



**Agenda Item No. 8**  
**February 5, 2014 Meeting**

**DATE:** January 29, 2014  
**TO:** Children and Families Commission of Orange County  
**FROM:** Christina Altmayer, Executive Director   
**SUBJECT:** Approve Proposed Legislative Strategy to Address Board of Equalization Administrative Fees

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**SUMMARY:**

As reported to the Children and Families Commission in November, the rising administrative fees associated with the Board of Equalization (BOE) monitoring and collection of the Proposition 10 tobacco taxes continues to be a concern of the Commission and county commissions throughout the state. Since 2003-04, there has been a significant increase in the administrative fees charged by the BOE for collection and administration of tobacco taxes, including Proposition 10. The Board of Equalization administrative fees have increased from less than 1% to over 3% of annual Proposition 10 revenue. For the fiscal year ended June 30, 2013, the BOE charges were \$15.8 million and are projected to be \$17.6 million for FY 2013/14, a cost of approximately \$1 million to the Children and Families Commission of Orange County. This agenda item requests Commission support and direction regarding development of a permanent legislative remedy to address the increasing BOE fees.

**DISCUSSION:**

The enabling Proposition 10 legislation allows “reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the taxes imposed by Section 30131.2”. This provision allows for BOE to recover its cost, but does not specify or define the cost allocation or the recovery mechanism.

The Department of Finance, in its independent audit report of First 5 California, had previously found that:

*“The BOE does not have written cost allocation (CAP) procedure for program and administrative costs allocated to the various funds it administers...”*

The report further recommended that the BOE is required per applicable government code and the State Administrative Manual to maintain “documentation of cost allocation procedures... with detailed information required for the costs being allocation, allocation methodology, frequency of allocation, and the rationale for the allocation base.”

In 2013, the First 5 Association made a formal request for a cost allocation methodology and other information requested by the Department of Finance’s report. At that meeting, BOE staff agreed to develop and share a Cost Allocation Plan that would document how BOE was determining and calculating the costs for tobacco tax collection and administration. This plan

was sent to First 5 California in early October and then subsequently shared with the First 5 Association and several county commissions for review and analysis. In response to inquiries regarding the costing methodology and analysis, BOE staff explained the plan provided is not the actual cost allocation plan and calculations for a specific fiscal year; rather, narrative explanation of the methodology employed and examples of how the cost allocation methodology is applied. The document provided does not specifically show the actual allocated costs and amounts for a fiscal year and the numbers referenced are for illustration only and cannot be tied and tracked through the document. Given this, it is not possible to either verify the accuracy of the application of the methodology or to determine the allocated costs for the most recent fiscal year. The Board of Equalization does not plan to issue or document the costs annually.

In January, the Commission Executive Director and the Executive Directors of the First 5 Association and First 5 California met with representatives from the BOE to review the cost allocation documents. While the meeting did not result in any agreements related to the reduction of BOE fees, the discussion did provide clarification on the following:

- *BOE fees are likely to increase over time* - The administrative fees are based on the BOE costs for two programs: Cigarette and Tobacco Products Tax Program and Cigarette and Tobacco Products Licensing Program. Collectively, these programs are budgeted at \$34.8 million for FY 2013/14; Proposition 10 funds are budgeted to be billed for approximately 50% of these costs at \$17.6 million. Despite prior indications, BOE does not anticipate any decline in the costs of these programs in the future; furthermore, costs are likely to increase as the State allows the rehiring of positions, eliminates the furloughing of state employees, and allows for future salary increase.
- *BOE charges to Proposition 10 funds are likely to increase significantly if additional tobacco tax increases are approved* - Recent tobacco tax initiatives that have proposed increases in the tobacco tax have included provisions that limit the amount of administrative fees that the BOE may charge on this new revenue. For example, a \$2.50 additional per pack tax that will be directed for cancer research and treatment includes a 1% limit on the BOE administrative cost. BOE staff has indicated that if this new tax was implemented, there would be a significant increase in BOE tobacco tax collection costs and that since there are no legislative restrictions; the increased cost of the programs would be allocated to all eligible revenue sources. This model would likely be replicated in future tobacco tax initiatives.

### **Proposed Action**

Staff requests Commission direction and approval to pursue a permanent legislative limit on the amount of BOE fees that may be charged to Proposition 10 funds. This approach was recently endorsed by the First 5 Association and is also being considered by First 5 California. This approach recognizes that an administrative or operational agreement with BOE is not realistic or within the likely action by the elected BOE. Commission communications

advisor, Curt Pringle will be available for comments and questions at the February Commission meeting.

**STRATEGIC PLAN & FISCAL SUMMARY:**

No funding action is proposed for this item.

**PRIOR COMMISSION ACTIONS:**

- December 2013 – Executive Officer’s Report
- February 2013 - First 5 California/Board of Equalization Administrative Fees

**RECOMMENDED ACTION:**

Receive report on the Board of Equalization’s increasing administrative fees and provide direction to the Commission Executive Director to develop a permanent legislative remedy.

**Contact:** Christina Altmayer