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No. 2024/031

TO COUNTY ASSESSORS:

**ACTIVE SOLAR ENERGY SYSTEM NEW CONSTRUCTION EXCLUSION:  
CLARIFICATION OF SUNSET DATE EXTENSION**

In 1980, voters approved Proposition 7 (SCA 28), which amended section 2(c) of article XIII A of the California Constitution to give the Legislature the authority to exclude construction of active solar energy systems from property tax assessment. This exclusion is implemented by Revenue and Taxation Code<sup>1</sup> section 73, which provides that the term “newly constructed” does not include the construction or addition of any active solar energy system for property tax purposes. Because the term “newly constructed” is defined by section 70 to include any addition to real property, it includes construction in progress.

Section 73 was initially enacted by the Legislature in 1980 with uncodified language establishing a sunset date through the 1985 fiscal year. The sunset date has subsequently been extended multiple times.<sup>2</sup> Most recently, section 73 was amended to apply to lien dates through the 2025-26 fiscal year. However, because section 73 contains what appears to be two different sunset dates, questions have been raised as to which date is the correct sunset date. Specifically, section 73, subdivision (g) provides, “This section applies to property tax lien dates for the 1999-2000 fiscal year to the 2025-26 fiscal year, inclusive,” indicating that the exclusion lasts only through January 1, 2025, since that date is the lien date for the 2025-26 fiscal year. At the same time, section 73, subdivision (i)(1) provides that, “This section shall remain in effect only until January 1, 2027, and as of that date is repealed,” indicating that the exclusion is available through December 31, 2026.

Letter to Assessors (LTA) No. 2022/054, *Active Solar Energy System New Construction Exclusion: Sunset Date Extension*, interpreted these subdivisions as follows:

Effective September 18, 2022, [Senate Bill 1340](#) (Stats. 2022, ch. 425) amends section 73 to extend the new construction exclusion for active solar energy systems from 2023-24 to the 2025-26 fiscal year and changes the repeal date from January 1, 2025, to January 1, 2027.

<sup>1</sup> All further statutory section references are to the Revenue and Taxation Code unless otherwise specified.

<sup>2</sup> The exclusion has remained in effect since the 1981 fiscal year except for the period between 1995 and 1999, during which section 73 was not extended.

Thus, the new construction exclusion applies to any active solar energy system new construction in process or completed before January 1, 2027, unless this date is further extended. After the exclusion sunsets, any solar energy system previously excluded as new construction will remain excluded from property tax until the property changes ownership.

This interpretation was based on the Legislature's previous extensions of section 73 using substantially the same language as that contained in subdivisions (g) and (i)(1) as well as the guidance issued in LTAs clarifying those previous legislative extensions.

In 1981, a year after its initial passage, the Legislature amended section 73 to, as relevant here, move the sunset date into a codified portion of the statute. The amendments also included for the first time a "remain in effect only until" date, which was initially January 1, 1986. Section 73 was then extended for the first time in 1985 by Stats. 1985, ch. 878 (AB 1412) to apply to lien dates for the 1981-82 through 1990-91 fiscal years and remain in effect only until January 1, 1991.

The Board's first LTA clarifying the sunset date was issued in 1990, just prior to what would have been the repeal of section 73 on January 1, 1991.<sup>3</sup> It explained that the exclusion is available until the "remain in effect only until" date. It stated, "...it is our position that any solar energy system completed on or after January 1, 1991 would not qualify for exclusion from new construction." It appears that this position may have been based, at least in part, on the legislative history which includes statements in the Legislative Analyst's Analysis of Assembly Bill No. 1412, that the bill extends section 73 to January 1, 1991, and the Senate Rules Committee analysis of AB 1412 that the bill extends the sunset date to January 1, 1991.

Following this initial extension of section 73 by the Legislature and the Board's first clarifying LTA, the Legislature extended section 73 six more times, again, each time, using substantially the same language.<sup>4</sup> The Board followed each extension by issuing a clarifying LTA that reiterated the position that the exclusion is available until the "remain in effect only until" date rather than the last specified lien date in the statute. (See LTA 95/04, LTA 2004/051, LTA 2008/037, LTA 2013/042, LTA 2014/37, and LTA 2022/054.) Notably, each successive legislative extension was enacted with no clarification of the sunset date language or any indication that the Board's clarifying guidance was not what the Legislature had intended. Had the Legislature intended a sunset date different than the Board's published clarifying guidance, we believe it would have amended the language of the statute to correct that guidance.

It appears, rather, that the Legislature affirmed the Board's previous guidance by adding both subdivisions (f) and (i)(2) to section 73 in 2011. Subdivision (f) stated that the exclusion "remains in effect only until there is a subsequent change in ownership", while subdivision (i)(2) stated that an exclusion granted prior to January 1, 2017 "shall continue to be excluded on and after January 1, 2017, until there is a subsequent change in ownership". Thus, both subdivisions made the same clarification, namely that once granted, the exclusion will last until a subsequent change in ownership occurs. It appears that in creating two subdivisions to make the same clarification, the Legislature was reiterating the Board's previous guidance that the statute operated through the "remain in effect only until" date of January 1, 2017, rather than January 1, 2015, the lien date for fiscal year 2015-2016. Because subdivision (i)(2) emphasizes that exclusions granted prior to

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<sup>3</sup> LTA 1990/079 (December 13, 1990).

<sup>4</sup> Beginning in 1998, the "remain in effect only until" date was moved into a separate subdivision.

January 1, 2017 are also excluded until a subsequent change in ownership, it supports the exclusion's availability from January 1, 2015 to December 31, 2017.

For these reasons, consistent with LTA 2022/054, this letter maintains that the section 73 new construction exclusion applies to any active solar energy system new construction in progress or completed before January 1, 2027. This statement, however, should not be taken to mean that all construction in progress, including those added after January 1, 2026 and before January 1, 2027, qualify for the exclusion. In order to be excluded from assessment, property must, of course, first be subject to assessment. Completed new construction is subject to assessment on the lien date and it is also subject to assessment on the day of completion because completed new construction is subject to supplemental assessment. Therefore, any new construction completed on any day prior to January 1, 2027 may qualify for section 73. However, since construction in progress becomes subject to assessment only on the lien date, only construction in progress in place as of 12:01 am, January 1, 2026 may qualify for section 73. Construction added between January 1, 2026 and December 31, 2026 is not excludable since such construction in progress is not assessable until January 1, 2027, at which time section 73 is repealed. Of course, if construction in progress added between those dates is completed before January 1, 2027, the completed new construction is subject to supplemental assessment and may, thus, be excluded by section 73.<sup>5</sup> Stated another way, construction in progress added from January 1, 2026 through December 31, 2026 is not excluded from reassessment unless construction is completed and therefore subject to assessment before January 1, 2027.

The following examples demonstrate situations involving the sunset date for the solar exclusion and construction in progress for active solar energy systems.

### ***Example 1***

Construction of an active solar energy system (ASES) begins in September 2025, and is scheduled for completion in September 2026. What is the property tax status of the exclusion for the construction of the active solar energy system?

The construction in progress as of January 1, 2026, is excluded until such time as there is a subsequent change in ownership or change in control of the solar facility. On the date of completion in September 2026, the ASES is subject to supplemental assessment and the assessor will establish a base year value for the completed ASES that will be excluded from assessment under section 73.

### ***Example 2***

Construction of an ASES begins in September 2025, and is scheduled for completion in September 2026. What is the property tax status of the exclusion for the construction of the active solar energy system if construction delays cause the system to be completed in February of 2027?

The construction in progress as of January 1, 2026, is excluded until such time

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<sup>5</sup> When construction is complete is beyond the scope of this LTA. For further guidance on the completion of construction, see Property Tax Rules 463 and 463.500.

as there is a subsequent change in ownership or change in control of the ASES. The value of any construction in progress on January 1, 2027, is enrolled as of that lien date. On the date of completion of the ASES in February 2027, the assessor will establish a base year value for that portion completed from January 1, 2026 to February 2027. This base year value is not excluded since section 73 is repealed as of January 1, 2027.

***Example 3***

Construction of an ASES begins in February 2026, and is scheduled for completion in October 2026. What is the property tax status of the exclusion for the construction of the active solar energy system?

On the date of completion of the ASES in October 2026, the assessor will establish a base year value for the completed facility that will be excluded from assessment under section 73.

***Example 4***

If construction of a solar project is completed in phases and individual phases are complete, what is the status of the exclusion for the construction of the ASES?

For an ASES being completed in phases, the completed phases that qualify for the new construction exclusion prior to January 1, 2027 remain excluded from the definition of assessable new construction until a subsequent change in ownership or change in control of the ASES. The assessor would establish a base year value for each phase upon completion, or a construction in progress value for a phase not complete on a lien date, absent the value of any excluded new construction. Any additional phases constructed but not complete before January 1, 2027 are assessable. Any phases completed after January 1, 2027 are also assessable new construction.

This letter supersedes previous advice regarding the sunset date that is contained in Assessors' Handbook Section 410, *Assessment of Newly Constructed Property* (May 2014); LTA 95/04, *Sunset of Solar Exclusion from New Construction*; LTA 2004/051, *Solar Energy New Construction Exclusion*; LTA 2008/037, *Solar Energy Property Tax Incentive*; LTA No. 2012/053, *Guidelines for Active Solar Energy Systems New Construction Exclusion*; LTA No. 2013/042, *Solar Energy Systems: Construction in Progress and the Sunset Date*; LTA 2014/037, *Active Solar Energy System New Construction Exclusion: Sunset Date Extension*; and LTA 2022/054, *Active Solar Energy System New Construction Exclusion: Sunset Date Extension*.

If you have any questions regarding the active solar energy new construction exclusion, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung  
Deputy Director  
Property Tax Department

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