

COL A12		COL A14		COL A15		COL A16		COL A14-A12		CODES
AGY FIN REQ FY 2016-17	POS	AGY AMD REQ FY 2016-17	POS	AGY AMD N/R FY 2016-17	POS	AGY AMD ANZ FY 2016-17	POS	AGY AMD REQ FY 2016-17 OVER(UNDER)	AGY FIN REQ FY 2016-17	
AMOUNT		AMOUNT		AMOUNT		AMOUNT		AMOUNT	AMOUNT	
BUSINESS/PROFESSIONAL REG										79000000
PGM: OFFICE/SEC & ADMIN										79010000
EXECUTIVE DIR/SUPPORT SVCS										79010200
GOV OPERATIONS/SUPPORT										16
EXEC LEADERSHIP/SUPPRT SVC										1602.00.00.00
NONRECURRING APPROPRIATIONS										8000000
LEGAL COSTS - DIVISION OF ALCOHOLIC BEVERAGES AND TOBACCO										8000030
OTHER PERSONAL SERVICES										030000
GENERAL REVENUE FUND										
-STATE										
			350,000			350,000			350,000	1000 1

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AGENCY ISSUE NARRATIVE:  
 2016-2017 BUDGET YEAR NARRATIVE:

IT COMPONENT? NO

Amended 2016-17 Narrative after December 4, 2015

The Department of Business and Professional Regulation, Office of the General Counsel requests \$350,000 of additional Other Personal Services (OPS) budget authority for expenses related to tax litigation cases for the Division of Alcoholic Beverages and Tobacco.

Pursuant to Chapter 210, Chapters 561-565 and Chapters 567-569 of Florida Statutes, the Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco licenses the alcoholic beverage and tobacco industries, collects and audits taxes and fees paid by the licensees, and enforces the laws and regulation of the alcoholic beverage and tobacco industries. Section 561.025, F.S., creates the Alcoholic Beverage and Tobacco Trust Fund and it is to be used to operate the Division of Alcoholic Beverage and Tobacco. Funding is transferred from the Division to the Office of the General Counsel for salaries and benefits and expenses related to attorneys who perform services for the Division.

The Office of the General Counsel is currently engaged in forty tax litigation cases with nearly twenty-five litigants for the Division of Alcoholic Beverages and Tobacco. These cases have been filed in various circuit courts as well as with the Division of Administrative Hearings. The Office of the Attorney General has represented the Department because of the specialized tax litigation experience it possesses.

These tax cases generally regard the interpretation of an appellate decision concerning the taxation of Other Tobacco Products, the determination of whether cigar wraps are categorized as Other Tobacco Products for tax purposes, and whether Florida's tax and surcharge on Other Tobacco Products is constitutional.

Beyond the forty cases being litigated, a particularly well-funded litigant has filed a public records request of substantial size and scope. Considering the size and scope of this request, it remains necessary for the Department to retain the services of an e-Discovery services contractor. Additionally, Departmental staff, in conjunction with the

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POS	AMOUNT	POS	AMOUNT	POS	AMOUNT	POS	AMOUNT	POS	AMOUNT	
										79000000
										79010000
										79010200
										16
										<u>1602.00.00.00</u>
										8000000
										8000030

assistance of software provided by the e-discovery services contractor will produce and redact public records related to the cases. This process could conceivably encompass millions of documents.

The Office of General Counsel has not yet been required to expend resources on e-Discovery services in 2015, as the public records requestor has placed his request in abeyance twice this year. The first abeyance occurred in or around April, 2015, as the parties believed that a legislative solution was possible during the legislative session. Although there was no legislative solution, the requestor remains hopeful for clarifying legislation during the 2016 legislative session. As such, the matter has remained in abeyance. Thus far, no bills resolving the matter have been filed.

Absent legislation and possible settlement during the 2016 legislative session, increased litigation expenses, e-Discovery services, and public record costs are nearly certain going into Fiscal Year 2016-17. Estimated litigation expenses for the Division of Alcoholic Beverages and Tobacco tax cases in Fiscal Year 2016-17:

Office of the Attorney General	\$249,314
e-Discovery Services	\$43,000
Litigation Public Record Production and Redaction	\$57,686
<b>Total</b>	<b>\$350,000</b>

Additional resources are needed to protect the State's interests. The Department's failure to timely respond to the outstanding public records request would result in the award of attorney's fees and costs. The Department's failure to utilize the services of an e-discovery provider would likely increase attorney hours and litigation costs. Moreover, the Department would be at a distinct disadvantage during the litigation phase without the e-discovery resource.

Summary: This is a new issue.

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