



Mr. Lawrence A. Augusta

February 18, 1983

New Construction
Solar Energy System

This memorandum is in response to the letter of January 24, 1983, from Mr. Gambale of Atlantic-Richfield requesting an opinion that a planned photovoltaic electric power generating plant ("The Project") is excluded from assessment under the "new construction" category of subdivision (a) of Section 2 of Article XIII A of the California Constitution.

Specifically excluded from this "new construction" category by Revenue and Taxation Code Section 73(a) is the "construction or addition of any active solar energy system." Section 73(b) defines an "active solar energy system" as one "which uses solar devices thermally isolated from... (the) area where the energy is used...." Among the examples given by Section 73(b) is the following:

"(3) Production of electricity."

From the information provided and the cited statutes, I would agree with Mr. Gambale that the construction of the described project would appropriately be excluded from the "new construction" definition. Section 73(c) would apply the exclusion to lien dates for fiscal years 1981 through 1985, since it is to remain in effect until January 1, 1986, subject to legislative deletion or extension. This application to the above lien dates would apparently attach to construction in progress as well.

Pursuing this analysis further, the Revenue and Taxation Code provides for one distinction between taxpayers who are homeowners and those who install or construct solar energy systems for other than home use. This is contained in Section 17052.5(a)(3) which specifies the amount of credit allowed. This amount is substantially greater for the taxpayer who installs such a system on premises "other than dwellings."

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As a final point, Section 3 of Statutes 1980, Chapter 1245, provided that there will be no subvention by counties for revenue lost as a result of this section since it implements a Constitutional amendment.

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