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January 17, 2006

Honorable James B. Rooney  
Amador County Assessor  
500 Argonaut Lane  
Jackson, California 95642

***Subject: Solar Panel/Carport Installation***

Dear Mr. Rooney:

This is in response to your October 24, 2005 letter to Acting Assistant Chief Counsel Selvi Stanislaus, requesting a determination as to whether a carport, on which solar panels have been installed, is subject to assessment as new construction. As discussed below, if the carport is part of an active solar energy system, it is excluded from assessment. However, in our opinion, the carport does not meet the definition of an "active solar energy system," as defined in Revenue and Taxation Code,<sup>1</sup> section 73. Therefore, it is new construction, subject to assessment.

### **Factual Background**

In your letter, you state that a 24 foot by 140 foot carport was installed by a convenience store/gas station at its business location. The carport was built of steel over existing asphalt and has electricity and lighting. The pictures you included show that the carport was built over existing parking spaces, presumably for the convenience of the store patrons.

You also state that the taxpayer has been advised by the contractor that the entire carport on which the solar panels have been installed is not assessable. You, however, believe that the carport, but not the solar panels, are assessable.

### **Legal Analysis**

All new construction is subject to assessment. (Cal. Const., art. XIII A, § 2; Rev. & Tax. Code, §§ 70 and 71.) New construction, however, does not include an "active solar energy system." (Cal. Const., art. XIII A, § 2, subd. (c)(1); Rev. & Tax. Code, § 73, subd. (a)(1).) "Active solar energy system" means:

[A] system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. (Rev. & Tax. Code, § 73, subd. (b)(1).)

<sup>1</sup>All further statutory references are to the Revenue and Taxation Code unless otherwise specified.

If the active solar energy system is used in the production of electricity, storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items are also excluded. (Rev. & Tax. Code, § 73, subd. (b)(3)(B).) Only that equipment used up to, but not including, the stage of transmission or use of electricity is included. (Ibid.) Thus, chain link fences and miscellaneous buildings constructed as part of a solar energy facility are not excluded from assessment as new construction under section 73, since that construction is part of a solar energy facility but not part of the active solar energy system located at that facility. (See Property Tax Annotation 610.0085, copy enclosed.)

Under the facts described in your letter, the taxpayer constructed a carport and installed active solar panels on its rooftop. If the carport itself is part of the active solar energy system, it would be excluded from assessment. But from the information and pictures provided, it appears that the carport is not part of the active solar energy system but rather merely serves as the mounting point for the solar panels. Further, the carport appears to serve the primary function of providing shade and shelter for customers and their cars rather than being a functioning part of the active solar energy system. In this case, the carport does not fall within the active solar energy system exclusion under section 73 and is subject to assessment as new construction.

The views expressed in this letter are only advisory in nature. They represent the analysis of the Board staff based on present law and the facts set forth herein. Therefore, they are not binding on any person or public entity.

Very truly yours,

/s/Richard Moon

Richard Moon  
Tax Counsel

RM:eb

Prec/New Construction/06/755-rm

cc: Mr. David Gau, MIC:63  
Mr. Dean Kinnee, MIC:64  
Ms. Mickie Stuckey, MIC:62  
Mr. Todd Gilman, MIC:70