



STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0064
1-916 274-3350 • FAX 1-916 285-0134
www.boe.ca.gov

BETTY T. YEE
First District, San Francisco
SEN. GEORGE RUNNER (RET.)
Second District, Lancaster

MICHELLE STEEL
Third District, Orange County

JEROME E. HORTON
Fourth District, Los Angeles

JOHN CHIANG
State Controller

CYNTHIA BRIDGES
Executive Director

No. 2013/063

December 16, 2013

TO COUNTY ASSESSORS AND INTERESTED PARTIES:

SOLAR ENERGY SYSTEMS ON NONPROFIT PROPERTIES

We have received a number of inquiries regarding the continued eligibility for property tax exemption on the property of nonprofit organizations that are currently receiving an exemption where solar energy systems have been installed and are operated by for-profit entities. The solar energy systems are frequently installed on the roof of worship centers, on covers over parking areas, and elsewhere on the grounds. The inquiries ask whether the nonprofit organizations' properties with installed solar energy systems still qualify for exemption under Revenue and Taxation Code section¹ 206 (Church Exemption), section 207 (Religious Exemption), or section 214 (Welfare Exemption).²

Nonprofit organizations' properties that are receiving the Church, Religious, or Welfare Exemption may continue to qualify for the exemption, either entirely or partially, if they enter into an agreement with a for-profit entity to install and operate a solar energy system on their property if the solar energy system is used to produce electricity for the nonprofit's own use.

One of the basic requirements for the Church, Religious, or Welfare Exemption is that the property must be *used exclusively* for a qualifying exempt purpose. The Revenue and Taxation Code does not specifically define the term *used exclusively*, but the courts have done so. The Supreme Court in *Cedars of Lebanon Hospital v. Los Angeles County*³ determined that the phrase *used exclusively* may not be given a literal interpretation so as to mean that the property exempted must be used solely for the purposes stated to the total exclusion of any other use. Instead, the Court held that *used exclusively* for exempt purposes includes any property which is used exclusively for any facility which is incidental to and reasonably necessary for the accomplishment of the exempt purpose.

Therefore, while a nonprofit organization may not own the solar-powered system and allows a solar installer to place the system on its property (to produce electricity for the nonprofit organization), that fact does not disqualify any portion of the property, including the portion specifically used for placement of the system, from exemption. The property is not being used inconsistently with the nonprofit's exempt purpose.

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

² For further information on solar energy systems, see Letters To Assessors 2012/053 for the *Guidelines for Active Solar Energy Systems New Construction Exclusion* [www.boe.ca.gov/proptaxes/pdf/lta12053.pdf].

³ (1950) 35 Cal.2d 729, 746.

The county assessor is responsible for determining on a case-by-case basis if the property continues to be used for its exempt purpose, and the installation of the solar system is incidental to and reasonably necessary for the accomplishment of the exempt purpose. To make this determination, it may be necessary for the assessor to review the service contract that the nonprofit has with its solar provider.

The following examples demonstrate various scenarios for solar energy systems installed on the property of nonprofit organizations, whereby either the nonprofit or the for-profit entity benefit from such installation. The term *benefit* refers to the use of the power generated from the active solar energy system.

Example 1

A nonprofit organization has leased a portion of its property to a for-profit entity for the installation of an active solar energy system for the benefit of the for-profit entity. What is the status of their property tax exemption(s)?

The portion of the nonprofit organization's property that is leased for the active solar energy system would not qualify for the Church, Religious, or Welfare Exemptions because the benefits realized by the solar system are accrued by the for-profit entity. However, disqualification of the exemption for the portion of the property leased for the active solar energy system does not, by itself, jeopardize the organization's qualification for exemption on the remaining portions of the property that are used exclusively for religious worship (Church Exemption), for property owned and operated by a church and used for religious worship or religious worship and school purposes (Religious Exemption), or for religious, charitable, hospital, or scientific purposes (Welfare Exemption).

Example 2

A nonprofit organization has leased a portion of its property to a for-profit for the installation of an active solar energy system for its benefit. What is the status of their property tax exemption(s)?

While a nonprofit organization does not own the solar-powered system and instead allows a solar installer to place the system on its property (to produce electricity for the benefit of the nonprofit organization), that fact does not disqualify any portion of the property, including the portion specifically used for the placement of the system, from exemption. The property is not being used inconsistently with the nonprofit's exempt purpose.

Example 3

A nonprofit organization has leased a portion of its property to a for-profit entity for the installation of an active solar energy system for both the benefit of the nonprofit organization and the for-profit entity. What is the status of its property tax exemption(s)?

The portion of the nonprofit organization's property that is leased for the solar energy system would not qualify for the Church, Religious, or Welfare Exemption if the for-profit entity receives a material benefit, for example by selling power generated by the system to

a third party. Such a benefit would be evidence to support the fact that the property is not used exclusively for the exempt purpose. However, disqualification of the exemption for the portion of the property leased for the active solar energy system does not, by itself, jeopardize the nonprofit organization's qualification for exemption on the remaining portions of the property used exclusively for a qualifying exempt purpose.

If you have any questions regarding solar energy systems on nonprofit properties, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David J. Gau

David J. Gau
Deputy Director
Property and Special Taxes Department

DJG:acb