TAXABLE YEAR

2012

Deferred Intercompany Stock Account (DISA) and Capital Gains Information

CALIFORNIA FORM

3726

Attach to Form 100 or Form 100W.

Corporation name (distribution recipient)	California corporation number

Part I **Prior Years DISA Information (Cal. Code Regs., tit. 18 section 25106.5-1(b)(8)).** Attach additional sheets if necessary.
Fill out Part I completely to satisfy the annual disclosure requirements. (Complete a **separate** form FTB 3726 for each corporation that received the distribution).

(a) Name of distributor	(b) Year of deferral	(c) Ownership percentage at time of distribution	(d) Current ownership percentage	(e) DISA balance

Part II **Current Year DISA Information.** Attach additional sheets if necessary.

(a) Name of distributor	(b) Percentage of ownership of dividend distributor	(c) Distribution amount	(d) Amount from column (c) paid out of current year E&P	(e) Amount from column (c) paid out of accumulated E&P	(f) Amount from column (c) reducing basis of the distributors stock	(g) Deferred capital gains (current year DISA balance) (column (c) less the sum of columns (d), (e), & (f))

Part III **DISA Capital Gains Recognized This Taxable Year (Cal. Code Regs., tit. 18 section 25106.5-1(f)(1)(B)).** Attach additional sheets if necessary.
Check column (g), Box A if the gain is a short-term capital gain
Check column (g), Box B if partial sale of stock

(a) Name of distributor	(b) Year of deferral	(c) Type of triggering event	(d) DISA balance	(e) Recognition ratio	(f) Amount of capital gain recognized (column (d) x (e))	(g) Box A	(g) Box B
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2 **Short-term DISA capital gains.** Add the amounts in Line 1, column (f) where column (g), Box A is **checked**. Enter here and on Forms 100 or 100W, Side 5, Schedule D, Part 1, line 1, column (f). See instructions	
3 **Long-term DISA capital gains.** Add the amounts in Line 1, column (f) where column (g), Box A is **not** checked. Enter here and on Forms 100 or 100W, Side 5, Schedule D, Part II, line 5, column (f). See instructions	

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FTB 3726 2012

Instructions for Form 3726

Deferred Intercompany Stock Account (DISA) and Capital Gains Information

References in these instructions are to the Internal Revenue Code (IRC) as of **January 1, 2009**, and to the California Revenue and Taxation Code (R&TC).

General Information

In general, for taxable years beginning on or after January 1, 2010, California law conforms to the Internal Revenue Code (IRC) as of January 1, 2009. However, there are continuing differences between California and federal law. When California conforms to federal tax law changes, we do not always adopt all of the changes made at the federal level. For more information, go to **ftb.ca.gov** and search for **conformity**. Additional information can be found in FTB Pub. 1001, Supplemental Guidelines to California Adjustments, the instructions for California Schedule CA (540 or 540NR), and the Business Entity tax booklets.

The instructions provided with California tax forms are a summary of California tax law and are only intended to aid taxpayers in preparing their state income tax returns. We include information that is most useful to the greatest number of taxpayers in the limited space available. It is not possible to include all requirements of the California Revenue and Taxation Code (R&TC) in the tax booklets. Taxpayers should not consider the tax booklets as authoritative law.

Note, as of the date of the publication of this form, there are pending proposed amendments to Cal. Code Regs., tit. 18 section 25106.5-1 that may affect the reporting requirement of this form. For updated information, go to **ftb.ca.gov** and search for **regulation 25106.5-1**.

Cal. Code Regs., tit. 18 section 25106.5-1 provides detailed rules relating to the treatment of intercompany transactions between members of a combined reporting group. These regulations apply to intercompany transactions that occur on or after January 1, 2001. In general, the regulations adopt the treatment of intercompany transactions for federal consolidated return purposes. (Treas. Reg., Section 1.1502-13.) R&TC Section 25106 allows for the elimination of dividend distributions between members of the combined report. Distributions are dividends to the extent that they are paid out of earnings and profits (E&P). Once the current year E&P and accumulated E&P have been depleted, additional distributions will reduce the shareholder's stock basis. Distributions in excess of current year E&P, accumulated E&P, and the shareholder's stock basis, are then treated as a capital gain.

Cal. Code Regs., tit. 18 section 25106.5-1(f)(1)(B) provides that for transactions occurring on or after January 1, 2001, the capital gain may be deferred, but must be tracked in a Deferred Intercompany Stock Account (DISA). Under Cal. Code Regs., tit. 18 section 25106.5-1(b)(8), the balance of each DISA must be disclosed annually on the taxpayer's tax return. The capital gain is deferred until either the distributor or recipient is no longer included in the combined report, or the occurrence of any other triggering event. See Cal. Code Regs., tit. 18 section 25106.5-1(f)(1)(B), for more information. If there is a partial stock sale of the distributor outside of the combined reporting group and the distributor remains in the combined report after the stock sale, then a portion of the DISA balance will be taxable to the extent of the stock sale.

Purpose

Use form FTB 3726, Deferred Intercompany Stock Account (DISA) and Capital Gains Information, to disclose the annual requirements of each DISA balance, and to report the capital gains from a DISA due to the occurrence of a triggering event. Failure to disclose the existing DISA balances for any taxable year may result in current recognition of the capital gain (see Cal. Code Regs., tit. 18 section 25106.5-1(j)(7)). The corporation (distribution recipient) completing this form is the corporation that received the distribution.

When filing a group tax return (see Cal. Code Regs., tit. 18 section 25106.5-11), and there is more than one corporation that has a DISA account, a **separate** form FTB 3726 must be completed for each corporation and attached to Form 100, California Corporation Franchise or Income Tax Return, or Form 100W, California Corporation Franchise or Income Tax Return — Water's-Edge Filers.

If the Franchise Tax Board (FTB) has not contacted the corporation for an audit and the corporation needs to disclose DISA information for a prior taxable year, see FTB Notice 2009-1.

Complete form FTB 3726, Part I and Part II to fulfill the annual DISA disclosure requirements. Complete Part III to report the current year DISA capital gains recognized. **Note:** Taxpayers may elect to recognize the IRC Section 332 liquidation gain over a 60 month period. Attach any additional sheets as needed.

Specific Line Instructions

Part I – Prior Years DISA Information

DISA account balances must be disclosed annually on the taxpayer's tax return. The FTB, at its discretion, may require the amounts of undisclosed DISA accounts to be taken into account in part or in whole in any taxable year the taxpayer fails to properly disclose this information. See Cal. Code Regs., tit. 18 section 25106.5-1(j)(7) for more information.

Column (a) – Name of distributor. The distributor is the corporation that paid the distribution to the recipient.

Column (b) – Year of deferral. Enter the taxable year that the distribution was paid and the DISA was created.

Column (c) – Ownership percentage at time of distribution. Enter the ownership percentage of the distributor when the original distribution was received.

Column (d) – Current ownership percentage. Enter the current taxable year ownership percentage of the distributor.

Column (e) – DISA balance. A DISA balance is the amount of deferred capital gains realized by a recipient for a specific taxable year for each distributor.

Part II – Current Year DISA Information

Complete Part II to calculate the current taxable year DISA balances that are required to be disclosed.

Part III – DISA Capital Gains Recognized This Taxable Year

Line 1, column (c) – Type of triggering event. Enter the following codes for the type of triggering event:

PS – Partial sale of distributor
LIQ – Liquidation of distributor into recipient
PAR – Liquidation of recipient into distributor
DIS – Distributor is no longer in the combined report
REC – Recipient is no longer in the combined report
LLC – Distributor converts into a limited liability company (LLC) taxed as a partnership
SML – Distributor converts into a single member LLC (disregarded LLC)
OTH – Other triggering event not listed above

Line 1, column (d) – DISA balance. A DISA balance is the amount of deferred capital gains realized by a recipient for a specific taxable year for each distributor.

Line 1, column (e) – Recognition ratio. Use the following schedule to compute the recognition ratio.

(a) Post-event percentage	(b) Pre-event percentage	(c) Recognition ratio 1 – [column (a)/(b)]

Column (a) – Post-event percentage. Enter the percentage of ownership immediately after the triggering event occurs. If the ownership percentage in column (a) is less than 50%, the recognition ratio is 1.

If the post-event ownership percentage of the distributor is less than 50%, the DISA balances associated with that distributor are fully recognized as a taxable capital gain in the taxable year of the triggering event, since the distributor will no longer be included in the combined report.

Column (b) – Pre-event percentage. Enter the percentage of ownership immediately before the triggering event occurs.

Column (c) – Recognition ratio. Divide column (a) by column (b). Subtract the result from 1.

Line 1, column (g)

Box A – Check Box A if the gain is a short-term capital gain.

Box B – Check Box B if the sale was only a partial sale of the total owned stock.

Line 2 – Short-term DISA capital gains. Add all amounts in column (f) where column (g), Box A is **checked**. Enter here and on Forms 100 or 100W, Side 5, Schedule D, Part I, line 1, column (f). When entering this amount on Schedule D, write "DISA" before the description required in column (a).

Line 3 – Long-term DISA capital gains. Add all amounts in column (f) where column (g), Box A is **not** checked. Enter here and on Forms 100 or 100W, Side 5, Schedule D, Part II, line 5, column (f). When entering this amount on Schedule D write "DISA" before the description required in column (a).

Example: Corporation A owns 100% of Corporation B. Corporation A has a $100,000 DISA balance from 2003. In 2012, Corporation A sells 10% of Corporation B to an outside entity. Corporation A is required to report the amount of the DISA balance associated with the 10% sale of Corporation B. In this case use the following formula to calculate the capital gain to be recognized {DISA balance X [1-(post-event percentage/Pre-event percentage)] or $100,000 X [1-(90/100)]= $10,000.}