

**ASSEMBLY BILL**

**No. 865**

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**Introduced by Assembly Member Nestande**

February 17, 2011

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An act to amend Section 73 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 865, as introduced, Nestande. Property tax: exclusion from newly constructed: active solar energy system.

The California Constitution generally limits ad valorem taxes on real property to 1% of the full cash value of that property. For purposes of this limitation, "full cash value" is defined as the assessor's valuation of real property as shown on the 1975–76 tax bill under "full cash value" or, thereafter, the appraised value of that real property when purchased, newly constructed, or a change in ownership has occurred. The California Constitution authorizes the Legislature to provide that "newly constructed" does not include, among other things, the construction or addition of an active solar energy system. Existing property tax law excludes from the definition of "newly constructed," through the 2015–16 fiscal year, the construction or addition of an active solar energy system, as provided.

This bill would extend the active solar energy system exclusion from the definition of "newly constructed" through the 2032–33 fiscal year.

Section 2229 of the Revenue and Taxation Code requires the Legislature to reimburse local agencies annually for certain property tax revenues lost as a result of any exemption or classification of property for purposes of ad valorem property taxation.

This bill would provide that, notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for property tax revenues lost by them pursuant to the bill.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 73 of the Revenue and Taxation Code is  
2 amended to read:

3 73. (a) Pursuant to the authority granted to the Legislature  
4 pursuant to paragraph (1) of subdivision (c) of Section 2 of Article  
5 XIII A of the California Constitution, the term “newly constructed,”  
6 as used in subdivision (a) of Section 2 of Article XIII A of the  
7 California Constitution, does not include the construction or  
8 addition of any active solar energy system, as defined in  
9 subdivision (b).

10 (b) (1) “Active solar energy system” means a system that uses  
11 solar devices, which are thermally isolated from living space or  
12 any other area where the energy is used, to provide for the  
13 collection, storage, or distribution of solar energy.

14 (2) “Active solar energy system” does not include solar  
15 swimming pool heaters or hot tub heaters.

16 (3) Active solar energy systems may be used for any of the  
17 following:

- 18 (A) Domestic, recreational, therapeutic, or service water heating.
- 19 (B) Space conditioning.
- 20 (C) Production of electricity.
- 21 (D) Process heat.
- 22 (E) Solar mechanical energy.

23 (c) For purposes of this section, “occupy or use” has the same  
24 meaning as defined in Section 75.12.

25 (d) (1) (A) The Legislature finds and declares that the definition  
26 of spare parts in this paragraph is declarative of the intent of the  
27 Legislature, in prior statutory enactments of this section that  
28 excluded active solar energy systems from the term “newly  
29 constructed,” as used in the California Constitution, thereby  
30 creating a tax appraisal exclusion.

1 (B) An active solar energy system that uses solar energy in the  
2 production of electricity includes storage devices, power  
3 conditioning equipment, transfer equipment, and parts related to  
4 the functioning of those items. In general, the use of solar energy  
5 in the production of electricity involves the transformation of  
6 sunlight into electricity through the use of devices such as solar  
7 cells or other solar collecting equipment. However, an active solar  
8 energy system used in the production of electricity includes only  
9 equipment used up to, but not including, the stage of conveyance  
10 or use of the electricity. For the purpose of this paragraph, the term  
11 “parts” includes spare parts that are owned by the owner of, or the  
12 maintenance contractor for, an active solar energy system that uses  
13 solar energy in the production of electricity and which spare parts  
14 were specifically purchased, designed, or fabricated by or for that  
15 owner or maintenance contractor for installation in an active solar  
16 energy system that uses solar energy in the production of  
17 electricity, thereby including those parts in the tax appraisal  
18 exclusion created by this section.

19 (2) An active solar energy system that uses solar energy in the  
20 production of electricity also includes pipes and ducts that are used  
21 exclusively to carry energy derived from solar energy. Pipes and  
22 ducts that are used to carry both energy derived from solar energy  
23 and from energy derived from other sources are active solar energy  
24 system property only to the extent of 75 percent of their full cash  
25 value.

26 (3) An active solar energy system that uses solar energy in the  
27 production of electricity does not include auxiliary equipment,  
28 such as furnaces and hot water heaters, that use a source of power  
29 other than solar energy to provide usable energy. An active solar  
30 energy system that uses solar energy in the production of electricity  
31 does include equipment, such as ducts and hot water tanks, that is  
32 utilized by both auxiliary equipment and solar energy equipment,  
33 that is, dual use equipment. That equipment is active solar energy  
34 system property only to the extent of 75 percent of its full cash  
35 value.

36 (e) (1) Notwithstanding any other law, for purposes of this  
37 section, “the construction or addition of any active solar energy  
38 system” includes the construction of an active solar energy system  
39 incorporated by the owner-builder in the initial construction of a  
40 new building that the owner-builder does not intend to occupy or

1 use. The exclusion from “newly constructed” provided by this  
2 subdivision applies to the initial purchaser who purchased the new  
3 building from the owner-builder, but only if the owner-builder did  
4 not receive an exclusion under this section for the same active  
5 solar energy system and only if the initial purchaser purchased the  
6 new building prior to that building becoming subject to  
7 reassessment to the owner-builder, as described in subdivision (d)  
8 of Section 75.12. The assessor shall administer this subdivision in  
9 the following manner:

10 (A) The initial purchaser of the building shall file a claim with  
11 the assessor and provide to the assessor any documents necessary  
12 to identify the value attributable to the active solar energy system  
13 included in the purchase price of the new building. The claim shall  
14 also identify the amount of any rebate for the active solar energy  
15 system provided to either the owner-builder or the initial purchaser  
16 by the Public Utilities Commission, the State Energy Resources  
17 Conservation and Development Commission, an electrical  
18 corporation, a local publicly owned electric utility, or any other  
19 agency of the State of California.

20 (B) The assessor shall evaluate the claim and determine the  
21 portion of the purchase price that is attributable to the active solar  
22 energy system. The assessor shall then reduce the new base year  
23 value established as a result of the change in ownership of the new  
24 building by an amount equal to the difference between the  
25 following two amounts:

26 (i) That portion of the value of the new building attributable to  
27 the active solar energy system.

28 (ii) The total amount of all rebates, if any, described in  
29 subparagraph (A) that were provided to either the owner-builder  
30 or the initial purchaser.

31 (C) The extension of the new construction exclusion to the initial  
32 purchaser of a newly constructed new building shall remain in  
33 effect only until there is a subsequent change in ownership of the  
34 new building.

35 (2) The State Board of Equalization, in consultation with the  
36 California Assessors’ Association, shall prescribe the manner,  
37 documentation, and form for claiming the new construction  
38 exclusion required by this subdivision.

1 (f) This section applies to property tax lien dates for the  
2 1999–2000 fiscal year to the ~~2015–16~~ 2032–33 fiscal year,  
3 inclusive.

4 (g) The amendments made to this section by the act that added  
5 this subdivision apply beginning with the lien date for the 2008–09  
6 fiscal year.

7 (h) This section shall remain in effect only until January 1, ~~2017~~,  
8 2034, and as of that date is repealed.

9 SEC. 2. Notwithstanding Section 2229 of the Revenue and  
10 Taxation Code, no appropriation is made by this act and the state  
11 shall not reimburse any local agency for any property tax revenues  
12 lost by it pursuant to this act.

13 SEC. 3. This act provides for a tax levy within the meaning of  
14 Article IV of the Constitution and shall go into immediate effect.