SB-364 Change in ownership: nonresidential active solar energy systems: initiative. (2019-2020)

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Senate Bill No. 364

CHAPTER 58

An act to amend Section 73 of, to amend, repeal, and add Sections 105 and 106 of, and to add Chapter 4.5 (commencing with Section 83) to Part 0.5 of Division 1 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 09, 2020. Filed with Secretary of State September 09, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

SB 364, Mitchell. Change in ownership: nonresidential active solar energy systems: initiative.

The California Constitution generally limits the maximum rate of ad valorem tax on real property to 1% of the full cash value of the property and defines “full cash value” for these purposes as the appraised value of real property when purchased, newly constructed, or a change in ownership has occurred after the 1975 assessment. Pursuant to constitutional authorization, existing property tax law excludes from the definition of “newly constructed” for these purposes the construction or addition of any active solar energy system, as defined, through the 2023–24 fiscal year. Under existing property tax law, this exclusion remains in effect only until there is a subsequent change in ownership, but an active solar energy system that qualifies for the exclusion before January 1, 2025, will continue to receive the exclusion until there is a subsequent change in ownership. Existing law defines and sets forth parameters for determining a change in ownership for real property.

The California Constitution authorizes the Legislature to provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness, and any legal or equitable interest not otherwise exempt. The California Constitution also authorizes the Legislature to classify, by a $^{2}/_{3}$ vote of each house, such personal property for differential taxation or for exemption.

This bill would provide that for purposes of the provisions of the California Constitution described above, real property includes improvements, but not personal property. The bill would provide that a nonresidential active solar energy system, as defined, is personal property, not an improvement. The bill would, as provided, exempt a nonresidential active solar energy system constructed or installed prior to January 1, 2025, from taxation until there is a subsequent change in ownership of the nonresidential active solar energy system. The bill would also exempt those nonresidential active solar energy systems from taxation on and after January 1, 2025, until there is a subsequent change in ownership. The bill would provide that change in ownership of a nonresidential active solar energy system occurs if it would have met the parameters for a change in ownership applicable to real property had the system been considered real property instead of personal property. The bill would make its provisions operative on the date that an initiative measure relating to the definition of “full cash value” for commercial and industrial real property, adding a specified section to the California Constitution at the November 3, 2020, statewide general election, becomes effective. The bill would provide that its provisions relating to nonresidential active solar energy systems shall remain inoperative until, and be repealed on, January 1, 2021, if a majority of voters do not approve the initiative. The bill would make conforming changes and make related findings and declarations. By adding to the duties of county assessors when assessing commercial and industrial real property, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Existing law requires the state 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 those provisions, 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: 2/3 Appropriation: no Fiscal Committee: yes Local Program: yes

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THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

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

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

(b) (1) “Active solar energy system” means 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, 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.

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

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

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

(B) Space conditioning.

(C) Production of electricity.

(D) Process heat.

(E) Solar mechanical energy.

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

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

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

(2) An active solar energy system that uses solar energy in the production of electricity also includes pipes and ducts that are used exclusively to carry energy derived from solar energy. Pipes and ducts that are used to carry both energy derived from

solar energy and from energy derived from other sources are active solar energy system property only to the extent of 75 percent of their full cash value.

(3) An active solar energy system that uses solar energy in the production of electricity does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power other than solar energy to provide usable energy. An active solar energy system that uses solar energy in the production of electricity does include equipment, such as ducts and hot water tanks, that is utilized by both auxiliary equipment and solar energy equipment, 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 effect only until there is a subsequent change in ownership of the new building.

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

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

(g) This section applies to property tax lien dates for the 1999–2000 fiscal year to the 2023–24 fiscal year, inclusive.

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

(i) (1) This section shall remain in effect only until January 1, 2025, and as of that date is repealed.

(2) Active energy solar systems that qualify for an exclusion under this section prior to January 1, 2025, shall continue to be excluded on and after January 1, 2025, until there is a subsequent change in ownership.

(j) On and after the operative date of Chapter 4.5 (commencing with Section 83), this section shall no longer apply to nonresidential active solar energy systems, as defined in Section 85.

SEC. 2. Chapter 4.5 (commencing with Section 83) is added to Part 0.5 of Division 1 of the Revenue and Taxation Code, to read:

CHAPTER 4.5. Implementation of Article XIII A For Nonresidential Active Solar Energy Systems

83. The Legislature finds and declares that it is the intent of the Legislature, in enacting this chapter, to ensure active solar energy systems that would have been exempt from taxation because of the new construction exclusion continue to be exempt from taxation until there is a subsequent change in ownership of the active solar energy system.

83.5. For purposes of Article XIII A of the California Constitution, all of the following apply:

(a) Notwithstanding Section 105, “improvements” do not include nonresidential active solar energy systems.

(b) Notwithstanding Section 106, “personal property” includes nonresidential active solar energy systems.

(c) “Real property” includes improvements, as defined in Section 105, but does not include personal property, as defined in Section 106.

84. For purposes of this chapter, “residential property” means real property used as residential property, including both single-family and multiunit structures, and the land on which those structures are constructed or placed.

85. (a) (1) “Nonresidential active solar energy system” means a system that uses solar devices to provide for the collection, storage, or distribution of solar energy, and that is not constructed or installed in or on residential property.

(2) “Nonresidential active solar energy system” does not include solar swimming pool heaters or hot tub heaters.

(b) Nonresidential active solar energy systems may be used for any of the following:

(1) Recreational, therapeutic, or service water heating.

(2) Space conditioning.

(3) Production of electricity.

(4) Process heat.

(5) Solar mechanical energy.

(c) A nonresidential active solar energy system that uses solar energy in the production of electricity includes storage devices, power conditioning equipment, transfer equipment, and parts related to the functioning of those items. In general, the use of solar energy in the production of electricity involves the transformation of sunlight into electricity through the use of devices such as solar cells or other solar collecting equipment. However, a nonresidential active solar energy system used in the production of electricity includes only equipment used up to, but not including, the stage of conveyance or use of the electricity. For the purpose of this section, the term “parts” includes spare parts that are owned by the owner of, or the maintenance contractor for, a nonresidential active solar energy system that uses solar energy in the production of electricity and which spare parts were specifically purchased, designed, or fabricated by or for that owner or maintenance contractor for installation in a nonresidential active solar energy system that uses solar energy in the production of electricity, thereby including those parts in the tax exemption created by this chapter.

(d) A nonresidential active solar energy system that uses solar energy in the production of electricity also includes pipes and ducts that are used exclusively to carry energy derived from solar energy. Pipes and ducts that are used to carry both energy derived from solar energy and from energy derived from other sources are nonresidential active solar energy system property only to the extent of 75 percent of their fair market value.

(e) A nonresidential active solar energy system that uses solar energy in the production of electricity does not include auxiliary equipment, such as furnaces and hot water heaters, that use a source of power other than solar energy to provide usable energy. A nonresidential active solar energy system that uses solar energy in the production of electricity does include equipment, such as ducts and hot water tanks, that is utilized by both auxiliary equipment and solar energy equipment, that is, dual-use equipment. That equipment is nonresidential active solar energy system property only to the extent of 75 percent of its fair market value.

86. (a) (1) Subject to paragraph (2), a nonresidential active solar energy system constructed or installed prior to January 1, 2025, shall be exempt from taxation until there is a subsequent change in ownership of the nonresidential active solar energy system.

(2) The exemption described in paragraph (1) applies to a nonresidential active solar energy system constructed or installed prior to the date this chapter becomes operative only if that system would have been excluded, on the date this chapter becomes operative, from the term “newly constructed,” as described in Section 73, had the system been real property instead of personal property and had Section 73 been applicable to nonresidential active solar energy systems.

(3) No nonresidential active solar energy systems constructed or installed on or after January 1, 2025, shall be exempt from taxation pursuant to this subdivision.

(b) Nonresidential active solar energy systems that qualify for the exemption from taxation pursuant to paragraph (1) of subdivision (a) shall continue to be exempt therefrom on and after January 1, 2025, until there is a subsequent change in ownership.

(c) A change in ownership shall be deemed to have occurred for purposes of this section if the transaction would have constituted a change in ownership under Chapter 2 (commencing with Section 60) had the nonresidential active solar energy system been real property instead of personal property.

87. (a) The provisions of this chapter are to be construed liberally so as to effectuate their intent, policy, and purposes.

(b) The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

88. (a) This chapter shall become operative on the date that an initiative measure adding Section 2.5 to Article XIII A of the California Constitution at the November 3, 2020, statewide general election takes effect pursuant to subdivision (a) of Section 10 of Article II of the California Constitution.

(b) If a majority of the voters do not approve the initiative measure adding Section 2.5 to Article XIII A of the California Constitution at the November 3, 2020, statewide general election, then this chapter shall remain inoperative until January 1, 2021, and as of that date is repealed.

SEC. 3. Section 105 of the Revenue and Taxation Code is amended to read:

105. (a) “Improvements” includes both of the following:

(1) All buildings, structures, fixtures, and fences erected on or affixed to the land.

(2) All fruit, nut-bearing, or ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age.

(b) This section shall be in effect until the date Chapter 4.5 (commencing with Section 83) of Part 0.5 goes into effect pursuant to subdivision (a) of Section 88, and as of that date is repealed.

SEC. 4. Section 105 is added to the Revenue and Taxation Code, to read:

105. (a) Except as provided in Section 83.5, “improvements” includes both of the following:

(1) All buildings, structures, fixtures, and fences erected on or affixed to the land.

(2) All fruit, nut-bearing, or ornamental trees and vines, not of natural growth, and not exempt from taxation, except date palms under eight years of age.

(b) This section shall go into effect on the date Chapter 4.5 (commencing with Section 83) goes into effect pursuant to subdivision (a) of Section 88.

SEC. 5. Section 106 of the Revenue and Taxation Code is amended to read:

106. (a) “Personal property” includes all property except real estate.

(b) This section shall be in effect until the date Chapter 4.5 (commencing with Section 83) of Part 0.5 goes into effect pursuant to subdivision (a) of Section 88, and as of that date is repealed.

SEC. 6. Section 106 is added to the Revenue and Taxation Code, to read:

106. (a) Except as provided in Section 83.5, “personal property” includes all property except real estate.

(b) This section shall go into effect on the date Chapter 4.5 (commencing with Section 83) of Part 0.5 goes into effect pursuant to subdivision (a) of Section 88.

SEC. 7. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.

SEC. 8. Notwithstanding Section 2229 of the Revenue and Taxation Code, no appropriation is made by this act and the state shall not reimburse any local agency for any property tax revenues lost by it pursuant to this act.

SEC. 9. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.