

STATE OF CALIFORNIA
Budget Change Proposal - Cover Sheet
 DF-46 (REV 02/20)

Fiscal Year 2021-22	Business Unit 7730	Department Franchise Tax Board	Priority No. 2
Budget Request Name 7730-023-BCP-2021-A1		Program 6280	Subprogram 6280010

Budget Request Description
 Asset Forfeiture Account Increase

Budget Request Summary

The Franchise Tax Board (FTB) requests to increase the Budget Act Authority from \$150,000 to \$740,000, beginning FY 2021-22 and annually thereafter for the Asset Forfeiture Account. FTB's Criminal Investigation Bureau (CIB) will use these funds for costs associated with criminal investigation law enforcement activities, such as additional training and equipment. Per the Equitable Sharing Agreements, these resources cannot be used to replace or supplement any General Fund resources.



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 No	Code Section(s) to be Added/Amended/Repealed	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

Prepared By 	Date 01-20-2021	Reviewed By <i>Rosita Mindermann</i>	Date 01/20/2021
Department Director 	Date 1/20/21	Agency Secretary	Date

Pending Board Approval

Department of Finance Use Only

Additional Review: Capital Outlay ITCU FSCU OSAE CALSTARS 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 to increase the Budget Act Authority from \$150,000 to \$740,000, beginning FY 2021-22 and annually thereafter for the Asset Forfeiture Account. FTB's Criminal Investigation Bureau (CIB) will use these funds for costs associated with criminal investigation law enforcement activities, such as additional training and equipment. Per the Equitable Sharing Agreements, these resources cannot be used to replace or supplement any General Fund resources.

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 participated in an investigation or prosecution that results in asset forfeiture may request an equitable share of the new 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.
- Strengthen law enforcement.

In June 2011, Department of Finance (DOF) approved FTB's request to establish Asset Forfeiture Accounts within the Special Deposit Fund in order to participate in the Equitable Sharing Agreement. In 2014-15, FTB submitted a budget change proposal (BCP) to receive spending authority from the fund. FTB currently participates in the following Asset Forfeiture Programs:

- **United States, Department of Justice (US DOJ)** – Federal law 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 law authorizes the Secretary of the Treasury to share federally forfeited property with participation 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 laws 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.

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 Consideration

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, and enforce the law with fairness and integrity..." This proposal also supports FTB's Strategic Plan Goals for Effective Enforcement and Operational Excellence.

D. Justification

FTB's CIB 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 California's tax laws and, in turn, reducing the tax gap. FTB's CIB 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.

Below are examples of the type of cases that CIB has participated in.

- FTB agents conducted a large scale 2016-2017 refund fraud investigation involving an identity theft ring with international ties to foreign countries. The suspects purchased stolen personal identifying information that was used to apply for credit on line and electronically file returns to obtain fraudulent refunds. To conceal their identities, the suspects operated on the dark net, utilized Bitcoin and other crypto currencies, used encrypted communication and stored information on international servers. Agents made 8 arrests and served warrants at 11 locations that required coordinating over 50 agents from five different state and federal agencies, including the IRS and United States Postal Service. FTB agents seized numerous cell phones and computers from the residences and/or individuals arrested. FTB Computer Forensic Examiners (CFEs) were able to image the electronic devices and extract hundreds of thousands of text messages, images, social media posts and email correspondence that were used as evidence in court to detail the crimes committed and electronically tie the individuals to the theft. A suspect in this ring had previously been convicted of identity theft/fraud.

- An FTB income tax investigation that involved a chiropractor, and suspected tax protestor, failed to file personal income tax returns for the 2012 through 2017 tax years. While conducting a search warrant at the residence in 2018 FTB agents found a cache of weapons which included 26 long guns (12 illegal assault rifles, two silencers, and multiple illegal high capacity magazines). The cache of firearms was found in a secret room, located behind a false wall within a closet of a locked bedroom. FTB agents also found handguns hidden in two holsters magnetically attached to the bedframe in the master bedroom. At the time of the search warrant, DOJ records showed the subject had only three handguns registered to him.
- FTB agents conducted a tax fraud investigation that involved a California retailer who filed false personal and corporate returns between 2010 and 2014 underreporting sales from its eight retail locations and international sales made through its Amazon virtual store. The subject was able to conceal his income by redirecting deposits into the bank accounts of his mother and cash paying employees and vendors. During the execution of the search warrant at the residence, FTB agents found more than \$1 million in cash concealed in a suitcase and bags throughout the house. The suspect is currently facing trial.
- FTB agents participated in a joint investigation with a northern California DA's Office and Police Department involving a massage parlor in which the owners were involved in human trafficking. In addition to the subjects pleading to pimping and pandering charges, our participation in the investigation resulted in them also pleading to money laundering and tax fraud charges for filing false personal income tax returns for the 2015 through 2018 tax years. One subject was sentenced to almost three years in state prison, while the second subject was sentenced to over eight years in state prison. The subjects were ordered to pay restitution of over \$1.5 million.
- FTB agents conducted a felony income tax investigation on two subjects involved in the illegal cultivation and distribution of marijuana in northern California. A number of charges were brought against the subjects including, tax fraud, tax evasion, money laundering and conspiracy. Through the course of the investigation in 2019 and 2020, 35 properties, totaling over 1,500 acres, were identified as being purchased by the subjects and used for marijuana cultivation. Based on our training and experience, individuals who own large amounts of properties for the purpose of cultivating marijuana often maintain firearms, employ armed guards, maintain lookouts and conduct counter-surveillance to guard their crops. In this case, while conducting surveillance, law enforcement personnel had multiple encounters with individuals engaged in these types of activities.

Per the Equitable Sharing Agreements, equitably shared funds must be used to increase or supplement the resources of the receiving state or local law enforcement agency. These 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.

FTB has received an equitable share of the funds that have been received by participating in various investigations. The chart below displays the current balance of each account as of July 31, 2020.

Fund Code	Account	Balance
0942 255	US DOJ Asset Forfeiture Account	\$78,960
0942 256	US DOT Asset Forfeiture Account	\$21,923,949
0942 257	CA Asset Forfeiture Account	\$6,376
		\$22,009,285

FTB is requesting Budget Act Authority of \$740,000 per fiscal year with provisional language to increase this amount upon approval by the Department of Finance and 30 day notification in the Joint Legislative Budget Committee, which will enable FTB to utilize additional Special Deposit account funds. The following provisional language would be included in the 2021-22 budget bill under FTB's Special Deposit Fund (7730-001-0942).

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.

Per the Equitable Sharing Agreements, 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 purchases 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 expenditure 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. FTB's 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 equitable 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 shall retain all documents and records pertaining to their participation in the DOJ Equitable Sharing Program for a period of at least five years.

F. Analysis of All Feasible Alternatives

Alternative 1 – Increase the Budget Act Authority from \$150,000 to \$740,000, beginning FY 2021-22 and annually thereafter for the Asset Forfeiture Account including 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 the 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 – Do not provide an increase in Budget Act Authority. FTB's current annual spending authority will remain at \$150,000. This will jeopardize FTB's ability to identify, detect, audit, or prosecute tax criminals as our assets and technology become outdated. Working with outdated equipment presents challenges to our ability to audit criminal's systems and technological devices that provide evidence of criminal activities. Without the increase, FTB would have to submit more frequent requests to increase spending authority hindering FTB's ability to engage in multi-year technology upgrades of our forensic assets.

G. Implementation Plan

- July 2021 - Budget Act Authority of \$740,000 is established.

H. Supplemental Information

None

I. Recommendation

Alternative 1 is recommended.

Approving this alternative will increase the Budget Act Authority from \$150,000 to \$740,000, beginning FY 2021-22 and annually thereafter for the Asset Forfeiture Accounts which will enable FTB to utilize the funds deposited in the Special Deposit Fund. FTB will use these funds for costs associated with criminal investigation law enforcement activities improving the Asset Forfeiture Program without additional requests.

Resource History (Dollars in thousands)

Criminal Investigation Bureau	2015-16	2016-17	2017-18	2018-19	2019-20
Authorized Expenditures	8,155	8,007	8,504	7,911	8,968
Actual Expenditures	8,173	8,123	9,164	8,523	8,135
Revenues					
Authorized Positions	62.0	62.0	61.0	61.0	61.0
Filled Positions	58.9	55.6	56.6	50.1	48.0
Vacancies	3.1	6.4	4.4	10.9	13.0