

Large Corporate Understatement Penalty Election in Lieu of Filing an Amended Return

This form applies only for taxable years beginning on or after January 1, 2003, and before January 1, 2008, relating to Revenue and Taxation Code Section 19138(b). Please refer to the instructions for more information. When an authorized representative of your corporation completes and signs this form, it will serve as your official election to treat this form together with attachments as an amended return and claim for refund, if applicable. Submit this form, payment, and FTB 3581, Tax Deposit Refund and Transfer Request, if applicable, to Franchise Tax Board (FTB) no later than May 31, 2009. You must file a separate election form for each taxable year.

For calendar year ____ or fiscal year beginning month ____ day ____ year ____, and ending month ____ day ____ year ____.	
Corporation name as shown on return and current address	California corporation number
	Key corporation number (If original return was included in an election to file a Unitary Taxpayers' Group return, include a copy of the Schedule R-7)

Select one: Check one of the following, as applicable.

<input type="checkbox"/> Pending NPA (<i>NPA issued on or before May 31, 2009, and the period to protest expires after May 31, 2009.</i>) <ul style="list-style-type: none"> • On behalf of the above-named corporation, I elect to (select one or both, as applicable): <ul style="list-style-type: none"> <input type="checkbox"/> Treat the total tax shown on the attached Notice(s) of Proposed Assessment as the total tax shown on an amended return. <input type="checkbox"/> Treat this election as a claim for refund. Specific grounds for the claim are described in an attachment. • I understand that payment in full of this tax amount must be submitted to FTB (and/or designated on FTB 3581 with respect to a tax deposit) on or before May 31, 2009.
<input type="checkbox"/> Disputed Assessment (<i>NPA issued on or before May 31, 2009, and is in protest, appeal, litigation, or settlement.</i>) <ul style="list-style-type: none"> • On behalf of the above-named corporation, I elect to treat the total tax shown on the attached Notice(s) of Proposed Assessment or Notice(s) of Action as the total tax shown on an amended return. • I understand that payment in full of this tax amount must be submitted to FTB (and/or designated on FTB 3581 with respect to a tax deposit) on or before May 31, 2009.
<input type="checkbox"/> Final Assessment (<i>NPA or NOA issued, or closing agreement or settlement agreement fully executed on or before May 31, 2009, and is not under protest, appeal, litigation, or settlement.</i>) <ul style="list-style-type: none"> • On behalf of the above-named corporation, I elect to treat the total tax shown on the attached Notice(s) of Proposed Assessment, Notice(s) of Action, closing agreement, or settlement agreement, as the total tax shown on an amended return. • I understand that if the final tax amount is not already fully satisfied, payment in full of this tax amount must be submitted to FTB (and/or designated on FTB 3581 with respect to a tax deposit) on or before May 31, 2009.

PLEASE SIGN BELOW

Under penalty of perjury of the laws of the State of California, I declare that I examined this form, including any accompanying statements, and to the best of my knowledge and belief it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge. I am properly authorized to execute this form.

Name of officer (please print): _____ Title: _____

Signature of officer: _____ Date: _____

Telephone number: _____ . _____ . _____

Note: An Election signed by a representative or an attorney-in-fact must be accompanied by a completed power of attorney (FTB 3520) authorizing such signature unless FTB 3520 is already on file with Franchise Tax Board. For taxpayers who elected to file a Unitary Taxpayers' Group return, see instructions under "How to Elect."

Get FTB 1131, *Franchise Tax Board Privacy Notice*, at ftb.ca.gov or call us at 800.338.0505. If outside the United States, call 916.845.6500 (not toll free).

Instructions for FTB 650

Large Corporate Understatement Penalty – Election in Lieu of Filing an Amended Return

These instructions are based on California Revenue and Taxation Code Section 19138 and FTB Notice 2009-3.

A. General Information

The Large Corporate Understatement Penalty, Revenue and Taxation Code (R&TC) Section 19138, was added by SBX1 28 (Stats. 2008, 1st Ex. Sess. 2007-2008, Ch. 1) and is effective December 19, 2008.

The penalty applies to corporations for taxable years beginning on or after January 1, 2003, where the corporation has an understatement of tax in excess of \$1 million. The penalty is 20 percent of the entire amount of the understatement. The understatement is measured by the difference between the tax reported on the original return or shown on an amended return, filed on or before the extended due date, and the correct tax liability.

The penalty will not be imposed if the understatement is attributable to either of the following:

- A change in law that occurs after the earlier of the date the taxpayer files the return or the extended due date of the return, for the year the change is operative.
- Reasonable reliance on a formal FTB Chief Counsel Ruling.

For the purpose of this penalty for taxable years 2003-2007, a taxpayer can file an amended return and pay the tax shown on the amended return by May 31, 2009, to treat the tax shown on this amended return as tax shown on the original return. This will increase the self-assessed tax base against which the understatement is measured to reduce the likelihood of receiving this penalty for these taxable years.

B. Purpose of this Form

Pursuant to FTB Notice 2009-3, this form allows corporations to elect to treat the tax shown on a pending or disputed proposed assessment or final assessment for taxable years beginning on or after January 1, 2003, and before January 1, 2008, as the tax shown on an amended return for purposes of satisfying the requirements of R&TC Section 19138(b). Under that provision of the law, the tax shown on an amended return filed and paid by May 31, 2009, is treated as the tax shown on the original return. Thus, this election form together with attachments will be treated as an amended return. If applicable, this election form will also serve as a claim for refund.

This election will increase the self-assessed tax base against which the understatement is measured to reduce the likelihood of receiving this penalty for these taxable years.

This election is discretionary for eligible corporations. However, a corporation that chooses not to make the election, but wishes to increase its self-assessed tax base to reduce its exposure to this penalty, must instead file an amended return and pay the tax shown on the amended return on or before May 31, 2009.

Making a valid election will not prevent application of the penalty in all cases. A penalty may still apply to the extent that the corporation has an understatement of tax in excess of \$1 million measured by the difference between the correct amount of tax and the self-assessed tax base increased by the election made on or before May 31, 2009.

C. Eligibility

To make this election you must agree to self-assess the full amount of tax shown on the Notice of Proposed Assessment (NPA), Notice of Action (NOA), closing agreement, or settlement agreement, as applicable. You may not make this election for only a portion of the tax or adjustments shown

on the assessment or agreement. If you wish to increase your self-assessed tax base by only a portion of the tax or adjustments shown on the assessment or agreement, you must file an amended return as described in FTB Notice 2009-3.

Corporations cannot make an election to treat this form as an amended return if the corporation has not received an NPA. If a corporation that has not received an NPA wishes to increase its self-assessed tax base for taxable years beginning on or after January 1, 2003, and before January 1, 2008, the corporation must file an amended return (i.e., FTB 100X) as described below reflecting such adjustments on or before May 31, 2009.

D. Election Categories

You must make the election in accordance with the status of the assessment (i.e., final, in the dispute resolution process, or recently proposed and the time for protest will not expire until after May 31, 2009). If we have not issued an NPA to the corporation, the corporation may not make this election.

1. Pending NPA

This is an NPA issued on or before May 31, 2009, where the period to protest the NPA expires after May 31, 2009. If you agree with or choose to dispute the NPA, you should make the “**Pending NPA**” election. Submit the election and pay the amount shown on the NPA on or before May 31, 2009, as instructed below. The amount of tax shown on the NPA that is paid on or before May 31, 2009, will be treated as a self-assessment of tax shown on an amended return filed on or before May 31, 2009. By checking the appropriate box, we will concurrently treat your election as a claim for refund based on the grounds stated in an attachment to the election.

2. Disputed Assessment

This is an NPA (or as revised or affirmed by an NOA) issued on or before May 31, 2009, that is under protest, appeal, litigation, or settlement. If you choose to continue your dispute, you should make the “**Disputed Assessment**” election. Submit the election and pay the amount shown on the NPA or NOA, as applicable, on or before May 31, 2009, as instructed below. The amount of tax shown on the NPA or NOA, as applicable, that is paid on or before May 31, 2009, will be treated as a self-assessment of tax shown on an amended return filed on or before May 31, 2009.

3. Final Assessment

This is an NPA or NOA issued on or before May 31, 2009, or a closing agreement or settlement agreement fully executed on or before May 31, 2009, that is **not** under protest, appeal, settlement, litigation, or any other administrative or judicial dispute resolution process. If you want the amount shown on the notice or agreement to increase your self-assessed tax base, you should make the “**Final Assessment**” election. Submit the election and (if not already fully paid) pay the amount shown on the NPA, NOA, closing agreement, or settlement agreement, as applicable, on or before May 31, 2009, as instructed below. The amount of tax shown on the NPA, NOA, closing agreement, or settlement agreement, as applicable, that is paid on or before May 31, 2009, will be treated as a self-assessment of tax shown on an amended return filed on or before May 31, 2009. Under this election category, we will **not** concurrently treat your election as a claim for refund.

E. How to Elect

You must choose one of the three election categories described above, as applicable. You must submit the Election in Lieu of Filing an Amended Return (FTB 650), payment, and FTB 3581, *Tax Deposit Refund and Transfer Request*, if applicable, to us no later than May 31, 2009. You must pay the amount of tax shown on the NPA, NOA, closing agreement, or settlement agreement. See Sections F and G of these instructions.

You must include with your election form the associated NPA(s), NOA(s), closing agreement(s), and/or settlement agreement, as applicable. If you do not have a copy of the notice or agreement, please identify it with as much specificity as possible. In addition, if you are electing to treat this form as a claim for refund, unless this information has already been provided in an ongoing dispute process, you must attach the specific grounds for the claim in detail and provide sufficient facts to apprise us of the exact basis of the claim in accordance with R&TC Section 19322 and its underlying regulation.

You must make a separate election for each taxable year.

Note: You can make this election to treat the amount of tax shown on the NPA, NOA, closing agreement, or settlement agreement, as applicable, that is paid on or before May 31, 2009, as a self-assessment of tax shown on an amended return filed on or before May 31, 2009, only for the entire amount shown on the notice or agreement. You cannot make the election with respect to only a portion of the amount shown on the notice or agreement or to make any other adjustments not reflected on the notice or agreement. If you wish to do so, you must file an amended return as described below reflecting such adjustments on or before May 31, 2009.

Complete the following items for the Election in Lieu of Filing an Amended Return (FTB 650):

- Calendar or fiscal year dates.
- Corporation name.
- California identification number.
- Key corporation number and copy of Schedule R-7, if applicable.
- Clearly check only one election category.
- Signature of authorized officer.
- Attach applicable NPA(s), NOA(s), closing agreement(s), or settlement agreement.
- Attach grounds and supporting documentation for claim for refund, if applicable.
- Make applicable payment, if the NPA has not been paid in full.

Note: For taxpayers who elected to file a Unitary Taxpayers' Group return: The individual signing this election represents that he or she is an officer of the corporation on whose behalf this election is being filed, and he or she has authorization to execute this election on behalf of each and every member of the unitary business for the year for which this election is being filed.

The Election in Lieu of Filing an Amended Return (FTB 650) and payment of the additional tax must be sent no later than May 31, 2009. Send your election form(s) and payment (if you are not subject to EFT) to:

FRANCHISE TAX BOARD
PO BOX 942867
SACRAMENTO CA 94267-2222

If you choose not to make the election, but want to increase your self-assessed tax base, you must file an amended return using FTB 100X for taxpayers who previously filed an FTB 100, 100S, or 100W.

F. Electronic Funds Transfer (EFT)

Corporations that meet certain requirements must remit all of their payments through EFT. Payments made by other means may result in a penalty of 10 percent of the amount paid. For purposes of this election, code your EFT payment as a Notice of Proposed Assessment payment using tax type code 02512.

For more information on the EFT requirements, please refer to Publication 3817, *Electronic Funds Transfer Information Guide*. If you would like assistance regarding EFT, please go to ftb.ca.gov and search for **eft** or call the EFT Unit at 916.845.4025, Monday through Friday, 8 a.m. until 5 p.m.

G. Tax Deposits

You can apply a tax deposit to make the payment required under this election and R&TC Section 19138(b). Use FTB 3581, *Tax Deposit Refund and Transfer Request*, to transfer all or part of a tax deposit payment from another year. If you have a tax deposit amount on account for the taxable year of the election, we will automatically apply the tax deposit amount to the additional tax when the amended return or Election in Lieu of Filing an Amended Return is processed and the self-assessed amount of additional tax becomes final.

In general, you can request the transfer of a tax deposit at any time before we apply the deposit amount to satisfy a final tax liability.

H. Internet and Telephone Assistance

Website: ftb.ca.gov and search for **lcup**
Phone: 916.845.3030 for the Large Corporate Understatement Penalty Hotline
TTY/TDD: 800.822.6268 for persons with hearing or speech impairments