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September 5, 2012

TO INTERESTED PARTIES:

GUIDELINES FOR ACTIVE SOLAR ENERGY SYSTEMS
NEW CONSTRUCTION EXCLUSION

On July 18, 2012, Board staff distributed a second draft of the proposed *Guidelines for Active Solar Energy Systems New Construction Exclusion (Guidelines)* and solicited comments/suggestions from interested parties. A few comments were received, and they are posted on the project webpage at www.boe.ca.gov/proptaxes/gase.htm.

Enclosed is the final draft of the *Guidelines* which we anticipate sending to the Board for discussion/adoption at its November 2012 meeting. Revisions made since the second draft are highlighted. If you have concerns about the text of the final draft of the *Guidelines*, you should convey those concerns to Ms. Sherrie Kinkle at slkinkle@boe.ca.gov no later than September 21, 2012 so that your concerns can be addressed in the Issue Paper that will transmit the *Guidelines* to the Board Members.

We thank all of you who have participated in the drafting process for these *Guidelines*. We believe that your input has helped create a document that will be of use to those concerned with the implementation of the solar energy systems new construction exclusion.

All documents regarding this project will be posted to the Board's website at www.boe.ca.gov/proptaxes/gase.htm. If you have questions regarding this project, you may contact Ms. Kinkle at 916-274-3363.

Sincerely,

/s/ Dean R. Kinnee

Dean R. Kinnee, Chief
County-Assessed Properties Division

DRK:sk
Enclosure

GUIDELINES FOR
ACTIVE SOLAR ENERGY SYSTEMS
NEW CONSTRUCTION EXCLUSION

November 2012

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1 **GUIDELINES FOR APPLICATION OF THE NEW CONSTRUCTION** 2 **EXCLUSION TO ACTIVE SOLAR ENERGY SYSTEMS**

3 **INTRODUCTION**

4 The objective of these guidelines is to provide assessors' staff, assessment appeals board
5 members, taxpayer representatives, and others interested in the administration of property taxes
6 in California with information regarding the new construction exclusion for active solar energy
7 systems, including:

- 8 • Definitions
- 9 • Assessment responsibility
- 10 • First buyer exclusion
- 11 • Construction completion
- 12 • Leases
- 13 • Legal entities
- 14 • Decline in value
- 15 • Types of uses for active solar energy systems

16 **DEFINITIONS**

17 **ACTIVE SOLAR ENERGY SYSTEM**

18 An *active solar energy system* is a system that uses solar devices, which are thermally isolated
19 from living space or any other area where the energy is used, to provide for the collection,
20 storage, or distribution of solar energy. Such a system does not include solar swimming pool
21 heaters, hot tub heaters, passive energy systems, or wind energy systems.

22 An active solar energy system may be used for any of the following:

- 23 • Domestic, recreational, therapeutic, or service water heating
- 24 • Space conditioning
- 25 • Production of electricity
- 26 • Process heat
- 27 • Solar mechanical energy

28 An active solar energy system includes storage devices, power conditioning equipment, transfer
29 equipment, and parts related to the functioning of those items. Parts include spare parts that are
30 owned by the owner of, or maintenance contractor for, an active solar energy system for which
31 the parts were specifically purchased, designed, or fabricated for installation in that system. Such

1 a system includes only equipment used up to, but not including, the stage of conveyance or use
2 of the electricity.¹

3 An active solar energy system does not include auxiliary equipment, such as furnaces or hot
4 water heaters, which use a source of power other than solar energy to provide usable energy.
5 Dual-use equipment, such as ducts and hot water tanks used by both auxiliary equipment and
6 solar energy equipment, is considered active solar energy system property only to the extent of
7 75 percent of its full cash value.²

8 **FIXTURES**

9 Property Tax Rule³ 122.5, *Fixtures*, establishes three tests to determine whether an article is a
10 fixture. The three tests are:

- 11 • Physical annexation
- 12 • Constructive annexation
- 13 • Intent

14 A typical active solar energy system is considered a fixture, and thus real property, if it meets the
15 tests outlined above.⁴ The exclusion is not applicable to portable active solar energy systems
16 since they are items of personal property.

17 **NEW CONSTRUCTION**

18 Generally, when something of value is physically added to real property, what is added is
19 considered new construction and is assessed at current market value. This value is added to the
20 existing base year value of the real property. *New construction* and *newly constructed* are defined
21 as either (1) any addition to real property (including fixtures), or (2) any alteration of land or of
22 an improvement (including fixtures) which constitutes a major rehabilitation thereof or converts
23 the property to a different use.⁵

24 The law⁶ requires an assessor to determine the added value for newly constructed property upon
25 completion. The value is established as the base year value for those specific improvements
26 qualifying as new construction and is added to the property's existing base year value(s).

27 Certain types of construction activity, however, are excluded from assessment as new
28 construction. These exclusions are authorized by constitutional amendment. Consequently, while

¹ Revenue and Taxation Code section 73. All statutory references are to the Revenue and Taxation Code unless specified otherwise.

² Section 73.

³ All references to Rules are Property Tax Rules from Title 18, Public Revenues, California Code of Regulations.

⁴ For more information, see Assessors' Handbook Section 504, *Assessment of Personal Property and Fixtures* [www.boe.ca.gov/proptaxes/pdf/ah504.pdf].

⁵ Section 70(a).

⁶ Section 71.

1 these types of improvements may increase the value of the property, the additional value of these
2 improvements is not assessable because of an exclusion.

3 **SOLAR NEW CONSTRUCTION EXCLUSION**

4 In 1980, voters approved amendment of section 2(c) of article XIII A of the California
5 Constitution,⁷ giving the Legislature the authority to exclude the construction of certain active
6 solar energy systems from property tax assessment. The new construction exclusion resulted
7 from Proposition 7, a ballot measure to amend the California Constitution. The Proposition 7
8 ballot language stated:

9 TAXATION, REAL PROPERTY VALUATION, SOLAR ENERGY SYSTEMS,
10 LEGISLATIVE CONSTITUTIONAL AMENDMENT. Amends Article XIII A,
11 Section 2 to authorize Legislature to provide that, in valuing real property, the
12 term "newly constructed" shall not include the construction or addition of *any*
13 *active solar energy system*. [Emphasis added.]

14 With the approval of the voters of Proposition 7 in November 1980, Article XIII A, Section 2 of
15 the California Constitution was amended to read:

16 ... (c) For purposes of subdivision (a), the Legislature may provide that the term
17 "newly constructed" does not include any of the following:

18 (1) The construction or addition of *any active solar energy system*.... [Emphasis
19 added.]

20 Subsequent, section 73 of the Revenue and Taxation Code section as added in 1980⁸ and
21 provided:

22 For purposes of subdivision (a) of Section 2 of Article XIII A of the Constitution,
23 the term "newly constructed" shall not include the construction or addition *of any*
24 *solar energy system*, as defined in subparagraph (A) of paragraph (6) of
25 subdivision (h) of Section 17052.5.⁹ In the case of solar swimming pool heaters,
26 "new construction" shall not include the increment of cost in excess of the cost of
27 a comparable conventional fossil fuel heating system. [Emphasis added.]

28 Based on the plain language of Proposition 7, the amending language of the California
29 Constitution, and the implementing language of Revenue and Taxation Code section 73, an
30 active solar energy system subject to the new construction exclusion includes commercial,
31 industrial, and utility-scale systems if they are locally assessed, as outlined below in the
32 *Assessment-Related Considerations* section.

33 The property tax incentive for the installation of an active solar energy system is in the form of a
34 *new construction exclusion*. It is not an exemption. Therefore, the installation of a qualifying

⁷ Proposition 7, Senate Constitutional Amendment 28.

⁸ Senate Bill 1306, ch. 1245, Stats. 1980.

⁹ Revenue and Taxation Code section 17052.5(h)(6)(A) defined solar energy systems to include passive thermal systems, semi-passive thermal systems, active thermal systems, photovoltaic systems, and wind driven systems.

1 solar energy system will not result in either an increase or a decrease in the assessment of the
2 existing property.

3 This exclusion remains in effect until a change in ownership of the system occurs. In the event of
4 a partial change in ownership, that portion of the system that changed ownership would be
5 assessable.¹⁰

6 **MAINTENANCE AND REPAIR**

7 Normal maintenance and repair is the action of continuing, carrying on, preserving, or retaining
8 real property or fixtures in proper condition. Maintenance keeps a property in condition to
9 perform efficiently the service for which it is intended and ensures that a property will
10 experience an economic life of typical duration. Normal maintenance is not considered new
11 construction.

12 Generally, new construction is assessable when that new construction has converted a fixture or
13 any other improvement (or a portion) to a state substantially equivalent to new.¹¹ However, for
14 an active solar energy system, even if new construction activity is such that it renders a system
15 substantially equivalent to new, the new construction activity would be excluded from
16 reassessment pursuant to the provisions of section 73.

17 **FIRST BUYER EXCLUSION**

18 Section 73 was modified¹² in 2008 to allow the active solar energy system new construction
19 exclusion to be conveyed to the first buyer of a new building incorporating such a system, if the
20 following conditions are met:

- 21 • The owner-builder does not intend to occupy or use the building;
- 22 • The owner-builder had not received the active solar energy system new construction
23 exclusion;
- 24 • The first buyer purchases the building prior to it becoming subject to reassessment to the
25 owner-builder, as prescribed in subdivision (d) of section 75.12 (a discussion of this
26 section follows); and
- 27 • The first buyer files the appropriate claim form¹³ with the assessor.

28 **BUILDERS' EXCLUSION**

29 When real property is being constructed, the assessor must determine the fair market value of the
30 portion of the property that is under construction at each lien date. When the construction is

¹⁰ For a complete discussion of change in ownership provisions, see Assessors' Handbook Section 401, *Change in Ownership* [www.boe.ca.gov/proptaxes/pdf/ah401.pdf].

¹¹ Rule 463(b)(3) [www.boe.ca.gov/lawguides/property/current/ptlg/rule/463.html].

¹² Stats. 2008, ch. 538 (Assembly Bill 1451).

¹³ Form BOE-64-SES, *Initial Purchaser Claim for Solar Energy System New Construction Exclusion*.

1 complete, the assessor determines the fair market value of the newly constructed property.
2 Section 71 states:

3 ...New construction in progress on the lien date shall be appraised at its full value on
4 such date and each lien date thereafter until the date of completion, at which time the
5 entire portion of property which is newly constructed shall be reappraised at its full
6 value.

7 For construction in progress on the lien date, generally it is the builder who is responsible for the
8 property taxes. If the construction involves an active solar energy system, the construction in
9 progress on the lien date would also qualify for the new construction exclusion. However, receipt
10 of the exclusion for construction in progress does not preclude the availability of the exclusion to
11 the first buyer.

12 Section 75.12 implements the exclusion from supplemental assessment commonly known as the
13 *builders' exclusion*. The exclusion allows builders to avoid reassessment of their inventories. The
14 exclusion is accomplished by deferring the date of assessment of new construction where either:

- 15 1. A builder has notified the assessor, prior to or within 30 days of the commencement of
16 construction, that he or she does not intend to occupy or use the property; or
- 17 2. The property meets all of the following criteria applicable to the development of
18 residential subdivisions:
 - 19 A. The property is subdivided into five or more parcels in accordance with the
20 Subdivision Map Act, or any successor to that law;
 - 21 B. The map describing the parcels has been recorded; and
 - 22 C. Zoning regulations applicable to the parcels or building permits for the parcels
23 require that, except for parcels dedicated for public use, single-family residences
24 will be constructed on the parcels.

25 For the builders' exclusion, new construction is considered completed at the date upon which the
26 new construction is available for use by the owner, unless the owner does not intend to occupy or
27 use the property. *Occupy or use* means the occupancy or use by the owner, including the rental
28 or lease of the property.¹⁴ Property is not considered occupied if the occupancy or use is in
29 conjunction with an offer for a change in ownership, such as use of the property as a model
30 home.¹⁵

31 The builders' exclusion applies only to the initial supplemental assessment for the completion of
32 new construction. It does not preclude the assessment of construction on the assessment roll on
33 the lien date following the date of completion of construction or to any other supplemental
34 assessments on the property, such as the change in ownership related to the initial acquisition of

¹⁴ Section 75.12(b)(1).

¹⁵ Section 75.12(b)(2).

1 the property. In other words, on the lien date, completed new construction and incomplete
2 construction in progress should be assessed at full value. Full value for completed new
3 construction would be determined as of the date the construction is completed.

4 The following examples illustrate the application of the builders' exclusion.

5 ***Example 1***

6 A builders' exclusion was in place for a home with an active solar energy system, which
7 was started in March 2009, and completed on August 15, 2009. No supplemental
8 assessments would have been enrolled during construction. The home was sold on or
9 before December 31, 2009. The initial purchaser *would* be eligible for the new construction
10 exclusion for the solar energy system.

11 ***Example 2***

12 A builders' exclusion was in place for a home with an active solar energy system, which
13 was started in March 2009, and completed on August 15, 2009. The home was sold on
14 February 3, 2010. Construction was 100 percent complete on the January 1, 2010 lien
15 date for purposes of determining the assessed value of the property for the 2010-2011
16 regular roll. The builder would receive the active solar energy system exclusion when the
17 lien date value is established. The initial purchaser *would not* be eligible for the new
18 construction exclusion for the solar energy system since the owner-builder received the new
19 construction exclusion when the lien date value was established.

20 ***Example 3***

21 With no builders' exclusion in place, construction of a warehouse with an active solar
22 energy system was started by a builder in March 2010. Construction was 80 percent
23 complete on January 1, 2011, at which time the value of the construction in progress
24 would have been enrolled. The portion of the active solar energy system that was
25 installed would have been excluded. Completion of construction occurred in
26 February 2011, at which time the value of the new construction would have been
27 enrolled, resulting in a supplemental assessment. The owner-builder would receive the
28 solar energy system exclusion. Upon subsequent sale in December 2011, the initial
29 purchaser *would not* be eligible for the new construction exclusion for the solar energy
30 system since the owner-builder already received the benefit of the new construction
31 exclusion.

32 **FEDERAL TAX BENEFITS**

33 In 2011,¹⁶ the Legislature added intent language declaring that section 73 was enacted to
34 encourage the building of active solar energy systems, and provided scenarios whereby taxpayers
35 may benefit from the section 73 new construction exclusion.

¹⁶ Stats. 2011, ch. 3 (Assembly Bill 15 of the First Extraordinary Session [AB X1 15]), in effect June 28, 2011.

1 The amendment to section 73 declared that newly constructed active solar energy systems are
2 often sold or transferred in sale-leaseback arrangements, partnership flip structures, or other
3 transactions to purchasers that may also be eligible for federal tax benefits. As long as the active
4 solar energy system is newly constructed or added and another taxpayer has not received an
5 exclusion for the same active solar energy system, it is the intent of the Legislature that the
6 purchaser of the active solar energy system in a transaction such as that described above receive
7 an exclusion.

8 The author of AB X1 15 (Hill), stated to the Assembly:

9 This bill is necessary to ensure that thousands of existing and future solar
10 installation projects throughout the state can continue to utilize tax exclusions and
11 financing mechanisms authorized by Revenue and Taxation Code Section 73. It
12 has come to the author's attention that there may be questions about whether the
13 Legislature intended to grant authority under Section 73 to permit new active
14 solar energy system projects to be financed. Such financing takes many forms,
15 including loans, sale-leaseback arrangements and similar transactions. AB X1 15
16 is declarative of the Legislature's intent in enacting and periodically amending
17 Revenue and Taxation Code Section 73 that financing mechanisms are permitted
18 under Revenue and Taxation Code Section 73 and Proposition 7. The provisions
19 in AB X1 15 are declaratory of existing law in order to remove any questions or
20 ambiguity that may have arisen regarding Revenue and Taxation Code 73 in
21 implementing Proposition 7.

22 The legislative intent declared that newly constructed active solar energy systems that are
23 constructed as freestanding or parking lot canopies, or that are constructed as installations on
24 existing buildings qualify for the exclusion from classification as newly constructed under
25 Section 73 of the Revenue and Taxation Code, including active solar energy systems sold in sale-
26 leaseback arrangements, partnership flip structures, or other transactions.

27 Thus, this legislation ensures that newly constructed active solar energy systems transferred
28 using sale-leaseback and similar arrangements that require the solar energy system to be sold or
29 transferred to a third party that may qualify for federal tax benefit ~~benefits~~ will continue to
30 receive the property tax exclusion.

31 Because the active solar energy system new construction exclusion was for the purpose of
32 encouraging the building of active solar energy systems, and states explicitly that it covers "other
33 transactions," the new construction exclusion should also be applied to active solar energy
34 systems that are transferred during construction. Therefore, the exclusion is applicable until a
35 taxpayer receives the exclusion on a completed system that is considered a change in ownership
36 under sections 61(j), 64(c), or 64(d). Additionally, construction in progress on the lien date
37 would also qualify for the exclusion.

38 The legislation further clarified that the new construction exclusion remains in effect only until
39 there is a subsequent change in ownership, and that systems qualifying for an exclusion prior to

1 January 1, 2017 will continue to be excluded on and after that date until there is a change in
2 ownership.

3 COMMON TRANSACTIONS THAT MAY BE ELIGIBLE FOR 4 FEDERAL TAX BENEFITS

5 SALE-LEASEBACKS

6 Sale-leaseback transactions involve the sale of a property in which the seller immediately begins
7 to lease the property from the buyer. Thus, the seller no longer has ownership of the property, but
8 operates it for the duration of the lease agreement.

9 Under federal law, the owner-builder is given three months from the time a solar energy system
10 is placed in service to enter the sale-leaseback transaction.¹⁷ Following the lead of the
11 Legislature and aligning with federal law on this issue, parties to such transactions should be
12 allowed a limited window (three months) for the transfer of the system after its completion. This
13 limited period (mirroring federal law) allows the owner-builder to arrange for and execute the
14 transaction post-construction.

15 PARTNERSHIP FLIP TRANSACTIONS

16 A partnership flip transaction is a financing arrangement between a renewable energy developer
17 and a single or multiple tax investors whereby the parties form a partnership or limited liability
18 company to develop and/or own a solar energy system. This structure involves the tax investor
19 making an investment in the partnership or limited liability company in exchange for the
20 majority of ~~economic benefits in the form of (1) the tax attributes (i.e., federal tax credits, (2)~~
21 ~~depreciation, and (3) sale of electricity net income) until.~~ When the investor achieves its pre-
22 established yield. The investor's share of these items is then reduced. The reduction is known as
23 the "flip."

24 ~~, the economic ownership will "flip" to the developer.~~ If the ~~initial~~ investment made by the tax
25 investor causes it to ~~own~~ obtain more than 50 percent of the capital and profits interests of the
26 partnership or limited liability company (any time upon the making of the initial investment or
27 pursuant to subsequent changes in the capital and profits percentages owned by the investor
28 required by the partnership or operating agreement, including on the "flip"), the change in
29 control is excluded by the new construction exclusion and no reassessment of the active solar
30 energy system will occur.

31 However, ~~when the ownership "flips" to the developer, a change in control is caused~~ if the
32 developer or a third party subsequently obtains more than 50 percent of the capital and profits

¹⁷ See Internal Revenue Code (IRC) section 50(d)(4) making applicable the provisions of paragraphs (2) and (3) of IRC section 48(b) in effect the day before enactment of the Revenue Reconciliation Act of 1990 (relating to certain leased property apply for specified energy property) (If property is "...sold and leased back by such person, or...leased to such person...within 3 months after the date such property was originally placed in service...such property shall be treated as originally placed in service not earlier than the date on which such property is used under the leaseback (or lease)...." (IRC section 48(d)(2) and (3) in effect prior to Revenue Reconciliation Act of 1990.)

1 interests of the partnership or limited liability company, a change in control and reassessment of
2 the solar energy system will occur .

3 If the ~~flip transaction does not result in one party investment made by the investor does not result~~
4 ~~in its~~ obtaining more than a 50 percent interest in the capital and profits, ~~it will not cause a no~~
5 change in control results and no reassessment of the active solar energy system will occur.
6 ~~However, if any party subsequently obtains more than a 50 percent interest in the capital and~~
7 ~~profits, a change in control and reassessment of the solar energy system will occur.~~

8 **ASSESSMENT-RELATED CONSIDERATIONS**

9 **PROPERTY TAX RULE 905²⁴**

10 Rule 905, *Assessment of Electric Generation Facilities*, subsection (a), defines the assessment of
11 electrical generation facilities, and states:

12 (a) Commencing with the assessment for the lien date for the 2003 assessment
13 year, an electrical generation facility shall be state assessed property for purposes
14 of article XIII, section 19 of the California Constitution if: (1) the facility has a
15 generating capacity of 50 megawatts²⁵ or more; *and* (2) is owned or used by a
16 company which is an *electrical corporation* as defined in subdivisions (a) and (b)
17 of section 218 of the Public Utilities Code; or, the facility is owned or used by a
18 company which is a state assessee for reasons other than its ownership of the
19 electric generation facility or its ownership of pipelines, flumes, canals, ditches,
20 or aqueducts lying within two or more counties.... [Footnote and emphasis
21 added.]

22 Systems that do not meet the definitions of Rule 905 are assessed by the assessor of the county
23 where the facility is located.

24 In accordance with Public Utilities Code section 218, a solar electric generating facility is subject
25 to local assessment because:

- 26 • The generation of electricity by an active solar energy system is considered the
27 production of power from other than a conventional power source; and
- 28 • Such power is sold or transmitted to an electrical corporation or state or public agency.

29 Systems subject to local assessment are excluded from the definition of new construction by
30 section 73.

31 **LOCALLY-ASSESSED PROPERTY**

32 In a utility-scale system, the final stage of power generation is typically a "step up" transformer,
33 where the output voltage is increased to meet the transmission grid voltage requirements. Thus,

²⁴ See also section 721.5.

²⁵ One megawatt is enough energy to power 1,000 average homes.

1 equipment up to and including the final step-up transformer within the on-site substation would
2 be considered part of the active solar energy system, and subject to the new construction
3 exclusion. Equipment after that point would not be eligible for the exclusion.

4 For large scale thermal power plants, where a heat transfer fluid (HTF) is heated by focused
5 mirrors and then generates steam for the turbine(s), there are two considerations:

6 1. In a solar only system, with no auxiliary energy source such as natural gas, there are no
7 dual-use components. The entire plant, up through the power block, is eligible for the
8 100 percent exclusion.

9 2. In a dual-use system, the HTF within the central receiver is heated by both solar energy
10 and an auxiliary energy source, such as natural gas. The central receiver, or boiler, is
11 considered dual use, and is eligible for the 75 percent exclusion. All equipment
12 downstream of the boiler is also considered dual use.

13 **PARKING LOT CANOPIES**

14 The legislative intent of AB X1 15 stated:

15 That newly constructed active solar energy systems that are constructed as
16 freestanding or parking lot canopies, or that are constructed as installations on
17 existing buildings qualify for the exclusion from classification as newly
18 constructed under Section 73 of the Revenue and Taxation code, including active
19 solar energy systems sold in sale-leaseback transactions.

20 Parking lot canopies that are built for the purpose of providing a mounting surface for solar
21 energy devices, while incidentally providing shade for automobiles, qualify for the new
22 construction exclusion. Canopy mounted systems may also provide direct charging stations for
23 hybrid or electric vehicles.

24 **STATE-ASSESSED PROPERTY**

25 State-assessed property is not subject to the provisions of article XIII A (Proposition 13), and,
26 therefore, is assessed at fair market value annually on the lien date. Generally, the State Board of
27 Equalization assesses electric generation facilities with a generating capacity of 50 megawatts or
28 more but excludes qualifying small power production facilities and qualifying cogeneration
29 facilities.

LEASES

LEASED EQUIPMENT

For active solar energy systems that are leased to the property owner for a term of less than 35 years, ownership of the system remains with the leasing company for the duration of the lease. Therefore, the system is excluded from the definition of new construction at the time of installation, and continues to be excluded from assessment until a change in ownership of the system occurs.

At the end of the lease term, some options for the lessee, and the effect of those options on the status of the active solar energy system, include:

- Extension of the lease for an additional period, resulting in no change in the assessment status of the system.
- Purchase of the system by the lessee, which terminates the new construction exclusion and makes the system assessable.
- Removal of the system, resulting in no change to the assessed value of the "host" property.

In the case of a pending sale of the host property, some options for the property owner prior to sale include:

- Lease buyout, which terminates the new construction exclusion and makes the system subject to assessment.
- Transfer of the lease to the purchaser, upon approval of the leasing company, resulting in no change in the assessment status of the system.

LEASED LAND OR OTHER LEASED REAL PROPERTY

Systems that are installed on leased land or leased building rooftops are also subject to the new construction exclusion and are not assessable until a change in ownership of the system occurs.

A taxable possessory interest is a taxable interest held by a private possessor in publicly owned real property. When the lease between a private entity and a governmental agency involves government-owned land or buildings, a taxable possessory interest in the real property is created. Although the active solar energy system is not assessable, the possessory interest must be valued and assessed.³⁶

LEGAL ENTITIES

Consistent with AB X1 15, active solar energy systems owned by a legal entity, such as a corporation, limited liability company (LLC), or partnership, are also excluded from the

³⁶ Rule 20, *Taxable Possessory Interests* [www.boe.ca.gov/lawguides/property/current/ptlg/rule/20.html].

1 definition of new construction and are excluded from assessment. However, a change in
2 ownership inconsistent with AB X1 15 would terminate the new construction exclusion for the
3 active solar energy system.

4 This section describes rules applicable to legal entities in general that may also apply to legal
5 entities that own active solar energy systems.⁴⁰

6 There are two types of transfers involving legal entities that may trigger a change in ownership
7 of real property:

- 8 • A transfer of real property between an individual and an entity or between entities; and
- 9 • A transfer of an interest in an entity.

10 A change in ownership would terminate the new construction exclusion for the active solar
11 energy system.

12 **TRANSFER OF REAL PROPERTY OF A LEGAL ENTITY**

13 Generally, a transfer of any interest in real property from an individual to a legal entity, from a
14 legal entity to an individual, or between legal entities is a change in ownership.⁴¹

15 However, any transfer of real property between an individual or individuals and a legal entity, or
16 between legal entities, that results solely in a change in the method of holding title to the real
17 property, and in which the proportional ownership interests of the transferors and transferees in
18 each and every piece of real property transferred remain the same after the transfer, is excluded
19 from a change in ownership.⁴² This is commonly known as the *proportional ownership interest*
20 *transfer exclusion*. If the transaction is subject to this exclusion, the active solar energy system
21 remains excluded from assessment. The persons holding the ownership interests in the transferee
22 entity are deemed "original co-owners" for purposes of determining whether a change in
23 ownership occurs upon subsequent transfers of the ownership interests in the legal entity under
24 section 64(d).⁴³

25 If the ownership interests are not identical after the transfer, then the real property interest
26 transferred is subject to reassessment, not only the disproportionate interest.⁴⁴

27 **TRANSFER OF INTERESTS IN A LEGAL ENTITY**

28 Generally, transfers of interests in legal entities do not constitute changes in ownership of the
29 real property owned by those legal entities.⁴⁵ Thus, purchases or transfers of corporate voting

⁴⁰ For a comprehensive discussion of the change in ownership provisions for legal entities, see Assessors' Handbook Section 401, *Change in Ownership*, September 2010, Chapter 6 [www.boe.ca.gov/proptaxes/pdf/ah401.pdf].

⁴¹ Section 61(j); Rule 462.180, *Change in Ownership – Legal Entities* [www.boe.ca.gov/lawguides/property/current/ptlg/rule/462-180.html].

⁴² Section 62(a)(2). Reorganizations of affiliated corporations are governed by section 64(b).

⁴³ Rule 462.180.

⁴⁴ Rule 462.180(d)(4).

⁴⁵ Section 64(a).

1 stock, partnership ownership interests, LLC membership interests, or ownership interests in other
2 legal entities are not changes in ownership of the real property owned by the legal entity.

3 However, there are two exceptions to this general rule. First, when a *change in control* of the
4 legal entity occurs, all real property owned by the entity will be reassessed.⁴⁶ Second, when a
5 legal entity's *original co-owners*⁴⁷ cumulatively transfer more than 50 percent of their ownership
6 interests in that legal entity, the real property previously excluded from change in ownership
7 under section 62(a)(2), including the active solar energy system, will be reassessed.

8 **NONPROFIT ORGANIZATIONS**

9 Nonprofit organizations that are receiving the Welfare, Church, or Religious Exemption may
10 continue to qualify for the exemption if they enter into an agreement with a for-profit entity to
11 install and operate a solar energy system on their property if the solar energy system is used to
12 produce electricity for the nonprofit's own use.

13 One of the basic requirements for the Welfare, Church, or Religious Exemption is that the
14 property must be used exclusively for a qualifying exempt purpose. The Revenue and Taxation
15 Code does not specifically define the term used exclusively, but the courts have done so. The
16 Supreme Court in Cedars of Lebanon⁴⁸ determined that the phrase exclusively used may not be
17 given a literal interpretation so as to mean that the property exempted must be used solely for the
18 purposes stated to the total exclusion of any other use. Instead, the Supreme Court held that used
19 exclusively for exempt purposes includes any property which is used exclusively for any facility
20 which is incidental to and reasonably necessary for the accomplishment of the exempt purpose.

21 Therefore, while a nonprofit organization may not own the solar-powered system and allows a
22 solar installer to place the system on its roof (to produce electricity for the nonprofit
23 organization), that fact does not disqualify any portion of the property, including the portion
24 specifically used for placement of the system, from exemption. The roof is not being used
25 inconsistently with the nonprofit's exempt purpose, and use of the roof by the solar installer is
26 incidental to the provision of solar-generated electricity pursuant to its service contract with the
27 nonprofit organization.

28 **DECLINE IN VALUE**

29 Section 51 requires that the assessor annually enroll the lesser of a property's factored base year
30 value or its full cash value (market value) as of the lien date. *Full cash value* is defined as the
31 amount of cash or its equivalent that property would bring *if exposed for sale* in the open market
32 under conditions in which neither buyer nor seller could take advantage of the exigencies of the
33 other.⁵¹ Since an estimate of full cash value for decline-in-value purposes is made as if the
34 property was exposed for sale, the full cash value should not be reduced by the value of any
35 excluded new construction because real property being made available for sale would include all
36 segments of the appraisal unit. This analysis is made for *comparison purposes only* to determine

⁴⁶ Section 64(c)(1).

⁴⁷ Section 64(d).

⁴⁸ (1950) 35 Cal.2d 729, 746.

⁵¹ California Constitution article XIII, section 1, and article XIII A, section 1; Section 110.

1 the lessor of the fair market value or the factored base year value of the appraisal unit.
2 Comparing the factored base year value with the current market value is necessary in order for
3 the assessor to enroll the lesser value on the lien date as required by law. This analysis **does not**
4 affect the factored base year value nor the status of any previously excluded new construction.

5 **APPRAISAL UNIT**

6 For decline-in-value purposes, the appropriate *appraisal unit*⁵² must be established. Section 51
7 provides:

8 ... (d) For purposes of this section, "real property" means that *appraisal unit that persons*
9 *in the marketplace commonly buy and sell as a unit, or that is normally valued*
10 *separately*. [Emphasis added.]

11 Rule 324, subdivision (b), interprets and applies section 51 as follows:

12 ... An appraisal unit of property is a collection of assets that functions together, and that
13 persons in the marketplace commonly buy and sell as a *single unit or that is normally*
14 *valued in the marketplace separately from other property, or that is specifically*
15 *designated as such by law*. [Emphasis added.]

16 Rule 461 provides:

17 ... (e) Declines in value will be determined by comparing the current lien date full
18 value of the appraisal unit to the indexed base year full value of the same unit for
19 the current lien date. Land and improvements constitute an appraisal unit except
20 when measuring declines in value caused by disaster, in which case land shall
21 constitute a separate unit. For purposes of this subsection *fixtures and other*
22 *machinery and equipment classified as improvements constitute a separate*
23 *appraisal unit....* [Emphasis added.]

24 In most cases, the identification of the appraisal unit is obvious and causes few problems. Since
25 the objective of the appraisal is to determine the market value of the property, the market also
26 must determine the proper appraisal unit. The proper appraisal unit to be valued normally is the
27 unit that persons in the marketplace typically buy and sell together as a single unit. For example,
28 single-family homes are sold as a combination of land and buildings, including those fixtures,
29 such as water heaters, that generally sell together with homes. This combination of land and
30 improvements, therefore, comprises the typical appraisal unit for single-family homes. Although
31 a solar energy system is technically a fixture, it would not be valued as a separate appraisal unit
32 because in the marketplace solar energy systems normally are sold together with residential
33 property as one unit.⁵⁴

34 In some cases, however, the identification of the appraisal unit for decline-in-value purposes may
35 not be as easily discernible as in the case of single-family homes. In those cases, the appraiser

⁵² Rule 461 [www.boe.ca.gov/lawguides/property/current/ptlg/rule/461.html.]

⁵⁴ Section 51(d); Rule 324(b).

1 must use judgment in determining the proper unit. These decisions must reflect, as faithfully as
2 possible, the unit most likely to be sold if the property were exposed to the open market.
3 Accordingly, in a commercial, industrial, or utility-scale system environment, because active solar
4 energy system fixtures commonly are sold separately, they typically would constitute a separate
5 appraisal unit.

6 **Example 4**

7 A property owner installs a qualified active solar energy system on a single-family residential
8 home, and the system is appropriately excluded from assessment as new construction. The
9 following January 1 lien date, the assessor reviews the property for a possible decline in value.
10 When comparing the factored base year value with the current market value, the assessor
11 would include the current market value of the active solar system as part of the current market
12 value for the entire property since the appraisal unit for a single-family residence is the entire
13 property. The current market value for the entire property would be compared to the factored
14 base year value, and the lesser of the two values enrolled.

15	January 1 Factored Base Year Value of Residence		
16	(Excluding Value of Solar System)		\$489,426
17			
18	January 1 Market Value of Residence	\$425,500	
19	January 1 Market Value of Solar System	<u>24,000</u>	
20	January 1 Market Value of Property		\$449,500
21			

22 Since the market value of the property, \$449,500, is less than the factored base year value of
23 the property, \$489,426, the assessor would enroll the current market value for the January 1
24 lien date.

25 **Example 5**

26 A property owner leases a roof-top active solar energy system from DRK Solar Company
27 and has it installed on a single-family residential home. The system is appropriately excluded
28 from assessment as new construction. The following January 1 lien date, the assessor reviews
29 the property for a possible decline in value. When comparing the factored base year value
30 with the current market value, the assessor would not include the current market value of the
31 active solar system as part of the current market value for the entire property since the system
32 is only leased by the owner of the residential property and it is owned by the solar company.
33 The current market value of the land and improvements, excluding the solar system, would
34 be compared to the enrolled factored base year value, and the lesser of the two values
35 enrolled.

36 **Example 6**

37 A property owner installs a qualified active solar energy system on a commercial warehouse,
38 and the system is appropriately excluded from assessment as new construction. The

1 following January 1 lien date, the assessor reviews the property for a possible decline in
2 value. When comparing the factored base year value with the current market value, the
3 assessor would have two appraisal units: one for the land and improvements (other than
4 fixtures), and one for the fixtures, including the current market value of the active solar
5 system. The current market value for each appraisal unit would be compared to the respective
6 enrolled factored base year value, and the lesser of the two values enrolled.

7 However, if the owner of the commercial warehouse leases the active solar system, then, as
8 in Example 5, the value of the active solar system would be excluded in the current market
9 value of the fixtures for the decline-in-value comparison.

10 **Example 7**

11 A property owner installs a qualified active solar energy system with dual-use pipes and
12 ducts used in conjunction with his wind energy system to produce electricity for agricultural
13 crop maintenance. For application of the new construction exclusion, the dual-use equipment
14 is considered active solar energy system property only to the extent of 75 percent of its full
15 cash value.⁵⁵ For decline-in-value purposes, the assessor would have two appraisal units: one
16 for the land and improvements (other than fixtures), and one for fixtures, including the
17 current market value of the active solar system. The current market value for each appraisal
18 unit would be compared to the enrolled factored base year value, and the lesser of the two
19 values enrolled.

20 **Example 8**

21 A locally-owned utility company installs a qualified active solar energy system to augment
22 their production of electricity which is sold to the community. The following January 1 lien
23 date, the assessor reviews the property for a possible decline in value. When comparing the
24 factored base year value with the current market value, the assessor would compare the
25 current market value of all fixtures, including the active solar energy system, with the
26 factored base year value of the fixtures, and the lesser of the two values enrolled. ~~If the
27 system had been 100 percent excluded upon completion of construction, the base year value
28 of the system would be zero.~~

29

⁵⁵ Section 73(d)(2).

TYPES OF USES FOR ACTIVE SOLAR ENERGY SYSTEMS

Active solar energy systems may be installed in several application environments, including but not limited to:

- Residential
- Commercial or industrial
- Government
- Agricultural
- Property of exempt organizations

ELECTRICAL GENERATING SYSTEMS – RESIDENTIAL

Figure 1 depicts the components of a typical solar electrical generating system. Depending on the application, systems may or may not contain battery banks.

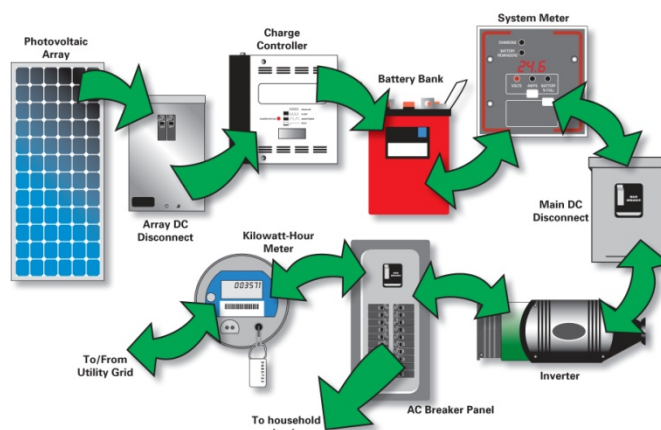


Figure 1. Typical Grid-Connected PV System⁵⁶

Many newer residential developments include energy efficient building enhancements. A solar electric system is often available as either a standard or optional feature. The majority of these types of systems do not have the battery backup shown in Figure 1.

Any excess electricity generated by the system during the day is provided to the grid, effectively selling it to the utility. The power output capability of this type of system is typically in the range of 2 – 5 kW.⁵⁷

⁵⁶ Reprinted with permission. © 2009 Home Power, Inc., [www.homepower.com].

⁵⁷ 1 kW (kilowatt) equals 1,000 watts.

1 The typical system included with residential new construction may include component parts such
2 as solar tiles rather than panels. When added to an existing residential structure, the system
3 typically uses solar panels.

4 **ELECTRICAL GENERATING SYSTEMS – COMMERCIAL OR INDUSTRIAL PV**

5 Systems designed for commercial or industrial environments are significantly larger than the
6 residential systems. They are designed to provide a significant amount of the daily energy
7 requirement of the building upon which they are installed. The power output of these systems
8 range from several hundred kW to over a megawatt.⁵⁸

9 **ELECTRICAL GENERATING SYSTEMS – UTILITY-SCALE PV**

10 Large scale systems can generate power outputs in the range of 100 MW to 1,000 MW,
11 equivalent to the power output of a conventional power plant.

12 Figure 2 provides an example of a large scale photovoltaic system.



21 Figure 2. Solar Tracking PV Array

22 **PARKING STRUCTURES**

23 Parking lot canopies that are built for the purpose of providing a mounting surface for solar
24 energy devices, while incidentally providing shade for automobiles, qualify for the new
25 construction exclusion.

26 Canopy mounted systems may also provide direct charging stations for hybrid or electric
27 vehicles.

28 Figure 3 shows an example of a solar parking lot canopy.

⁵⁸ A megawatt is equal to one million watts.



10
11 **Figure 3. Solar parking lot canopy**

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12 **THERMAL SYSTEMS – PASSIVE**

12 Buildings may be designed to optimize the collection of solar energy for heating, ventilation, and
13 daytime lighting. These structures are categorized as *passive solar* and are not excluded from the
14 definition of new construction by section 73.

15 Passive systems are inherent to the structural design and site of the building and contain no
16 active components.

17 Figure 4 provides an example of a passive solar residential structure.



25 **Figure 4. Passive Solar Architecture**⁵⁹

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25 **THERMAL SYSTEMS – ACTIVE**

26 Active thermal systems are found in many applications, including but not limited to:

- 27 • Water heating (domestic, commercial, and industrial)
- 28 • Space heating and cooling and process heating
- 29 • Electricity generating facilities

⁵⁹ All photographs in this document are courtesy of DOE/NREL.

- 1 • Pool and spa heating⁶⁰

2 **ELECTRICAL GENERATING SYSTEMS – UTILITY-SCALE THERMAL**

3 Large scale thermal systems typically use either:

- 4 • Parabolic trough technology to solar heat a heat transfer fluid, which generates steam
5 through a steam turbine generator to produce electrical power; or
- 6 • Heliostats which focus sunlight on a single target to heat a transfer medium, which
7 generates steam through a steam turbine generator to produce electrical power.

8 Figure 5 illustrates a large scale thermal system.



20 Figure 5. Active Large Scale Thermal System

21

22 **SOLAR WATER HEATING**

23 Although not as widely implemented as solar electric generation systems, the installed base of
24 solar water heating systems will likely grow in the next few years.

25 The *Solar Water Heating and Efficiency Act of 2007*⁶¹ is intended to facilitate the installation of
26 at least 200,000 solar water heating systems on homes, businesses, and government buildings
27 throughout California by 2017. This program is to be coordinated with the Energy Commission's
28 New Solar Homes Partnership to achieve the goal of building "zero-energy" homes.

29 The photographs in Figure 6 show typical water heating system solar collectors.

30

⁶⁰ Pool, spa, and hot tub heaters are not eligible for the new construction exclusion.

⁶¹ Public Utilities Code sections 2860 through 2867.4; Stats. 2007, ch 536 (Assembly Bill 1470)

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Figure 6. Medium and Small-Scale Solar Water Heating – Roof Mount

As previously noted, dual-use equipment, such as ducts and hot water tanks used by both auxiliary equipment and solar energy equipment, is considered active solar energy system property only to the extent of 75 percent of its full cash value.

SPACE CONDITIONING

Several methods of using solar energy for space and process heating are in use today. Two websites provide a good overview of the different types of systems:

- The U.S. Department of Energy's Federal Energy Management Program at <http://www1.eere.energy.gov/femp/>; and
- The U.S. Department of Energy's National Renewable Energy Laboratory at <http://www.nrel.gov/>.

One example of a space heating technology is depicted in Figure 47. The *transpired solar collector* is an effective and simple technique for pre-warming air for an industrial building. In the example, the perforated dark-colored collector is mounted to a south-facing wall. Air is drawn through the perforations, warmed by the collector, and distributed to ductwork by the ventilation fan. The outside air temperature can be increased significantly by this type of system.

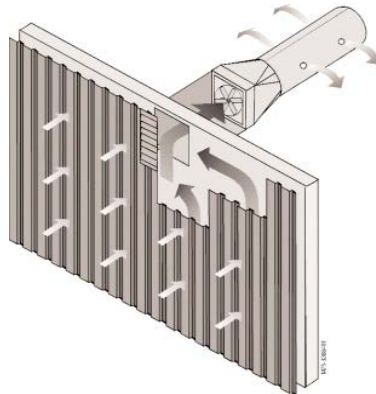


Figure 7. Transpired Solar Collector Diagram

1 **PROCESS HEATING**

2 Process heating, used in industrial environments, generally requires the development of much
3 higher temperatures for the production of steam or high heat. Figure 8 shows a *parabolic trough*
4 system, where a highly reflective parabolic surface concentrates sunlight upon a central liquid-
5 carrying tube. Systems like this are capable of producing process heat and steam in the
6 temperature range of 200° - 400°F.

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Figure 8. Parabolic Trough Collector

FREQUENTLY ASKED QUESTIONS AND ANSWERS

General Information

- 1
2
3 **1. Has the sunset date for the active solar energy system new construction exclusion**
4 **been extended?**

5 Yes, effective September 28, 2008, the sunset date for the active solar energy system
6 new construction exclusion was extended through the 2015-16 fiscal year. The statute is
7 now scheduled to sunset on January 1, 2017.

- 8 **2. How does this new construction exclusion for solar energy systems work?**

9 Generally, when something of value is physically added to real property, the addition is
10 assessed at current market value and this value is added to the existing base year value
11 of the real property. When an active solar energy system is installed, it is not assessed,
12 meaning that the existing assessment will not increase.

Leases and Ownership

- 13
14 **3. A company has contracted with a local government agency to lease the roof of the**
15 **agency's building, install an active solar electrical generating system, and sell the**
16 **electricity to the agency. Is the solar energy system assessable?**

17 No. The system is excluded from the definition of new construction and is, therefore,
18 not assessable. However, a taxable possessory interest in the roof area may have been
19 created when the lease was executed.⁶²

- 20 **4. A homeowner installed an active solar energy system last year and financed it with**
21 **a capital lease. The leasing company was advised to report the system as**
22 **machinery and equipment on their annual 571-L Business Property Statement,**
23 **and the homeowner subsequently received a tax bill. Is this correct?**

24 No. The system is excluded whether it is leased or owned. The real property appraiser
25 in the assessor's office should coordinate information with the business property
26 auditor-appraiser when a permit for construction is issued.

- 27 **5. If an active solar energy system is installed on an existing structure (store,**
28 **shopping mall, parking structure, office building, etc.) and the ownership of the**
29 **active solar energy system is vested in a multi-member LLC, is the new**
30 **construction exclusion still applicable for this installation, or is the active solar**
31 **energy system considered to be assessable business property to the LLC? Does it**

⁶² Rule 20, *Taxable Possessory Interests* [www.boe.ca.gov/lawguides/property/current/ptlg/rule/20.html].

1 **matter if the active solar energy system will be powering general business**
2 **occupancy requirements or specialized fixtures?**

3 The active solar energy system would be classified as a fixture (real property) if it
4 meets the tests of Rule 122.5, and would be excluded from the definition of new
5 construction if it meets the definitions of section 73. Therefore, it would not be
6 considered assessable business property. Ownership of the system is not a condition of
7 exclusion. Further, there are no specific use requirements for the energy produced by
8 the system.

9 ***Residency Requirement***

10 **6. The corporate headquarters of a company is in New Jersey, but the corporation**
11 **owns a building in Los Angeles upon which was installed an active solar energy**
12 **system. Is the new construction exclusion limited to California residents or**
13 **entities?**

14 No. There are no residency provisions for the owner of a solar energy system.

15 ***Property of Exempt Organizations***

16 ~~7. A religious organization has leased a portion of its property to a for-profit entity~~
17 ~~for the installation of an active solar energy system. What is the status of their~~
18 ~~property tax exemption(s)?~~

19 ~~The portion of the religious organization's property that is leased for the solar energy~~
20 ~~system would not qualify for the church, religious, or welfare exemptions. However,~~
21 ~~disqualification of the exemption for the portion of the property leased for the solar energy~~
22 ~~system does not, by itself, jeopardize the organization's qualification for exemption on the~~
23 ~~remaining portions of the property that are used exclusively for religious worship (church~~
24 ~~exemption), for religious worship and the operation of a school of less than collegiate grade~~
25 ~~(religious exemption), or for religious purposes (welfare exemption). The active solar~~
26 ~~energy exclusion would apply to the system, and it would not be assessable.~~

27 ***Property Type***

28 **8. Does the new construction exclusion for active solar energy systems apply only to**
29 **residential buildings?**

30 No. The exclusion is not restricted to residential buildings.

1 **Initial Purchaser**

2 **9. In February 2008, I purchased a recently constructed home that had an integrated**
3 **solar energy system. The completion of construction was July 3, 2007. Can I claim**
4 **an exclusion as the initial purchaser?**

5 No. The provisions of the new construction exclusion to the initial purchaser for a solar
6 energy system are *prospective*, and only qualifying improvements completed on or after
7 January 1, 2008 are eligible for the exclusion.

8 **10. If a builder is fully assessed for a newly constructed home on the lien date**
9 **(January 1) following the date of completion of new construction and the initial**
10 **purchaser buys the property after the lien date, is the initial purchaser eligible for**
11 **the active solar energy new construction exclusion?**

12 No. Since the builder was assessed on the lien date following the date of completion of
13 the new construction, the subsequent purchaser is not eligible for the solar energy
14 system new construction exclusion.

15 Example: A home with an active solar energy system is completed on
16 November 15, 2009, and the new construction of the home is 100 percent complete on
17 the lien date for purposes of determining the assessed value of the property for the
18 2010-2011 regular roll. If the home sold on or before December 31, 2009, the initial
19 purchaser *would* be eligible for the new construction exclusion for the solar energy
20 system. If the home did not sell until after the lien date, for example January 2, 2010,
21 the initial purchaser *would not* be eligible for the new construction exclusion for the
22 solar energy system because the builder would receive the exclusion as of the lien date.

23 **Filing**

24 **11. Does a property owner have to file an application to get this exclusion?**

25 A property owner who adds an active solar energy system to an existing structure does
26 not have to file for the exclusion. The exclusion should be automatically granted when
27 the assessor receives a copy of the building permit.

28 However, if a developer installs an active solar energy system while constructing a new
29 building, the initial purchaser of that building may receive the exclusion if (1) the
30 building was completed on or after January 1, 2008, (2) the developer/builder did not
31 receive the exclusion, and (3) the purchaser files a form with the assessor. The form is
32 called the *Initial Purchaser Claim for Solar Energy System New Construction*
33 *Exclusion* and is available from the assessor of the county where the property is located.
34 After the assessor receives this form, the new base year value of the building may be
35 reduced by the value of the active solar energy system, less any rebates or tax credits

1 received. The builder will be able to provide the value of the system and any rebates or
2 tax credits that they received.