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November 23, 2011

State Board of Equalization
Attention: Michael McDade
Property and Special Taxes Department
P.O. Box 942879
Sacramento, CA 94279-0064

Re: DRAFT Guidelines for Active Solar Energy Systems New Construction Exclusion

Dear Mr. McDade:

On behalf of locally-assessed solar energy entities represented by my firm, the following comments respond to DRAFT *Guidelines for Active Solar Energy Systems New Construction Exclusion* (**Letter to Assessors No. 2011/039**).

DEFINITIONS

The DRAFT guidelines should be revised to include meaningful descriptions and examples of key terms, including:

- "system" (page 2, line 18)
- "storage devices" (page 2, line 28)
- "power conditioning equipment" (page 2, line 28)
- "transfer equipment" (page 2, line 29)

The guidelines should explain the scope and limitations of "parts related to the functioning of those items." (page 2, line 29)

The guidelines should distinguish excluded from non-excluded "spare parts"

- parts specifically "purchased . . . for installation in that system"
- parts specifically "designed . . . for installation in that system"
- parts specifically "fabricated . . . for installation in that system"
(page 3, line 2)

The DRAFT guidelines should be corrected by substituting "conveyance" for "transmission" (page 3, line 3).

The guidelines should clarify differences between, and include examples of, "pre-conveyance" and "post-conveyance" equipment, since the exclusion is limited to "equipment used up to, but not including, the stage of conveyance or use of the electricity." (page 3, line 4)

The guidelines should include descriptions and examples of "auxiliary" equipment (page 3, line 5).

The guidelines should include descriptions and examples of "dual-use" equipment (page 3, line 7).

The guidelines should clarify that underlying "land" is treated as a separate appraisal unit, as to which fee owner is liable for associated property tax.

The guidelines should emphasize that the exclusion is based on the 'intent' of the taxpayer and the extent of installation, regardless of whether active solar energy system property is removable or replaceable.

DECLINE IN VALUE

The DRAFT guidelines are based on the principle that "installation of a qualifying solar energy system will not result in either an increase or a decrease in the assessment of the existing property." (*New Construction*, Exclusions, page 6, lines 22 – 24)

However, the *Decline in Value* section of the DRAFT guidelines appears to contemplate *increases* in the value of non-excluded improvements. Non-excluded improvements and fixtures typically decrease in value. Unlike land, improvements and fixtures rarely appreciate in value.

Specifically, the DRAFT guidelines provide, for decline-in-value purposes, that an estimate is made "as if the *property was exposed for sale*" (page 11, line 25, emphasis added). The guidelines should differentiate what is meant by "the property" and "exposed for sale", as applied to:

- residential electrical generating systems
- commercial electrical generating systems
- industrial electrical generating systems
- active thermal systems
- solar water heating systems
- space conditioning systems
- process heating systems

The first step in the appraisal process is identifying the "appraisal unit". (*Assessors' Handbook 501, Basic Appraisal*, page 10). The guidelines should clarify, as to each solar energy system type, what is meant by "the entire property" (page 12, line 4; see also, Letter to Assessor 2009/024).

The guidelines should also clarify what is meant by "exposed for sale" and enable assessors, assessment appeals boards, and taxpayers to apply "comparable sales", "replacement cost new less depreciation", and "capitalized earning ability" valuation methods in estimating "full cash value".

Moreover, for decline-in-value purposes, the DRAFT guidelines should be modified to *exclude* "the current market value of the active solar system" from "the current market value for the entire property." (page 12, lines 3 – 4) In determining "full cash value" under Revenue and Taxation Code section 51, it is incorrect to value *excluded* property as if an ownership change occurred. Decline-in-value determinations should be based on recognition that *excluded* property will continue to be non-assessable, absent an ownership change. The exclusion should not be disregarded.

TREATMENT of NON-EXCLUDED PROPERTY

The guidelines should include examples for treatment of non-excluded property, as applied to:

- residential electrical generating systems
- commercial electrical generating systems
- industrial electrical generating systems
- active thermal systems
- solar water heating systems
- space conditioning systems
- process heating systems

Particularly for large-scale commercial and industrial electrical generating systems (page 14, lines 4 – 8), as well as large photovoltaic systems, solar thermal electric systems, and solar mechanical energy, the guidelines should include attributes and examples of excluded and non-excluded "pre-conveyance", "post-conveyance", "auxiliary", and "dual-use" equipment, including substations, control buildings, storage facilities, boilers, pipes, ducts, fencing, and other improvements.

TREATMENT of SYSTEM UPGRADES

The guidelines should address treatment of future replacements of system components. For example, if 2001-vintage panels are replaced by 2011-vintage mirrors, how would the replacement panels be treated?

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If you would like to discuss these comments informally by telephone, please contact me with a suggested date/time at peter@petermichaelslaw.com. Thank you.

Very truly yours


Peter W. Michaels