

Interest Parties Meeting
Guidelines for Active Solar Energy Systems New Construction Exclusion

Additional Comments Submitted by CleanREIT Partners LLC
January 17, 2012

1. The following language was accepted for Comment 17, Page 9, Line 31:

"The Legislature also declared that:

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

We would like to suggest that the accepted language be clarified as follows:

"The Legislature also declared that:

Newly constructed active solar energy systems that are constructed as freestanding or parking lot canopies, or that are constructed as installations on existing buildings qualify for the exclusion from classification as newly constructed under Section 73 of the Revenue and Taxation Code, including active solar energy systems sold in sale-leaseback arrangements, partnership flip structures, or other transactions."

2. **Question related to unclear wording in the SBE rewrite of Comment 26, Page 10, Line 2:** All partnership flip, sale leaseback, and inverted lease solar project finance transactions, and any transactions where a solar asset was sold into a publicly-traded trust or other securitization vehicle, have one thing in common—each transaction holds title to the solar assets (rooftop or ground mounted) via an LLC or other legal entity. Do the words:

"Consistent with ABx1 15, active solar energy systems owned by a legal entity, such as a corporation, limited liability company (LLC), or partnership, are also excluded from the definition of new construction, and are excluded from assessment."

mean that all the active solar systems financed by these solar transactions (each titled in the name of their appropriate single-purpose LLCs or other single-purpose legal entities) **are not assessed even if the ownership or control of the single-purpose legal entities changes** (as would be the case in a publicly traded financing of solar assets)?

HANDOUT #1

More specifically, the words on page 10, lines 20 – 28 are unclear.

- On page 10, lines 20 – 22 appear to indicate that the active solar system is ***not*** real property when owned by a legal entity (who itself does not the underlying building and/or real property owner).
- By comparison, lines 23 – 28 (and later) do not discuss legal entities owning active solar systems. Those lines discuss changes in ownership in legal entities owning real property. Are lines 20 – 22 and 23 – 28 describing the exact same legal entities, or different ones? Lines 23 – 28 do not appear to apply to single-purpose legal entities who solely own active solar assets (not subject to assessment).
- Instead, lines 23 – 28 seem to apply ***solely*** to entities that ***also*** own real estate (such as buildings or land) which may, or may not, also own the active solar systems sited on their properties.

Please clarify. Also, please provide a specific example on Page 10, Lines 20 – 28 (or elsewhere) describing the case where an LLC, corporation, or partnership would own an active solar system that becomes subject to assessment—if such legal entity simply was granted an easement to affix the solar system to the building or property, but where such legal entity was ***not*** the owner of the underlying building or property.

Please cover the specific case where there is a 100% transfer of interest in the legal entity (owning the solar system, but not owning any associated real property) to another legal entity (such as a publicly traded trust or other securitization vehicle)—where (i) none of the parties to the transfer transaction, nor the majority of their shareholders, are direct (or indirect) owners of the underlying building or real estate, and (ii) where the active solar property is not subject to assessment as described in lines 20 – 22.