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July 18, 2012

TO INTERESTED PARTIES:

GUIDELINES FOR ACTIVE SOLAR ENERGY SYSTEMS  
NEW CONSTRUCTION EXCLUSION

In October 2011, Board staff initiated a project to develop guidelines to assist county assessors' staff in applying the active solar energy system new construction exclusion and distributed the draft *Guidelines for Active Solar Energy Systems New Construction Exclusion (Guidelines)* in Letter To Assessors 2011/039. An interested parties meeting was held on January 26, 2012 to discuss the proposed text of the *Guidelines*.

As a result of discussions at the January meeting and subsequent comments received from interested parties, a second draft of the *Guidelines* was developed. The enclosed draft is shown in strikeout-and-underscore format. Interested parties may suggest revisions to the second draft by providing suggested alternative text. Suggested revisions should be submitted by August 17, 2012 to Ms. Sherrie Kinkle at the above address or via email to [slkinkle@boe.ca.gov](mailto:slkinkle@boe.ca.gov). It is anticipated that the *Guidelines* will be sent to the Board for adoption in the fall of 2012.

All documents regarding this project will be posted to the Board's website at [www.boe.ca.gov/proptaxes/gase.htm](http://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

*SECOND DRAFT*

GUIDELINES FOR  
ACTIVE SOLAR ENERGY SYSTEMS  
NEW CONSTRUCTION EXCLUSION

July 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 county 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 ~~transmission~~  
2 conveyance or use of the electricity.<sup>1</sup>

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.<sup>2</sup>

## 8 **FIXTURES**

9 Property Tax Rule<sup>3</sup> 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.<sup>4</sup> The exclusion is not applicable to portable active solar energy systems  
16 since they are items of personal property.

## 17 **ELECTRICAL CORPORATION**

18 ~~Section 218 of the Public Utilities Code clarifies the definition of *electrical corporation* as:~~

19 ~~(a) "Electrical corporation" includes ...every corporation or person owning,~~  
20 ~~controlling, operating, or managing any electric plant for compensation within~~  
21 ~~this state, except where electricity is generated on or distributed by the producer~~  
22 ~~through private property solely for its own use or the use of its tenants and not for~~  
23 ~~sale or transmission to others....~~

24 ~~(b) "Electrical corporation" does not include a corporation or person employing~~  
25 ~~cogeneration technology or producing power from other than a conventional~~  
26 ~~power source for the generation of electricity solely for any one or more of the~~  
27 ~~following purposes:~~

28 ~~(1) Its own use or the use of its tenants.~~

29 ~~(2) The use of or sale to not more than two other corporations or persons solely~~  
30 ~~for use on the real property on which the electricity is generated or on real~~

---

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

<sup>2</sup> Section 73.

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

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

1 ~~property immediately adjacent thereto, unless there is an intervening public street~~  
2 ~~constituting the boundary between the real property on which the electricity is~~  
3 ~~generated and the immediately adjacent property and one or more of the following~~  
4 ~~applies:~~

5 ~~(A) The real property on which the electricity is generated and the immediately~~  
6 ~~adjacent real property is not under common ownership or control, or that common~~  
7 ~~ownership or control was gained solely for purposes of sale of the electricity so~~  
8 ~~generated and not for other business purposes.~~

9 ~~(B) The useful thermal output of the facility generating the electricity is not used~~  
10 ~~on the immediately adjacent property for petroleum production or refining.~~

11 ~~(C) The electricity furnished to the immediately adjacent property is not utilized~~  
12 ~~by a subsidiary or affiliate of the corporation or person generating the electricity.~~

13 ~~(3) Sale or transmission to an electrical corporation or state or local public~~  
14 ~~agency, but not for sale or transmission to others, unless the corporation or person~~  
15 ~~is otherwise an electrical corporation.~~

16 ~~(e) "Electrical corporation" does not include a corporation or person employing~~  
17 ~~landfill gas technology for the generation of electricity for any one or more of the~~  
18 ~~following purposes:~~

19 ~~(1) Its own use or the use of not more than two of its tenants located on the real~~  
20 ~~property on which the electricity is generated.~~

21 ~~(2) The use of or sale to not more than two other corporations or persons solely~~  
22 ~~for use on the real property on which the electricity is generated.~~

23 ~~(3) Sale or transmission to an electrical corporation or state or local public~~  
24 ~~agency.~~

25 ~~(d) "Electrical corporation" does not include a corporation or person employing~~  
26 ~~digester gas technology for the generation of electricity for any one or more of the~~  
27 ~~following purposes:~~

28 ~~(1) Its own use or the use of not more than two of its tenants located on the real~~  
29 ~~property on which the electricity is generated.~~

30 ~~(2) The use of or sale to not more than two other corporations or persons solely~~  
31 ~~for use on the real property on which the electricity is generated.~~

32 ~~(3) Sale or transmission to an electrical corporation or state or local public~~  
33 ~~agency, if the sale or transmission of the electricity service to a retail customer is~~  
34 ~~provided through the transmission system of the existing local publicly owned~~  
35 ~~electric utility or electrical corporation of that retail customer.~~

1 ~~(e) "Electrical corporation" does not include an independent solar energy~~  
2 ~~producer, as defined in Article 3 (commencing with Section 2868) of Chapter 9 of~~  
3 ~~Part 2.~~

4 ~~(f) The amendments made to this section at the 1987 portion of the 1987-88~~  
5 ~~Regular Session of the Legislature do not apply to any corporation or person~~  
6 ~~employing cogeneration technology or producing power from other than a~~  
7 ~~conventional power source for the generation of electricity that physically~~  
8 ~~produced electricity prior to January 1, 1989, and furnished that electricity to~~  
9 ~~immediately adjacent real property for use thereon prior to January 1, 1989.~~

## 10 NEW CONSTRUCTION

11 Generally, when something of value is physically added to real property, what is added is  
12 considered new construction and is assessed at current market value. This value is added to the  
13 existing base year value of the real property. *New construction* and *newly constructed* are defined  
14 as either (1) any addition to real property (including fixtures), or (2) any alteration of land or of  
15 an improvement (including fixtures) which constitutes a major rehabilitation thereof or converts  
16 the property to a different use.<sup>5</sup>

17 The law<sup>6</sup> requires a county assessor to determine the added value for newly constructed property  
18 upon completion. The value is established as the base year value for those specific improvements  
19 qualifying as new construction and is added to the property's existing base year value(s).

20 Certain types of construction activity, however, are excluded from assessment as new  
21 construction. These exclusions are authorized by constitutional amendment. Consequently, while  
22 these types of improvements may increase the value of the property, the additional value of these  
23 improvements is not assessable because of an exclusion.

### 24 **SOLAR NEW CONSTRUCTION EXCLUSIONS**

25 In 1980, voters approved amendment of section 2(c) of article XIII A of the California  
26 Constitution,<sup>7</sup> giving the Legislature the authority to exclude the construction of certain active  
27 solar energy systems from property tax assessment. The new construction exclusion resulted  
28 from Proposition 7, a ballot measure to amend the California Constitution. The Proposition 7  
29 ballot language stated:

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

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<sup>5</sup> Section 70(a).

<sup>6</sup> Section 71.

<sup>7</sup> Proposition 7, Senate Constitutional Amendment 28.

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

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

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

7  
8 Subsequent, section 73 of the Revenue and Taxation Code section as added in 1980<sup>8</sup> and  
9 provided:

10 For purposes of subdivision (a) of Section 2 of Article XIII A of the Constitution,  
11 the term "newly constructed" shall not include the construction or addition *of any*  
12 *solar energy system*, as defined in subparagraph (A) of paragraph (6) of  
13 subdivision (h) of Section 17052.5.<sup>9</sup> In the case of solar swimming pool heaters,  
14 "new construction" shall not include the increment of cost in excess of the cost of  
15 a comparable conventional fossil fuel heating system. [Emphasis added.]

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

21 The property tax incentive for the installation of an active solar energy system is in the form of a  
22 *new construction exclusion*. It is not an exemption. Therefore, the installation of a qualifying  
23 solar energy system will not result in either an increase or a decrease in the assessment of the  
24 existing property.

25 This exclusion remains in effect until a change in ownership of the system occurs. In the event of  
26 a partial change in ownership, that portion of the system that changed ownership would be  
27 assessable.<sup>10</sup>

## 28 **MAINTENANCE AND REPAIR**

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

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<sup>8</sup> Senate Bill 1306, ch. 1245, Stats. 1980.

<sup>9</sup> 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.

<sup>10</sup> 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](http://www.boe.ca.gov/proptaxes/pdf/ah401.pdf)].



1 Generally, new construction is assessable when that new construction has converted a fixture or  
2 any other improvement (or a portion) to a state substantially equivalent to new.<sup>11</sup> However, for  
3 an active solar energy system, even if new construction activity is such that it renders a system  
4 substantially equivalent to new, the new construction activity would be excluded from  
5 reassessment pursuant to the provisions of section 73.

## 6 **FIRST BUYER EXCLUSION**

7 Section 73 was modified<sup>12</sup> in 2008 to allow the active solar energy system new construction  
8 exclusion to be conveyed to the first buyer of a new building ~~containing~~ incorporating such a  
9 system, if the following conditions are met:

- 10 • The owner-builder does not intend to occupy or use the building;
- 11 • The owner-builder had not received the active solar energy system new construction  
12 exclusion;
- 13 • The first buyer purchases the building prior to it becoming subject to reassessment to the  
14 owner-builder, as prescribed in subdivision (d) of section 75.12 (a discussion of this  
15 section follows); and
- 16 • The first buyer files the appropriate claim form<sup>13</sup> with the county assessor.

## 17 **BUILDERS' EXCLUSION**

18 When real property is being constructed, the assessor must determine the fair market value of the  
19 portion of the property that is under construction at each lien date. When the construction is  
20 complete, the assessor determines the fair market value of the newly constructed property.  
21 Section 71 states:

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

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

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

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<sup>11</sup> [Rule 463\(b\)\(3\) \[www.boe.ca.gov/lawguides/property/current/ptlg/rule/463.html\]](http://www.boe.ca.gov/lawguides/property/current/ptlg/rule/463.html).

<sup>12</sup> Stats. 2008, ch. 538 (Assembly Bill 1451).

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

- 1 1. A builder has notified the county assessor, prior to or within 30 days of the  
2 commencement of construction, that he or she does not intend to occupy or use the  
3 property; or
- 4 2. The property meets all of the following criteria applicable to the development of  
5 residential subdivisions:
  - 6 A. The property is subdivided into five or more parcels in accordance with the  
7 Subdivision Map Act, or any successor to that law;
  - 8 B. The map describing the parcels has been recorded; and
  - 9 C. Zoning regulations applicable to the parcels or building permits for the parcels  
10 require that, except for parcels dedicated for public use, single-family residences  
11 will be constructed on the parcels.

12 For the builders' exclusion, new construction is considered completed at the date upon which the  
13 new construction is available for use by the owner, unless the owner does not intend to occupy or  
14 use the property. *Occupy or use* means the occupancy or use by the owner, including the rental  
15 or lease of the property.<sup>14</sup> Property is not considered occupied if the occupancy or use is in  
16 conjunction with an offer for a change in ownership, such as use of the property as a model  
17 home.<sup>15</sup>

18 The builders' exclusion applies only to the initial supplemental assessment for the completion of  
19 new construction. It does not preclude the assessment of construction on the assessment roll on  
20 the lien date following the date of completion of construction or to any other supplemental  
21 assessments on the property, such as the change in ownership related to the initial acquisition of  
22 the property. In other words, on the lien date, completed new construction and incomplete  
23 construction in progress should be assessed at full value. Full value for completed new  
24 construction would be determined as of the date the construction is completed.

## 25 **Examples**

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

### 27 ***Example 1***

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

---

<sup>14</sup> Section 75.12(b)(1).

<sup>15</sup> Section 75.12(b)(2).

1 **Example 2**

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

10 **Example 3**

11 With no builders' exclusion in place, construction of a warehouse with an active solar  
12 energy system was started by a builder in March 2010. Construction was 80 percent  
13 complete on January 1, 2011, at which time the value of the construction in progress  
14 would have been enrolled. The portion of the active solar energy system that was  
15 installed would have been excluded. Completion of construction occurred in  
16 February 2011, at which time the value of the new construction would have been  
17 enrolled, resulting in a supplemental assessment. The owner-builder would receive the  
18 solar energy system exclusion. Upon subsequent sale in December 2011, the initial  
19 purchaser *would not* be eligible for the new construction exclusion for the solar energy  
20 system since the owner-builder already received the benefit of the new construction  
21 exclusion.

22 **RECENT LEGISLATION**

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

26 **FEDERAL TAX BENEFITS**

27 In 2011,<sup>16</sup> the Legislature added intent language declaring that section 73 was enacted to  
28 encourage the building of active solar energy systems, and provided scenarios whereby taxpayers  
29 may benefit from the section 73 new construction exclusion.

30 ~~¶The amendment to section 73 also declared the following:~~ that newly constructed active solar  
31 energy systems are often sold or transferred in sale-leaseback arrangements, partnership flip  
32 structures, or other transactions to purchasers that may also be eligible for federal tax benefits.  
33 As long as the active solar energy system is newly constructed or added and another taxpayer has  
34 not received an exclusion for the same active solar energy system, it is the intent of the  
35 Legislature that the purchaser of the active solar energy system in a transaction such as that  
36 described above receive an exclusion.

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<sup>16</sup> Stats. 2011, ch. 3 (Assembly Bill ~~4\*~~ 15 of the First Extraordinary Session [AB X1 15]), in effect June 28, 2011.

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

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

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

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

24 Because the active solar energy system new construction exclusion was for the purpose of  
25 encouraging the building of active solar energy systems, and states explicitly that it covers "other  
26 transactions," the new construction exclusion should also be applied to active solar energy  
27 systems that are transferred during construction. Therefore, the ~~The~~ exclusion is ~~not lost on~~  
28 ~~transfer~~ applicable until a taxpayer receives the exclusion on a completed system ~~on which~~  
29 ~~construction has been completed~~ that is considered a change in ownership under sections 61(j),  
30 64(c), or 64(d). Additionally, construction in progress on the lien date would also qualify for the  
31 exclusion.

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

1 COMMON TRANSACTIONS THAT MAY BE ELIGIBLE FOR  
2 FEDERAL TAX BENEFITS

3 SALE-LEASEBACKS

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

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

13 PARTNERSHIP FLIP TRANSACTIONS

14 A partnership flip transaction is a financing arrangement between a renewable energy developer  
15 and a single or multiple tax investors whereby the parties form a partnership or limited liability  
16 company to develop a solar energy system. This structure involves the tax investor making an  
17 investment in the partnership or limited liability company in exchange for the majority of  
18 economic benefits in the form of (1) federal tax credits, (2) depreciation, and (3) sale of  
19 electricity. When the investor achieves its pre-established yield, the economic ownership will  
20 "flip" to the developer. If the initial investment made by the tax investor causes it to own more  
21 than 50 percent of the capital and profits interests of the partnership or limited liability company,  
22 the change in control is excluded by the new construction exclusion and no reassessment of the  
23 active solar energy system will occur.

24 However, when the ownership "flips" to the developer, a change in control is caused if the  
25 developer obtains more than 50 percent of the capital and profits interests of the partnership or  
26 limited liability company. If the flip transaction does not result in one party obtaining more than  
27 a 50 percent interest in the capital and profits, it will not cause a change in control and no  
28 reassessment of the active solar energy system will occur. However, if any party subsequently  
29 obtains more than a 50 percent interest in the capital and profits, a change in control and  
30 reassessment of the solar energy system will occur.

31 ASSESSMENT-RELATED CONSIDERATIONS RESPONSIBILITY

32 ~~The first determination to be made by a county assessor is whether the active solar energy system~~  
33 ~~will be state or locally assessed.~~

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<sup>17</sup> 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 ~~State assessed property is not subject to the provisions of article XIII A (Proposition 13), and~~  
2 ~~thus is assessed at fair market value annually on the lien date. Generally, the Board assesses~~  
3 ~~electric generation facilities with a generating capacity of 50 megawatts or more but excludes~~  
4 ~~qualifying small power production facilities and qualifying cogeneration facilities. For further~~  
5 ~~clarification, please refer to Letter To Assessors (LTA) 2003/009, "Electric Generation~~  
6 ~~Facilities" State/Local Assessment Jurisdiction Issues.~~

## 7 **PROPERTY TAX RULE 905<sup>24</sup>**

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

10 (a) Commencing with the assessment for the lien date for the 2003 assessment  
11 year, an electrical generation facility shall be state assessed property for purposes  
12 of article XIII, section 19 of the California Constitution if: (1) the facility has a  
13 generating capacity of 50 megawatts<sup>25</sup> or more; **and** (2) is owned or used by a  
14 company which is an *electrical corporation* as defined in subdivisions (a) and (b)  
15 of section 218 of the Public Utilities Code; or, the facility is owned or used by a  
16 company which is a state assessee for reasons other than its ownership of the  
17 electric generation facility or its ownership of pipelines, flumes, canals, ditches,  
18 or aqueducts lying within two or more counties.... [Footnote and emphasis  
19 added.]

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

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

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

27 ~~Only a sSystems~~ subject to local assessment ~~could be~~ are excluded from the definition of new  
28 construction by section 73.

## 29 **LOCALLY-ASSESSED PROPERTY**

30 In a utility-scale system, the final stage of power generation is typically a "step up" transformer,  
31 where the output voltage is increased to meet the transmission grid voltage requirements. Thus,  
32 equipment up to and including the final step-up transformer within the on-site substation would  
33 be considered part of the active solar energy system, and subject to the new construction  
34 exclusion. Equipment after that point would not be eligible for the exclusion.

---

<sup>24</sup> See also section 721.5.

<sup>25</sup> One megawatt is enough energy to power 1,000 average homes.

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

- 3 1. In a solar only system, with no auxiliary energy source such as natural gas, there are no  
4 dual-use components. The entire plant, up through the power block, is eligible for the  
5 100 percent exclusion.
- 6 2. In a dual-use system, the HTF within the central receiver is heated by both solar energy  
7 and an auxiliary energy source, such as natural gas. The central receiver, or boiler, is  
8 considered dual use, and is eligible for the 75 percent exclusion. All equipment  
9 downstream of the boiler is also considered dual use.

## 10 **PARKING LOT CANOPIES**

11 The legislative intent of AB X1 15 stated:

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

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

## 21 **STATE-ASSESSED PROPERTY**

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

## 27 **LEASES**

### 28 **LEASED EQUIPMENT**

29 For active solar energy systems that are leased to the property owner for a term of less than  
30 35 years, ownership of the system remains with the leasing company for the duration of the  
31 lease. Therefore, the system is excluded from the definition of new construction at the time of  
32 installation, and continues to be excluded from assessment until a change in ownership of the  
33 system occurs.

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

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

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

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

### 13 **LEASED LAND OR OTHER LEASED REAL PROPERTY**

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

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

### 21 **LEGAL ENTITIES**

22 Consistent with AB X1 15, active ~~Active~~ solar energy systems owned by a legal entity, such as a  
23 corporation, limited liability company (LLC), or partnership, are also excluded from the  
24 definition of new construction and are excluded from assessment. However, a change in  
25 ownership inconsistent with AB X1 15 would terminate the new construction exclusion for the  
26 active solar energy system.

27 This section describes rules applicable to legal entities in general that may also apply to legal  
28 entities that own active solar energy systems.<sup>40</sup>

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

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

---

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

<sup>40</sup> 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].



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

### 3 **TRANSFER OF REAL PROPERTY OF A LEGAL ENTITY**

4 Generally, a transfer of any interest in real property from an individual to a legal entity, from a  
5 legal entity to an individual, or between legal entities is a change in ownership.<sup>41</sup>

6 ~~However, any~~ Any transfer of real property between an individual or individuals and a legal  
7 entity, or between legal entities, that results solely in a change in the method of holding title to  
8 the real property, and in which the proportional ownership interests of the transferors and  
9 transferees in each and every piece of real property transferred remain the same after the transfer,  
10 is excluded from a change in ownership.<sup>42</sup> This is commonly known as the *proportional*  
11 *ownership interest transfer exclusion*. If the transaction is subject to this exclusion, the active  
12 solar energy system remains excluded from assessment. The persons holding the ownership  
13 interests in the transferee entity are deemed "original co-owners" for purposes of determining  
14 whether a change in ownership occurs upon subsequent transfers of the ownership interests in the  
15 legal entity under section 64(d).<sup>43</sup>

16 If the ownership interests are not identical after the transfer, then the ~~entire~~ real property interest  
17 transferred is subject to reassessment, not only the disproportionate interest.<sup>44</sup>

### 18 **TRANSFER OF INTERESTS IN A LEGAL ENTITY**

19 Generally, transfers of interests in legal entities do not constitute changes in ownership of the  
20 real property owned by those legal entities.<sup>45</sup> Thus, purchases or transfers of corporate voting  
21 stock, partnership ownership interests, LLC membership interests, or ownership interests in other  
22 legal entities are not changes in ownership of the real property owned by the legal entity.

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

### 28 **DECLINE IN VALUE**

29 ~~A county assessor must appraise new construction at its full cash value on the date the~~  
30 ~~construction is completed.~~<sup>48</sup> ~~Full cash value is defined as the amount of cash or its equivalent~~

---

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

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

<sup>43</sup> Rule 462.180.

<sup>44</sup> Rule 462.180(d)(4)., ~~Change in Ownership – Legal Entities~~.

<sup>45</sup> Section 64(a).

<sup>46</sup> Section 64(c)(1).

<sup>47</sup> Section 64(d).

<sup>48</sup> Section 75.10.

1 ~~that property would bring if exposed for sale in the open market under conditions in which~~  
2 ~~neither buyer nor seller could take advantage of the exigencies of the other.~~<sup>49</sup>

3 Section 51 requires that the county assessor annually enroll the lesser of a property's factored  
4 base year value or its full cash value (market value) as of the lien date. Full cash value is defined  
5 as the amount of cash or its equivalent that property would bring if exposed for sale in the open  
6 market under conditions in which neither buyer nor seller could take advantage of the exigencies  
7 of the other.<sup>50</sup> Since an estimate of full cash value for decline-in-value purposes is made as if the  
8 property was exposed for sale, the full cash value (~~for comparison purposes only~~) should not be  
9 reduced by the value of any excluded new construction because real property being made  
10 available for sale would include all segments of the appraisal unit. This analysis is made for  
11 comparison purposes only to determine the lesser of the fair market value or the factored base  
12 year value of the appraisal unit. Comparing the factored base year value with the current market  
13 value is necessary in order for the assessor to enroll the lesser value on the lien date as required  
14 by law. This analysis **does not** affect the factored base year value nor the status of any previously  
15 excluded new construction.

## 16 APPRAISAL UNIT

17 For decline-in-value purposes, the appropriate appraisal unit<sup>51</sup> must be established. Section 51  
18 provides:

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

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

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

27 Rule 461 provides:

28 ...(e) Declines in value will be determined by comparing the current lien date full  
29 value of the appraisal unit to the indexed base year full value of the same unit for  
30 the current lien date. Land and improvements constitute an appraisal unit except  
31 when measuring declines in value caused by disaster, in which case land shall  
32 constitute a separate unit. For purposes of this subsection fixtures and other  
33 machinery and equipment classified as improvements constitute a separate  
34 appraisal unit.... [Emphasis added.]

---

<sup>49</sup> Section 110.

<sup>50</sup> California Constitution article XIII, section 1, and article XIII A, section 1; Section 110.

<sup>51</sup> Rule 461 [[www.boe.ca.gov/lawguides/property/current/ptlg/rule/461.html](http://www.boe.ca.gov/lawguides/property/current/ptlg/rule/461.html).]

1 In most cases, the identification of the appraisal unit is obvious and causes few problems. Since  
2 the objective of the appraisal is to determine the market value of the property, the market also  
3 must determine the proper appraisal unit. The proper appraisal unit to be valued normally is the  
4 unit that persons in the marketplace typically buy and sell together as a single unit. For example,  
5 single-family homes are sold as a combination of land and buildings, including those fixtures,  
6 such as water heaters, that generally sell together with homes. This combination of land and  
7 improvements, therefore, comprises the typical appraisal unit for single-family homes. Although  
8 a solar energy system is technically a fixture, it would not be valued as a separate appraisal unit  
9 because in the marketplace solar energy systems normally are sold together with residential  
10 property as one unit.<sup>53</sup>

11 In some cases, however, the identification of the appraisal unit for decline-in-value purposes may  
12 not be as easily discernible as in the case of single-family homes. In those cases, the appraiser  
13 must use judgment in determining the proper unit. These decisions must reflect, as faithfully as  
14 possible, the unit most likely to be sold if the property were exposed to the open market.  
15 Accordingly, in a commercial, industrial, or utility-scale system environment, because active solar  
16 energy system fixtures commonly are sold separately, they typically would constitute a separate  
17 appraisal unit.

18 ***Example 4***

19 A property owner installs a qualified active solar energy system ~~for \$500,000~~ on a single-  
20 family residential home, and the system is appropriately excluded from assessment as new  
21 construction. The following January 1 lien date, the county assessor reviews the property for a  
22 possible decline in value (~~Proposition 8~~). When comparing the factored base year value with  
23 the current market value, the county assessor would include the current market value of the  
24 active solar system ~~in~~ as part of the current market value for the entire property since the  
25 appraisal unit for a single-family residence is the entire property. The current market value for  
26 the entire property would be compared to the enrolled factored base year value, and the lesser  
27 of the two values enrolled.

28 ~~This comparison is for a decline in value review only, and does not affect the enrolled~~  
29 ~~factored base year value.~~

30 ***Example 5***

31 A property owner leases a roof-top active solar energy system from DRK Solar Company  
32 and has it installed on a single-family residential home. The system is appropriately excluded  
33 from assessment as new construction. The following January 1 lien date, the county assessor  
34 reviews the property for a possible decline in value. When comparing the factored base year  
35 value with the current market value, the county assessor would not include the current market  
36 value of the active solar system as part of the current market value for the entire property  
37 since the system is only leased by the owner of the residential property and it is owned by the

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<sup>53</sup> Section 51(d); Rule 324(b).

1 solar company. The current market value of the land and improvements, excluding the solar  
2 system, would be compared to the enrolled factored base year value, and the lesser of the two  
3 values enrolled.

#### 4 **Example 6**

5 A property owner installs a qualified active solar energy system on a commercial warehouse,  
6 and the system is appropriately excluded from assessment as new construction. The  
7 following January 1 lien date, the assessor reviews the property for a possible decline in  
8 value. When comparing the factored base year value with the current market value, the  
9 assessor would have two appraisal units: one for the land and improvements (other than  
10 fixtures), and one for the fixtures, including the current market value of the active solar  
11 system. The current market value for each appraisal unit would be compared to the respective  
12 enrolled factored base year value, and the lesser of the two values enrolled.

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

#### 16 **Example 7**

17 A property owner installs a qualified active solar energy system with dual-use pipes and  
18 ducts used in conjunction with his wind energy system to produce electricity for agricultural  
19 crop maintenance. For application of the new construction exclusion, the dual-use equipment  
20 is considered active solar energy system property only to the extent of 75 percent of its full  
21 cash value.<sup>54</sup> For decline-in-value purposes, the assessor would have two appraisal units: one  
22 for the land and improvements (other than fixtures), and one for fixtures, including the  
23 current market value of the active solar system. The current market value for each appraisal  
24 unit would be compared to the enrolled factored base year value, and the lesser of the two  
25 values enrolled.

#### 26 **Example 8**

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

---

54 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.

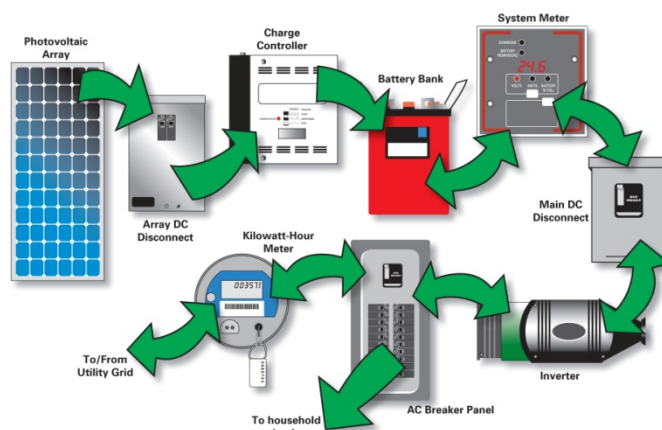


Figure 1. Typical Grid-Connected PV System<sup>55</sup>

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.<sup>56</sup>

<sup>55</sup> Reprinted with permission. © 2009 Home Power, Inc., [[www.homepower.com](http://www.homepower.com)].

<sup>56</sup> 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.<sup>57</sup>

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.

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<sup>57</sup> A megawatt is equal to one million watts.



10  
Figure 3. Solar parking lot canopy

11 **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 [24](#) provides an example of a passive solar residential structure.



24 Figure 24. Passive Solar Architecture<sup>58</sup>

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)
  - Space heating and cooling and process heating
  - Electricity generating facilities
- 28  
29

---

<sup>58</sup> All photographs in this document are courtesy of DOE/NREL.

- Pool and spa heating<sup>59</sup>

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

Large scale thermal systems typically use either:

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

Figure 5 illustrates a large scale thermal system.



Figure 5. Active Large Scale Thermal System

## **SOLAR WATER HEATING**

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

The *Solar Water Heating and Efficiency Act of 2007*<sup>60</sup> is intended to facilitate the installation of at least 200,000 solar water heating systems on homes, businesses, and government buildings throughout California by 2017. This program is to be coordinated with the Energy Commission's New Solar Homes Partnership to achieve the goal of building "zero-energy" homes.

The photographs in Figure 36 show typical water heating system solar collectors.

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<sup>59</sup> Pool, spa, and hot tub heaters are not eligible for the new construction exclusion.

<sup>60</sup> Public Utilities Code sections 2860 through 2867.4; Stats. 2007, ch 536 (Assembly Bill 1470)



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Figure 36. 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.

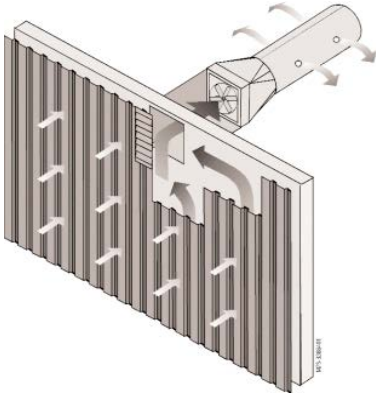


Figure 47. Transpired Solar Collector Diagram

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 58 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 58. 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.<sup>61</sup>

- 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 county 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**

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<sup>61</sup> Rule 20, *Taxable Possessory Interests* [[www.boe.ca.gov/lawguides/property/current/ptlg/rule/20.html](http://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 county 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 county assessor. The  
32 form is 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 county assessor receives this form, the new base year value of the building  
35 may be reduced by the value of the active solar energy system, less any rebates or tax

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