associated with FTB’s Criminal Investigation Bureau.

Alternative 5 – Do not provide Budget Act Authority. FTB will not be able to spend the funds already deposited in our Special Deposit Fund – Asset Forfeiture Accounts. Funds are expected to be expended as they are received and may not be retained longer than two years.

G. Implementation Plan

- On July 1, 2014, Budget Act authority of \$1,000 is established to use the funds deposited in our Special Deposit Fund - Asset Forfeiture Accounts.
- After July 1, 2014, FTB will submit a spending plan to the Department of Finance providing a listing of intended purchases.
- After the Department of Finance’s approval and 30 day notification to the Joint Legislative Budget Committee of FTB’s spending plan, expenditure requests from the revenue accounts can be submitted to the Asset Forfeiture Coordinator, or designee. The Chief, or designee, will authorize all expenditures including verifying the permissible use of the funds.
- On the 5th of every month, FTB’s Fiscal Accounting Section will provide the Asset Forfeiture Coordinator a CalStars report, the Asset Forfeiture Fund Listing, for each fund detailing the activity for the prior month. The listing will itemize the expenditures and encumbrances posted during the month. The listing will be used to reconcile the postings on the Asset Forfeiture Program Expenditure Log.

Analysis of Problem

H. Supplemental Information

None Facility/Capital Costs Equipment Contracts Other _____

I. Recommendation

Alternative 1 is recommended. This alternative will provide Budget Act Authority to allow FTB to use the funds deposited in our Special Deposit Fund – Asset Forfeiture Accounts. FTB will use these funds for costs associated with criminal investigation law enforcement activities. Failure to establish Budget Act Authority will result in FTB being unable to spend the funds in these accounts and the funds will sit idle. Funds are expected to be expended as they are received and may not be retained longer than two years.

Fiscal Summary

(Dollars in thousands)

BCP No 7	DATE August 14, 2013	Proposal Title: Asset Forfeiture Accounts	PROGRAM Tax Programs
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	Positions			FY 2013/14	FY 2014/15	FY 2015/16
	CY	BY	BY + 1	CY	BY	BY + 1
Total Salaries & Wages	.0	.0	.0	\$ 0	\$ 0	\$ 0
Total Staff Benefits				\$ 0	\$ 0	\$ 0
Total Personal Services				\$ 0	\$ 0	\$ 0

Operating Expenses and Equipment

General Expense	\$ 0	\$ 0	\$ 0
Printing	0	0	0
Communications	0	0	0
Postage	0	0	0
Travel-In-State	0	0	0
Travel Out-of-State	0	0	0
Training	0	0	0
Facilities Operations	0	0	0
Utilities	0	0	0
Cons & Prof Svs - Interdept'l	0	0	0
Cons & Prof Svs - External	0	0	0
Data Center Services	0	0	0
Information Technology	0	0	0
Equipment	0	0	0
Other/Special Items of Expense /1	0	1	1
Total Operating Expense & Equipment	\$ 0	\$ 1	\$ 1

TOTAL STATE OPERATIONS EXPENDITURES

\$ 0 \$ 1 \$ 1

Fund Source

Item No.

	Org	Ref	Fund			
Special Deposit Fund	7730	001	0942	\$ 0	\$ 1	\$ 1
				0	0	0
				0	0	0
				0	0	0
				0	0	0
				0	0	0
				0	0	0
Totals				\$ 0	\$ 1	\$ 1

Total Local Assistance Expenditures

\$(0) \$(0) \$(0)

Fund Source

Item No.

	Org	Ref	Fund			
				\$ 0	\$ 0	\$ 0
				0	0	0
				0	0	0
				0	0	0
				0	0	0
				0	0	0
Totals				\$ 0	\$ 0	\$ 0

Grand Total, State Operations and Local Assistance

\$ 0 \$ 1 \$ 1

/1 Costs associated with agency law enforcement activities.