

McDade, Michael P

From: De Lorrell, Walter [Walter.DeLorrell@sdcounty.ca.gov]
Sent: Wednesday, December 07, 2011 1:23 PM
To: McDade, Michael P
Cc: Dronenburg, Ernest; Olson, Jeffrey
Subject: RE: San Diego County Assessor comments on Guidelines for Active Solar Energy Systems
New Construction Exclusion, LTA 2011/039
Attachments: Example Exhibits.pdf
Expires: Saturday, December 04, 2021 12:00 AM

Hi Mike,

This is to follow up on our conversation where you asked for the situation that was presented to the Assessor. Below is the flip structure presented and attached are the referenced exhibits.

Parent Company has a wholly-owned subsidiary, Company A, which in turn owns two single member limited liability companies, LLC 1 and LLC 2. (See Exhibit 1.) LLC 2 will obtain a loan from the Department of Energy to finance the construction of the solar power system. The solar power system will be built in California and all of the real and tangible property will be owned by LLC 2 at the time the plant is placed in service as its first use.

Before the solar plant is placed in service, assume that LLC 1 enters into what is commonly referred to as a “partnership flip transaction” to monetize the federal income tax benefits generated by the solar plant. In the partnership flip transaction, it is contemplated that LLC 1 would enter into a partnership agreement with a third-party investor wherein the LLC would specially allocate 99% of the federal income tax benefits generated by the solar to the third-party investor. (See Exhibit 2.) Once the solar plant is placed in service, the third-party investor would be allocated those federal income tax benefits and some (possibly a great majority) of the cash flow from operations until the investor reaches a pre-determined target rate of return; at which point the allocations of taxable income and cash flows to the investor will “flip” to 5% and Company A will have an option to buy the investor’s residual 5% interest at fair market value. (See Exhibit 3.)

The Assessor was not provided with a copy of the LLC operating agreements or the partnership flip agreement for the proposed transaction. However, we believe it is possible that as part of this “partnership flip transaction” the controlling interest in LLC 1 will temporarily change (say, for example, by a change in membership interests) in accordance with the 99% flip of the federal income tax benefits and the redirection of a large portion of the cash flow. This in turn would cause an indirect change in control of LLC 2 (the entity owning the system). Then, at some point, the controlling interest in LLC 1 acquired by the investor would “flip back” once the investor reaches the pre-determined target of return resulting in another change of control of LLC 1 and LLC 2. The system itself would always be held by LLC 2. Therefore, we are seeking clarity on how to apply the exclusion where a change of control of an entity holding the system occurs as part of a partnership flip transaction rather than a transfer of the system itself.

Please let me know if you have any questions.

Walter

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From: De Lorrell, Walter
Sent: Tuesday, November 22, 2011 2:46 PM
To: 'McDade, Michael P'; 'Kinkle, Sherrie'
Cc: Dronenburg, Ernest; Olson, Jeffrey
Subject: San Diego County Assessor comments on Guidelines for Active Solar Energy Systems New Construction Exclusion, LTA 2011/039

Hi Mike and Sherrie,

The following comments are for the Guidelines for Active Solar Energy Systems New Construction Exclusion, LTA 2011/039, and are being submitted on behalf of the San Diego County Assessor.

The Assessor requests that the Guidelines be amended to address: (1) whether a change in control of an entity that owns an active solar energy system (or a partially constructed system) due to a "partnership-flip" causes assessment of the system (or partially constructed system); and, (2) whether the system should be assessed upon the "flip-back" due to a change in control of that entity. The Assessor has been presented with a partnership flip structure where only controlling interests in legal entities are being transferred, as opposed to a transfer of the system itself.

The language of section 1(b) of Assembly Bill 1x 15 does not mention changes of control in legal entities and states the new construction exclusion should apply in "partnership flip structures" where the real property (the system fixture itself) is transferred as part of the transaction. However, in a partnership flip, it is possible that only legal entity interests will be transferred as opposed to the system itself. See Assembly Floor Bill analysis of 6/27/11 at pp 5-6 http://www.leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/abx1_15_cfa_20110627_132925_asm_floor.html.

Accordingly, it appears the system may undergo a change in ownership (CIO) subjecting it to assessment under R&T Code section 64(c) through a transfer of legal entity interests due to the "flip" (and possibly some years later when there is a "flip-back") because of a change in control of the entity owning the system.

As presently worded, the Guidelines could be read to support a CIO assessment of a system (or partially completed system) due to a change in control as part of a partnership flip transaction where only interests in an entity are transferred in the "flip" and later "flip-back". At page 9, line 33 to page 10, line 1, the Guidelines refer to the new construction exclusion applying to "similar arrangements that require the solar energy system itself" being "sold or transferred". At page 10, lines 5-6, it states that the exclusion should be applied to "systems that are transferred during construction." And, at page 10, lines 27-28 it states "A change in ownership [including a transfer of an interest in an entity per line 26] would terminate the new construction exclusion for the active solar energy system." Further, at page 11, lines 8-12, it differentiates between the transfer of interests in legal entities and the real property held by those entities. Then, at page 11, lines 13-14, it provides that a change in control of the legal entity causes reassessment of all real property owned by the entity.

The Assessor requests that the above referenced language of the Guidelines be clarified to specify whether a change in control of the legal entity owning the active solar energy system as part of a partnership flip (in the "flip" during or after construction and later in the "flip back"), without a transfer of the system itself, would terminate the new construction exclusion and cause the system to be assessed. For example, if Board staff is of the opinion the exclusion applies to changes in control of an entity as part of a partnership flip structure (the "flip" and subsequent "flip back"), the following change can be made at page 10, line 6 (addition in underline): "systems that are transferred during construction and

where a change in control of the legal entity owning the active solar energy system occurs as part of a partnership flip structure during or after construction. The exclusion is not lost on transfer until a”.

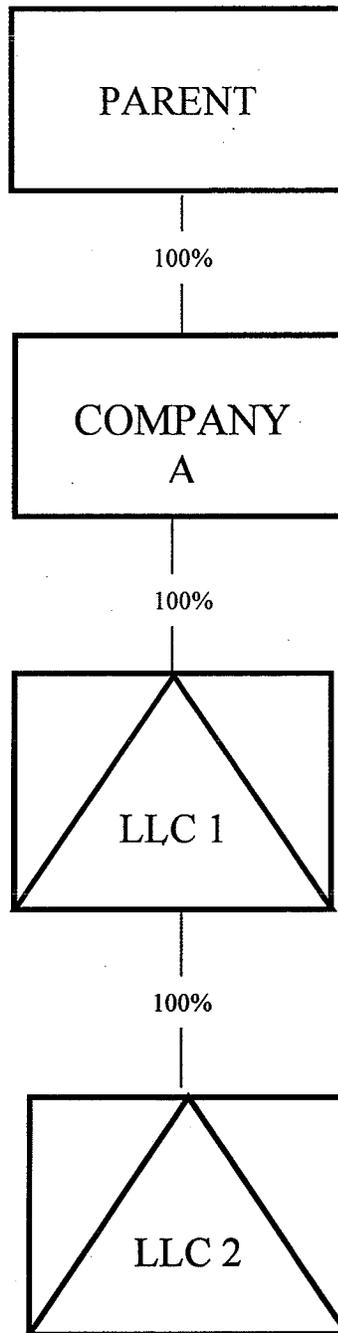
If you have any questions, please feel free to contact me at this email or the number below.

Thank you,

Walter

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Solar Project will be built and owned by LLC 2

EXHIBIT 1

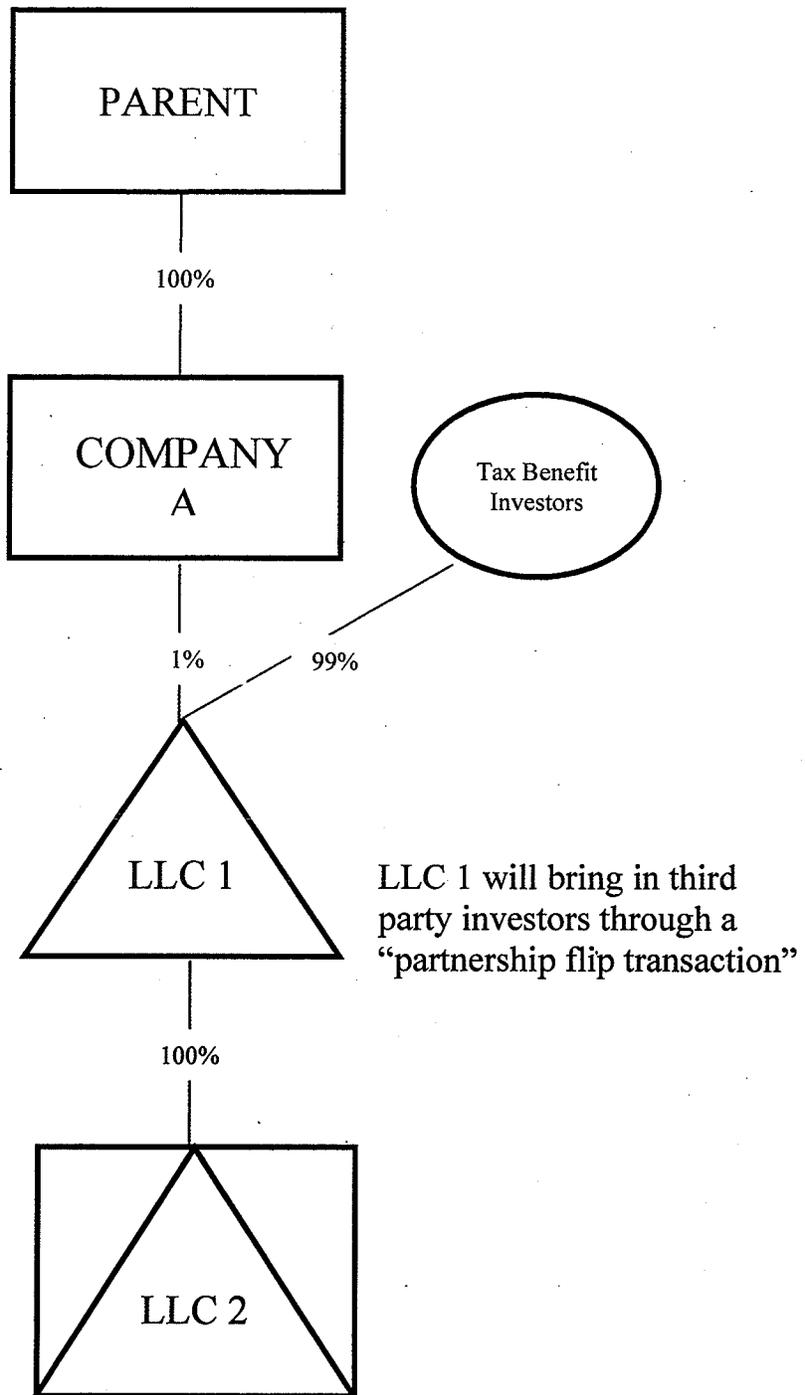


EXHIBIT 2

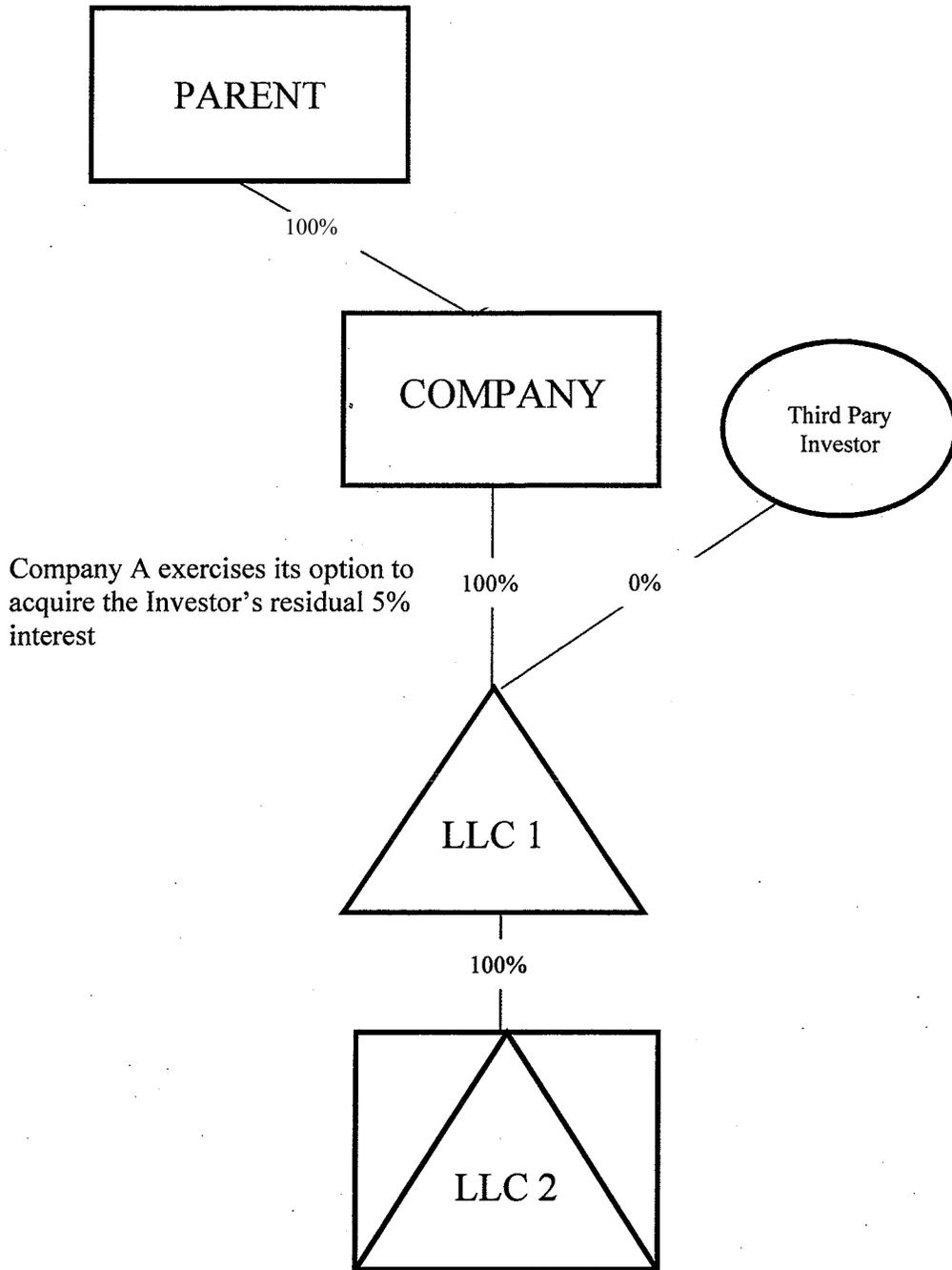


EXHIBIT 3