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No. 2004/051

TO COUNTY ASSESSORS:

SOLAR ENERGY NEW CONSTRUCTION EXCLUSION

In response to inquiries we continue to receive about the applicability of the exclusion from new construction for active solar energy systems to wind machines and turbines, this letter presents an explanation of the application of the exclusion provided by Revenue and Taxation Code¹ section 73.

This section provides that the term "newly constructed" does not include the construction or addition of any active solar energy system for property tax purposes. As explained below, wind machines and turbines are excluded from new construction under section 73 *only* if installed between January 1, 1981, and July 19, 1981. Wind machines and turbines installed before or after these dates are assessable.

OVERVIEW OF EXCLUSION

An "active solar energy system" is defined in section 73 as a system that uses solar devices, which are thermally isolated from living space or any other area where the energy is used, to provide for the collection, storage, or distribution of solar energy. Such a system does not include solar swimming pool heaters, hot tub heaters, passive energy systems, or wind energy systems. An active solar energy system may be used for any of the following:

- Domestic, recreational, therapeutic, or service water heating.
- Space conditioning.
- Production of electricity.
- Process heat.
- Solar mechanical energy.

An active solar energy system includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. "Parts" includes spare parts that are owned by the owner of, or maintenance contractor for, an active solar energy system for which the parts were specifically purchased, designed, or fabricated for installation in that system. Such a system includes only equipment used up to, but not including, the stage of transmission or use of the electricity.

¹ All references are to the Revenue and Taxation Code unless otherwise indicated.

An active solar energy system also includes pipes and ducts that are used *exclusively* to carry energy derived from solar energy. Pipes and ducts that are used to carry *both* energy derived from solar energy and energy derived from other sources may be considered active solar energy system property only to the extent of 75 percent of their full cash value.

An active solar energy system does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power *other* than solar energy to provide usable energy. Dual use equipment, such as ducts and hot water tanks, that is 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.

HISTORY

In 1980, voters approved Proposition 7 (SCA 28) which amended section 2(c) of article XIII A of the California Constitution, giving the Legislature the authority to exclude from property tax assessment the construction of active solar energy systems. Senate Bill 1306 (Ch. 1245, Stats. 1980) added section 73 to the Revenue and Taxation Code to implement Proposition 7. Section 73 provided that, for fiscal years 1981 through 1985, the term "newly constructed" shall not include the construction or addition of any solar energy systems as defined in Revenue and Taxation Code section 17052.5(h)(6)(A). This provision defined solar energy systems to include passive thermal systems, semi-passive thermal systems, active thermal systems, photovoltaic systems, and wind driven systems.

Assembly Bill 375 (Ch. 239, Stats. 1981) deleted the reference to section 17052.5 and instead provided that this new construction exclusion applied only to *active* solar energy systems. Thus, AB 375 clarified that the exclusion was not applicable to passive solar energy systems or to wind driven systems.² AB 375 was an urgency bill and took effect on July 20, 1981.

In 1985, Assembly Bill 1412 (Ch. 878, Stats. 1985) extended the sunset date of the new construction exclusion to January 1, 1991. Senate Bill 103 (Ch. 28, Stats. 1991) re-enacted section 73 (repealed as of January 1, 1991, as a result of a sunset clause) and extended its provisions through the 1993-94 fiscal year. In addition, Senate Bill 103 amended section 73 to provide that an active solar energy system did not include swimming pool or hot tub solar heating systems and specified that for an active solar energy system used to produce electricity, only the portion of the new construction or addition that is solar energy property, as defined, was excluded as new construction. This exclusion ended on January 1, 1995.³

In 1998, Assembly Bill 1755 (Ch. 855, Stats. 1998) repealed section 73 and added the current section 73, effective January 1, 1999. The current section will sunset on January 1, 2006, unless a statute is enacted that deletes or extends this date.

² Letters To Assessors No. 81/71, dated June 19, 1981, and No. 81/94, dated August 13, 1981.

³ Letter To Assessors No. 90/79, dated December 13, 1990.

WIND ENERGY

As noted above, wind energy systems were initially included in the solar energy new construction exclusion as enacted by SB 1306. However, AB 375 deleted wind energy from the solar energy new construction exclusion effective July 20, 1981. Thus, wind energy systems installed between January 1, 1981, and July 19, 1981, were excluded from new construction. Wind energy systems installed before December 31, 1980, or after July 20, 1981, are assessable.

Any solar energy system that has qualified for the exclusion under section 73 will continue to receive the benefit until that property changes ownership. If you have any questions regarding this new construction exclusion, please contact our Real Property Technical Services Unit at (916) 445-4982.

Sincerely,

/s/ Edward W. King, Jr.

for

David J. Gau

Deputy Director

Property and Special Taxes Department

DJG:grs