



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

TED GAINES
First District, Sacramento

MALIA M. COHEN, CHAIR
Second District, San Francisco

ANTONIO VAZQUEZ
Third District, Santa Monica

MIKE SCHAEFER, VICE CHAIR
Fourth District, San Diego

BETTY T. YEE
State Controller

YVETTE M. STOWERS
Executive Director

No. 2022/023

June 10, 2022

TO COUNTY ASSESSORS:

**ACTIVE SOLAR ENERGY SYSTEMS:
PARTNERSHIP FLIP TRANSACTIONS**

Effective September 30, 2021, [Senate Bill 267](#) (ch. 424, Stats. 2021) added section 64.1 to the Revenue and Taxation Code,¹ which relates to legal entities owning active solar energy systems pursuant to a partnership flip transaction.

Section 73 excludes from the definition of "newly constructed" the construction or addition of any active solar energy system, as defined, through the 2023-24 fiscal year. This new construction exclusion remains in effect until there is a subsequent change in ownership.²

In order to finance the construction of new active solar energy systems, solar developers often enter into financing arrangements, including sale-leaseback arrangements, partnership flip structures, or similar transactions, with investors (purchasers) that may also be eligible for federal tax benefits. In 2011, Assembly Bill (AB) X1 15 of the First Extraordinary Session (ch. 3, Stats. 2011) amended section 73 and included uncodified legislative findings and declarations that it was the intent of the Legislature that the purchaser of the active solar energy system in a sale-leaseback arrangement, partnership flip structure transaction, or similar transaction receive an exclusion until there is a subsequent change in ownership.

Under Revenue and Taxation Code section 64(a), a transfer of ownership interests in a legal entity is not generally considered a change in ownership of the legal entity's real property. However, pursuant to section 64(c)(1), if any person or entity obtains control of more than 50 percent of a legal entity, all real property owned by that legal entity is subject to reassessment.

Section 64.1 adds an exception to the section 64(c)(1) change in control provisions and provides that for a legal entity that owns an active solar energy system pursuant to a partnership flip transaction, neither an initial transfer of a capital and profits interest in the legal entity, nor any subsequent change in the allocation of the capital and profits of the legal entity among the members, constitutes a transfer of control of, or of a majority interest in, the legal entity. This exception does not apply to any real property owned by the legal entity other than the active solar

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

² For further information on the new construction exclusion for active solar energy systems, please see Letters To Assessors No. 2012/053 and No. 2014/037.

energy system. Real property owned by the legal entity, other than the active solar energy system, shall be deemed to undergo a change in ownership and subject to reassessment. Additionally, this exception does not apply to more than one partnership flip transaction with respect to any portion of an active solar energy system.

An "initial transfer" is defined as a transfer or series of transfers of an interest in a partnership or limited liability company used to own the active solar energy system and that commence prior to the date that the active solar energy system is placed in service for federal income tax purposes.³

A "partnership flip transaction" is defined as a financing arrangement that meets all of the following requirements:⁴

- A developer of an active solar energy system and one or more unrelated parties enter into the financing arrangement;
- As part of the initial transfer, the unrelated party or parties agree to provide a capital contribution, or a series of contributions, to a partnership or limited liability company in exchange for, on a cumulative basis, an interest in a majority of the tax attributes, such as federal tax credits, depreciation, and a majority of either, or both, the capital and profits of the entity; and
- The unrelated party or parties receive the tax attributes until the party or parties achieve a preestablished yield or until after a preestablished period of time, at which time the tax attributes are reduced, and the developer obtains a majority of both the capital and profit interests of the partnership or limited liability company.

Section 64.1(c) provides that if the parties to a partnership flip transaction sell or exchange ownership of the partnership or limited liability company in a transaction or series of transactions that are separate and apart from the partnership flip transaction conducted pursuant to the provisions of section 64.1, in such a manner that a change in control of the partnership or limited liability company occurs under section 64(c)(1), then the provisions of section 64.1 do not apply to that transaction or transactions.

A copy of new section 64.1 is enclosed. If you have any questions regarding these provisions, please contact the County-Assessed Properties Division at 1-916-274-3350.

Sincerely,

/s/ David Yeung

David Yeung
Deputy Director
Property Tax Department

DY:mc
Enclosure

³ Section 64.1(b)(2).

⁴ Section 64.1(b)(3).

Section 64.1 is added to the Revenue and Taxation Code to read:

64.1. (a) (1) Notwithstanding paragraph (1) of subdivision (c) of Section 64, in the case of a legal entity that owns an active solar energy system pursuant to a partnership flip transaction, neither an initial transfer of a capital and profits interest in the legal entity, nor any subsequent change in the allocation of the capital and profits of the legal entity among the members, shall be deemed to constitute a transfer of control of, or of a majority interest in, the legal entity.

(2) Paragraph (1) shall not apply to any real property owned by the legal entity other than the active solar energy system. Real property owned by the legal entity, other than the active solar energy system, shall be deemed to undergo a change in ownership to the extent otherwise provided under subdivision (c) of Section 64.

(3) Paragraph (1) shall not apply to more than one partnership flip transaction with respect to any portion of an active solar energy system.

(b) For purposes of this section, all of the following definitions apply:

(1) "Active solar energy system" has the same meaning as defined in Section 73.

(2) "Initial transfer" means a transfer or series of transfers of an interest in a partnership or limited liability company used to own the active solar energy system and that commence prior to the date that the active solar energy system is placed in service for federal income tax purposes.

(3) "Partnership flip transaction" means a financing arrangement that meets all of the following requirements:

(A) A developer of an active solar energy system and one or more unrelated parties enter into the financing arrangement.

(B) As part of the initial transfer, the unrelated party or parties agree to provide a capital contribution, or a series of contributions, to a partnership or limited liability company in exchange for, on a cumulative basis, an interest in a majority of the tax attributes, such as federal tax credits, depreciation, and a majority of either, or both, the capital and profits of the entity.

(C) The unrelated party or parties receive the tax attributes until the party or parties achieve a preestablished yield or until after a preestablished period of time, at which time the tax attributes are reduced, and the developer obtains a majority of both the capital and profit interests of the partnership or limited liability company.

(c) If the parties to a partnership flip transaction sell or exchange ownership of the partnership or limited liability company in a transaction or series of transactions, that are separate and apart from the partnership flip transaction conducted pursuant to this section, in such a manner that a change in ownership of the partnership or limited liability company occurs under paragraph (1) of subdivision (c) of Section 64, then paragraph (1) of subdivision (a) shall not apply to that transaction or transactions.

(d) Nothing in this section shall be construed to exclude from a change in ownership any other transfer or change in the allocation in the interest in profits and losses, or the ownership interests, in an active solar energy system that is not a partnership flip transaction.