



(916) 323-7715

April 11, 1986

Dear Mr.

This is in response to your February 19, 1986, letter to Mr. herein you inquired concerning the scope of the "newly constructed" exemption for active solar energy systems (Article XIII A, Section 2(c) of the California Constitution and Revenue and Taxation Code Section 73).

Per your letter, the Atlantic Richfield Company has constructed a solar energy facility on land leased from Pacific Gas and Electric Company; and it contends that not only the solar energy panels, connection equipment, and building in which the control panels are housed, but also the entire facility, including a chain link fence which surrounds the facility, a building used as a garage and for miscellaneous storage, and anything else which it might build on the property, are exempt from taxation. Determinative in our view, however, is that pursuant to Article XIII A, Section 2 and Section 73, it is active solar energy systems rather than solar energy facilities which are excluded from the term "newly constructed". As the result, the exclusion is more limited than it would have been had solar energy facilities been denominated the property excluded from the term "newly constructed". Enclosed in this regard are copies of the following:

1. Proposition 7 from the November 4, 1980, California Ballot Pamphlet, authorizing the Legislature to exclude the construction or addition of any active solar energy system from the term "newly constructed". Among other things, the Legislative Analyst's analysis states that "solar energy systems utilize energy from the sun for purposes of heating or cooling", and, "active systems are generally those with moving parts, such as water pumps, designed for the collection, storage, and distribution of solar energy for heating or cooling".

2. Revenue and Taxation Code Section 73, which was added by Stats. 1980, Ch. 1245 to provide that the term "newly constructed" shall not include the construction or addition of any solar energy system as defined in Section 17052.5(h)(6)(A) (in actuality, Section 17052.5(i)(6)(A)).

3. Section 17052.5(i)(6)(A), which defined "solar energy system" to mean the use of solar devices for individual functions, as specified therein.

4. Section 73, as amended by Stats. 1981, Ch. 239 to add the word "active" in the first sentence before "solar energy system" and to add subdivision (b), which provides that "active solar energy system" means "a system which uses solar devices thermally isolated from living space or other area where the energy is used to provide for collection, storage or distribution of solar energy." (The present Section 73 is substantially similar in form and identical in meaning to Section 73, as amended in 1981, insofar as it relates to the definition of active solar energy system.)

Viewed then from the perspective of what constitutes or might be part of an active solar energy system, it seems clear from the above intent, histories, and definitions that chain link fences, miscellaneous use buildings, etc., are not part of an "active solar energy system", which is all that is excluded from the term "newly constructed". At the same time, there is nothing to indicate that property used in conjunction with an active solar energy system was intended to be excluded from the term "newly constructed", as Atlantic Richfield Company contends. Assuming that Article XIII A, Section 2(c) would permit it, had the Legislature intended such a result, it could have specifically excluded "active solar energy facilities" or "active solar energy systems and property used in conjunction with the systems" from the term "newly constructed".

Very truly yours,

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Tax Counsel

JKM:fr

Enclosures

cc: Mr. Richard H. Ochsner
Mr. Verne Walton
bc: Mr. Gordon P. Adelman
Mr. Robert H. Gustafson