

Dear Mr. McDade,

Below are suggested revisions (in red) to the draft guidelines issued by the California Board of Equalization on October 13, 2011 for the new construction property tax exclusion for active solar energy systems. Constellation appreciates the opportunity to provide input as this property tax incentive is essential to Constellation's solar investments in California.

Best Regards,

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RECENT LEGISLATION (from P. 9 of guidance)

The most recent amendment to section 73 was chaptered June 28, 2011. It added legislative intent language declaring that section 73 was enacted to encourage the building of active solar energy systems. It also declared the following:

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

Thus, this legislation ensures that newly constructed active solar energy systems transferred using sale-leaseback and similar arrangements that require the solar energy system itself, but not the real estate on which it is situated, to be sold or transferred to a third party, will continue to receive the property tax exclusion.

Because the active solar energy system new construction exclusion was for the purpose of encouraging the building of active solar energy systems, and states explicitly that it covers "other transactions," the new construction exclusion should also be applied to active solar energy systems that are transferred during construction. A "transfer" during construction would include the acquisition of a controlling or non-controlling interest in a limited liability company or partnership that owns an active solar energy system, irrespective of whether the interest was acquired through the purchase of an undivided interest in the assets of the limited liability company or partnership and a contribution of those assets to a new limited liability company or partnership, or whether the interest was acquired through a contribution of cash and the active solar energy system to a new limited liability company or partnership in exchange for an interest in the new limited liability company or partnership. The exclusion is not lost on transfer until a taxpayer receives the exclusion on a system on which construction has been completed. Additionally, construction in progress on the lien date would also qualify for the exclusion.

The legislative intent also declared that:

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

The legislation further clarified that the new construction exclusion remains in effect only until there is a subsequent change in ownership, and that systems qualifying for an exclusion prior to January 1, 2017 will continue to be excluded on and after that date until there is a change in ownership.

TRANSFER OF INTEREST IN A LEGAL ENTITY (from P. 11 of guidance)

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

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

However, there are two exceptions to this general rule. First, when a change in control of the legal entity occurs, all real property owned by the entity will be reassessed. Second, when a legal entity's original co-owners cumulatively transfer more than 50 percent of their ownership interests in that legal entity, then the real property previously excluded from change in ownership, including the active solar energy system, will be reassessed. However, these exceptions will not apply to a change in control or transfer by original co-owners with respect to a legal entity that occurs during the construction of an active solar energy system owned by the legal entity.

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