

TO: Mr. Michael McDade – State Board of Equalization

FROM: The Solar Alliance

RE: **Guidelines for Active Solar Energy Systems New Construction Exclusion**

DATE: Nov 23, 2011

Mr. McDade,

Thank you for the opportunity to comment on the draft Guidelines for Active Solar Energy Systems New Construction Exclusion.

Background

The Legislature amended Revenue and Taxation Code Section 73 to specify that solar energy systems qualify for the property tax exclusion even when they are sold or transferred in “sale-leaseback arrangements, partnership flip structures, or other transactions to purchasers that may also be eligible for federal tax benefits.”¹ The Legislature enacted this clarification of the property tax exclusion after study of how the industry works and how solar energy systems are financed. The Legislature knew that solar energy systems are completed, tested, and certified prior to their sale under various financing mechanisms and explicitly clarified the law to ensure that the systems would continue to qualify for the Section 73 exclusion for the purchaser despite the requirements of certain financing structures. However, the Draft Guidelines are not sufficiently clear in recognizing the Legislature’s specific enactment of ABx1 15 making this clarification.

Need for Conformity with Federal Tax Law

Under federal law, an owner-builder is given 90 days from the time the solar energy system is placed in service to fully execute the financing arrangements with a purchaser and still receive the federal tax benefits (*e.g.*, investment tax credit).² The Draft Guidelines should follow the lead of the Legislature and align with federal law on this issue and provide parties with a limited window (*i.e.*, 90 days) for the transfer of the system after its completion. A limited period of time mirroring federal law allows the

¹ Stats. 2011, ch. 3 (ABx1 15 sec. 1(b)).

² See IRC § 50(d)(4) making Paragraphs (2) and (3) of IRC § 48(b) (relating to certain leased property); see American Recovery and Reinvestment Act of 2009 (“ . . . 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) . . .”).

owner-builder to arrange for and execute the transaction post-construction. The Legislature, knowing exactly which financing transactions occur, sought to exempt systems transferred under these various arrangements and accomplished this objective through ABx1 15.

We understand the BOE may be concerned that without assessment immediately upon completion of construction someone could build a solar energy system and hold onto it for many years prior to selling the property and still claim the initial purchaser is entitled to an exclusion. However, a short period of time between completion and financing is essential in the commercial solar industry which is why it is permitted by federal law. The Legislature also recognizes this commercial reality and reaffirmed it through its enactment of ABx1 15.

Need for Conformity with Federal Tax Law

The Draft Guidelines should be amended to ensure conformity with federal tax law consistent with the above.