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SB-267 Property taxation: active solar energy systems: partnership flip transactions. (2021-2022)

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Senate Bill No. 267

CHAPTER 424

An act to add Section 64.1 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 30, 2021. Filed with Secretary of State September 30, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 267, Hertzberg. Property taxation: active solar energy systems: partnership flip transactions.

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.

This bill would provide that for a legal entity that owns an active solar energy system pursuant to a partnership flip transaction, as defined, 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. The bill would provide 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 bill's provisions, in such a manner that a change in ownership of the partnership or limited liability company occurs, as specified, then the bill's provisions do not apply to that transaction or transactions. The bill would make related findings and declarations. By adding to the duties of county assessors in applying this exclusion, 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.

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

SECTION 1. The Legislature finds and declares all of the following:

(a) Section 73 of the Revenue and Taxation Code was enacted to encourage and to provide incentives for the development of active solar energy systems by providing an exclusion from classification as newly constructed the construction or addition of active solar energy systems.

(b) 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, Section 73 of the Revenue and Taxation Code was amended to clarify that it is 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.

(c) For purposes of Section 73 of the Revenue and Taxation Code, a subsequent change in ownership is not intended to include a change in control among the partners in a partnership flip transaction, resulting solely from a change in the allocation of the partnership's capital and profit among the partners, if the mechanics of the change were in place at the time the active solar energy system is acquired by the partnership.

(d) The addition of Section 64.1 to the Revenue and Taxation Code by this act does not constitute a change in, and is declaratory of, existing law.

SEC. 2. 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.

SEC. 3. 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. 4. 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. 5. This act provides for a tax levy within the meaning of Article IV of the California Constitution and shall go into immediate effect.