

AMENDED IN SENATE JUNE 2, 2011

AMENDED IN ASSEMBLY MARCH 22, 2011

CALIFORNIA LEGISLATURE—2011–12 FIRST EXTRAORDINARY SESSION

ASSEMBLY BILL

No. 15

Introduced by Assembly Member Hill

March 14, 2011

An act to amend Section 73 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 15, as amended, Hill. 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. Pursuant to an authorization in the California Constitution, existing law excludes from classification as “newly constructed” the construction or addition of an active solar energy system. Existing law defines “active solar energy systems for purposes of this exclusion to mean 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.

This bill would clarify the definition of active solar energy system for purposes of this exclusion to mean a system that, upon completion

of the construction of a system as part of a new property or the addition of a system to an existing property, uses solar devices as described above *and would make additional findings and declarations, as provided*. This bill would also clarify that this exclusion shall remain in effect only until there is a subsequent change in ownership. This bill would state that its provisions are declaratory of existing law.

The California Constitution authorizes the Governor to declare a fiscal emergency and to call the Legislature into special session for that purpose. Governor Schwarzenegger issued a proclamation declaring a fiscal emergency, and calling a special session for this purpose, on December 6, 2010. Governor Brown issued a proclamation on January 20, 2011, declaring and reaffirming that a fiscal emergency exists and stating that his proclamation supersedes the earlier proclamation for purposes of that constitutional provision.

This bill would state that it addresses the fiscal emergency declared and reaffirmed by the Governor by proclamation issued on January 20, 2011, pursuant to the California Constitution.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) That Section 73 of the Revenue and Taxation Code was
- 4 enacted to encourage and to provide incentives for the development
- 5 of active solar energy systems by providing an exclusion from
- 6 classification as newly constructed the construction or addition of
- 7 active solar energy systems. In 2008, Section 73 of the Revenue
- 8 and Taxation Code was amended to provide that this exclusion
- 9 would apply to the initial purchaser from an owner-builder that
- 10 incorporated an active solar energy system in the initial
- 11 construction of the new building that the owner-builder did not
- 12 intend to occupy or use, under specified circumstances.
- 13 (b) That newly constructed active solar energy systems are often
- 14 sold or transferred in sale-leaseback arrangements, *partnership*
- 15 *flip structures*, or other transactions to purchasers ~~who~~ that may
- 16 also be eligible for federal tax benefits. As long as the active solar

1 energy system is newly constructed or added and another taxpayer
2 has not received an exclusion for the same active solar energy
3 system, it is the intent of the Legislature that the purchaser of the
4 active solar energy system in a transaction such as that described
5 above receive an exclusion.

6 (c) That newly constructed active solar energy systems that are
7 constructed as freestanding or parking lot canopies, or that are
8 constructed as installations on existing buildings qualify for the
9 exclusion from classification as newly constructed under Section
10 73 of the Revenue and Taxation Code, including active solar energy
11 systems sold in sale-leaseback transactions.

12 (d) That the amendments made to Section 73 of the Revenue
13 and Taxation Code by this act do not constitute a change in, but
14 are declaratory of, existing law.

15 SEC. 2. Section 73 of the Revenue and Taxation Code is
16 amended to read:

17 73. (a) Pursuant to the authority granted to the Legislature
18 pursuant to paragraph (1) of subdivision (c) of Section 2 of Article
19 XIII A of the California Constitution, the term “newly constructed,”
20 as used in subdivision (a) of Section 2 of Article XIII A of the
21 California Constitution, does not include the construction or
22 addition of any active solar energy system, as defined in
23 subdivision (b).

24 (b) (1) “Active solar energy system” means a system that, upon
25 completion of the construction of a system as part of a new property
26 or the addition of a system to an existing property, uses solar
27 devices, which are thermally isolated from living space or any
28 other area where the energy is used, to provide for the collection,
29 storage, or distribution of solar energy.

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

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

34 (A) Domestic, recreational, therapeutic, or service water heating.

35 (B) Space conditioning.

36 (C) Production of electricity.

37 (D) Process heat.

38 (E) Solar mechanical energy.

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

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

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

25 (2) An active solar energy system that uses solar energy in the
26 production of electricity also includes pipes and ducts that are used
27 exclusively to carry energy derived from solar energy. Pipes and
28 ducts that are used to carry both energy derived from solar energy
29 and from energy derived from other sources are active solar energy
30 system property only to the extent of 75 percent of their full cash
31 value.

32 (3) An active solar energy system that uses solar energy in the
33 production of electricity does not include auxiliary equipment,
34 such as furnaces and hot water heaters, that use a source of power
35 other than solar energy to provide usable energy. An active solar
36 energy system that uses solar energy in the production of electricity
37 does include equipment, such as ducts and hot water tanks, that is
38 utilized by both auxiliary equipment and solar energy equipment,
39 that is, dual use equipment. That equipment is active solar energy

system property only to the extent of 75 percent of its full cash value.

(e) (1) Notwithstanding any other law, for purposes of this section, “the construction or addition of any active solar energy system” includes the construction of an active solar energy system incorporated by the owner-builder in the initial construction of a new building that the owner-builder does not intend to occupy or use. The exclusion from “newly constructed” provided by this subdivision applies to the initial purchaser who purchased the new building from the owner-builder, but only if the owner-builder did not receive an exclusion under this section for the same active solar energy system and only if the initial purchaser purchased the new building prior to that building becoming subject to reassessment to the owner-builder, as described in subdivision (d) of Section 75.12. The assessor shall administer this subdivision in the following manner:

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

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

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

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

(C) The extension of the new construction exclusion to the initial purchaser of a newly constructed new building shall remain in

1 effect only until there is a subsequent change in ownership of the
2 new building.

3 (2) The State Board of Equalization, in consultation with the
4 California Assessors' Association, shall prescribe the manner,
5 documentation, and form for claiming the new construction
6 exclusion required by this subdivision.

7 (f) Notwithstanding any other law, the exclusion from new
8 construction provided by this section shall remain in effect only
9 until there is a subsequent change in ownership.

10 (g) This section applies to property tax lien dates for the
11 1999–2000 fiscal year to the 2015–16 fiscal year, inclusive.

12 (h) The amendments made to this section by the act that added
13 this subdivision apply beginning with the lien date for the 2008–09
14 fiscal year.

15 (i) (1) This section shall remain in effect only until January 1,
16 2017, and as of that date is repealed.

17 (2) Active energy solar systems that qualify for an exclusion
18 under this section prior to January 1, 2017, shall continue to be
19 excluded on and after January 1, 2017, until there is a subsequent
20 change in ownership.

21 SEC. 3. This act addresses the fiscal emergency declared and
22 reaffirmed by the Governor by proclamation on January 20, 2011,
23 pursuant to subdivision (f) of Section 10 of Article IV of the
24 California Constitution.

25 SEC. 4. This act is an urgency statute necessary for the
26 immediate preservation of the public peace, health, or safety within
27 the meaning of Article IV of the Constitution and shall go into
28 immediate effect. The facts constituting the necessity are:

29 In order to timely clarify the application and requirements of the
30 real property exclusion for active solar energy systems, it is
31 necessary that this act take effect immediately.

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