

**City of Carson City
Agenda Report**

Date Submitted: 08/23/11

Agenda Date Requested: 09/01/11
Time Requested: 5 min.

To: Mayor and Supervisors

From: Assessor's Office

Subject Title: For Possible Action: To approve the removal of the taxes and penalties from the 2010/11 and 2011/12 personal property taxes for commercial business account number CB 045276 (Sierra Solar 1 LLC, located at 2444 Fairview Dr) per NRS 701A.200 in the amount of \$311,054.82 (Dave Dawley, Assessors Office).

Staff Summary: In 2010, Sierra Solar, CleanPath Renewable Development built and installed several solar panels with the Army National Guard property located at 2444 Fairview Dr. Shortly after the installation of the majority of these panels; a member of the Department of Taxation, Bruce Bartolwits took a tour of the Nevada Army National Guard facility and it was his determination that the solar panels WERE subject to taxation. The Assessors' Office sent Sierra Solar 1 LLC, a request for information regarding the cost of the solar panels. On September 2, 2010 the requested information was received and the account was billed accordingly. On June 13, 2011, SB 426 was passed, thereby, making the solar panels exempt from taxation, this bill provided further clarification to NRS 701. The Assessors Office is requesting that the taxes and penalties be removed from the 2010/11 and the 2011/12 Personal Property tax rolls. This will result in a decrease to the Personal Property tax rolls in the amount of \$149,196.10 (plus penalties of \$14,919.61 for a total of \$164,115.71 for 2010/11 and \$146,939.11 for the 2011/12 tax year, for a total of \$311,054.82.

Type of Action Requested: (check one)
☐ Resolution ☐ Ordinance
☒ Formal Action/Motion ☐ Other (Specify)

Does This Action Require A Business Impact Statement: ☐ Yes ☒ No

Recommended Board Action: To approve the removal of the taxes and penalties from the 2010-11 and 2011-12 personal property taxes for commercial business account number CB 045276 (Sierra Solar 1 LLC, located at 2444 Fairview Dr) per NRS 701A.200 in the amount of \$311,054.82 (Dave Dawley, Assessors Office).

Explanation for Recommended Board Action: In 2010, Sierra Solar, CleanPath Renewable Development built and installed several solar panels with the Army National Guard property located at 2444 Fairview Dr. Shortly after the installation of the majority of these panels; a member of the Department of Taxation, Bruce Bartolwits took a tour of the Nevada Army National Guard facility and it was his determination that the solar panels WERE subject to taxation. The Assessors' Office sent Sierra Solar 1 LLC, a request for information regarding the cost of the solar panels. On September 2, 2010 the requested information was received and the account was billed accordingly.

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Applicable Statue, Code, Policy, Rule or Regulation: NRS 701A.200.

Fiscal Impact: A decrease of \$149,196.10 (\$14,919.61 penalties) (2010/11) and \$164,115.71 (2011/12) for a total of \$311,054.82 to the Personal Property Tax Rolls.

Explanation of Impact: Decrease of the 2010/11 and the 2011/12 Personal Property Tax Rolls.

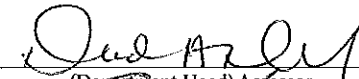
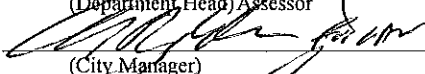
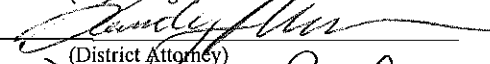
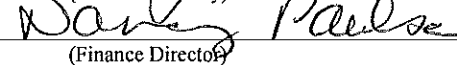
Funding Source: Various Tax Entities.

Alternatives: Approve, Modify, or Deny.

Supporting Material: Cover Letter from Holland & Hart, The Law Out West.

Prepared By: Kimberly Adams, Senior Property Appraiser

Reviewed By:


(Department Head) Assessor

(City Manager)

(District Attorney)

(Finance Director)

Date: 8/22/2011

Date: 8-23-11

Date: 8/23/11

Date: 8/23/11

Board Action Taken:

Motion: _____

1) _____

2) _____

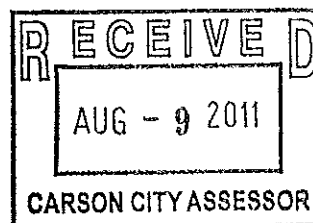
Aye/Nay

(Vote Recorded By)

August 9, 2011

HAND DELIVERED

David A. Dawley
Carson City Assessor
201 N. Carson St., Ste. #6
Carson City, NV 89701



**RE: ACCOUNT #: CB 045276
2444 FAIRVIEW (ARMY NATIONAL GUARD)**

Dear Mr. Dawley:

We are writing on behalf of Sierra Solar 1 LLC (Sierra Solar) with regard to the Personal Property Tax Bill (the "Tax Bill") it recently received for property located at 2444 Fairview in Carson City. The Carson City Treasurer's Office sent the Tax Bill to Sierra Solar on March 10, 2011 for the 2010-2011 Fiscal Year. This was the first time that Sierra Solar was notified of the assessed valuation of its personal property, which consists primarily of solar panels and related components of a "qualified system" as defined in NRS 701A.200.

At that time, Sierra Solar, CleanPath Renewable Development ("CleanPath"), and other companies in the business of building and installing "qualified systems" on municipal buildings, were working with the Nevada Department of Taxation (the "Department") to determine the applicability of NRS 701A.200 to their projects. CleanPath, Sierra Solar and others argued that precedent established in Clark County and through the State Board of Equalization showed that their projects were "qualified systems" and, therefore, exempt from property tax pursuant to NRS 701A.200. Attached as Exhibit 1 is a copy of our firm's letter to the Attorney General's Office on behalf of CleanPath Renewable Development.

Moreover, when the Legislature recodified the "qualified system" exemption from NRS 361.079 to NRS 701A.200, comments from the Senate Committee on Commerce and Labor and the Executive Director of the Department expressed a clear intent to ratify the interpretation of the Clark County Assessor and the State Board of Equalization. The May 28, 2007 and May 29, 2007 Minutes of the Senate Committee on Commerce and Labor are attached as a part of Exhibit 1.

By strictly construing the language of the exemption, the Department determined that the exemption, as worded at that time, did not apply. Specifically, the Department was concerned that the equipment is owned separately from the ownership of the building, that the buildings are municipal and not "residential, commercial or industrial" as set forth in the prior language of the



statute, and that some of the solar panels would be ground mounted rather than attached directly to the buildings. A copy of the Department's letter to CleanPath is attached as Exhibit 2.

While we did not agree with this interpretation, especially in light of the clear legislative history of NRS 701A.200, we understood the Department's concern over ambiguities in the language and sought to clarify the language and the Legislature's intent through an amendment to Senate Bill 426 of the 76th (2011) Session of the Nevada Legislature. SB 426 was approved by the Governor on June 13, 2011.

Section 23.5 of SB 426 clarified NRS 701A.200 in several ways. First, it removed the reference to the "assessed value of a building." A "qualified system" itself is exempt from property taxes. Second, it removed the reference to a "residential, commercial or industrial building," to clarify that qualified systems providing electricity to municipal (and other) facilities are also exempt. Third, it removed the requirement that solar devices be "not thermally insulated from the area where the energy is used," which caused the Department to believe the qualified system had to be physically attached to the building. Finally, it added "adjacent to one or more buildings" to the definition of "qualified system," to make clear that ground mounted systems are also exempt. See Senate Bill 426 of the 76th Session of the Nevada Legislature, § 23.5.

In our testimony in support of Section 23.5, we pointed out some of the same arguments that we made to the Department, especially the proceedings of the Senate Commerce and Labor Committee in 2007, and asked the Legislature to clarify the language to match its intent. We believe, therefore, that SB 426 is merely a clarification of the applicability of NRS 701A.200. See *Hughes Properties Inc. v. State*, 100 Nev. 295, 298, 680 P.2d 970 (1984) (amendment rendering doubtful interpretation certain is persuasive evidence of intent of original statute); *Eggleston v. Costello (In re Estate of Thomas)*, 116 Nev. 492, 495 (2000) ("[W]here a former statute is amended, or a doubtful interpretation of a former statute rendered certain by subsequent legislation, it has been held that such amendment is persuasive evidence of what the Legislature intended by the first statute.")

Under these circumstances, we believe that Sierra Solar's Army National Guard photovoltaic array located at 2444 Fairview Drive in Carson City is a "qualified system" and is not only exempt from property taxes for 2011-2012, but was also exempt from property taxes in 2010-2011.

Moreover, with regard to the property that is the basis for the 2010-2011 assessment, Sierra Solar did not own that property on July 1, 2010. Rather, the property was owned by Sierra Nevada Corp. ("SNC"), the manufacturer of the qualified system. SNC purchased and held title to the components and manufactured the qualifying system at the site. Only after SNC completed manufacturing the qualifying system did it sell the entire system to Sierra Solar.

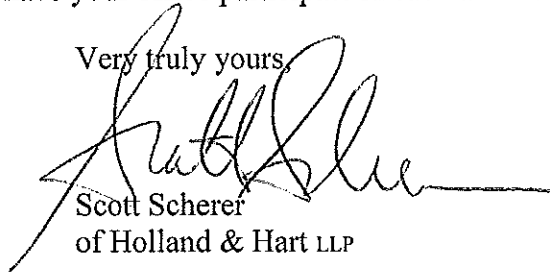
We respectfully request the opportunity to meet with you and your counsel to discuss these issues and arrive at an appropriate determination of the appropriate assessment of Sierra



David A. Dawley
August 9, 2011
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Solar's qualified system, both for the 2010-2011 fiscal year and for 2011-2012. Please have your office or your counsel contact me at (775) 684-6011 at your earliest convenience to let me know whether you would be willing to have your office participate in such a meeting.

Very truly yours,



Scott Scherer
of Holland & Hart LLP

SS:taw

Enclosures

cc: Paul Olivas
Al Kramer, Carson City Treasurer
Neil Rombardo, Carson City District Attorney

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