Pennies From Heaven:
SOLAR POWER IN THE RETAIL SECTOR

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I. INTRODUCTION: SOLAR ENERGY AND SAVINGS

As many retailers and shopping center owners have already discovered, there has never been a better time to "go green." In addition to serving as an enormous marketing asset and a smart geopolitical choice, an investment in solar equipment can translate into lucrative tax savings for a retail business or shopping center owner. The following summarizes selected state and federal incentives that promote investments in solar energy in the retail sector.

In addition to the tax savings and cash incentives provided by government entities, a retailer or shopping center owner can save money on utility bills by using self-generated solar energy instead of utility-provided electricity.

The two most common forms of solar energy are photovoltaic ("PV") systems and solar thermal systems. Most conventional solar panels are composed of PV cells, which convert sunlight into direct current ("DC") electricity. An "inverter" inverts the DC energy into the alternating current ("AC") energy that powers buildings and appliances.[1] Solar thermal systems use heat from the sun to produce energy or hot water. Because PV systems are most relevant to the bulk of commercial solar customers, references to "solar panels" or "solar equipment" in this memorandum indicate PV systems unless otherwise specified.

Throughout California and some other states, buildings with photovoltaic solar installations are interconnected with the regional, utility-run electricity grid. Through a process known as "net metering," solar equipment producing electricity in excess of what a building consumes transmits the surplus solar-generated electricity directly into the utility grid, and the building's bi-directional energy meter (which measures the building's net electricity usage and production) runs backward. Customers are credited for the full retail value of the solar-generated energy that they transmit to the grid, which can reduce (or, hypothetically, even eliminate) their utility bills, depending on the net energy measurement.[2]

II. FEDERAL INCENTIVES

The Federal Tax Code (the "Tax Code") contains numerous incentives designed to encourage investment in renewable energy. The following section will identify important solar energy incentives that are currently available to retail businesses and shopping center owners.[3]

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[1] See Go Solar California, *Consumer Guide to the California Solar Initiative* 4-5 (2008) *available at* http://www.energy.ca.gov/2008publications/CPUC-1000-2008-026/CPUC-1000-2008-026.PDF (last visited July 30, 2009) for basic explanations of solar energy processes.

[2] Id. at 5. Net metering will be discussed in section III.

[3] Many of the energy incentives discussed in this memorandum are applicable to multiple types of renewable energy in addition to solar, such as biomass, geothermal, or wind. For the sake of brevity and relevance, only solar

A. Commercial Taxpayer Election: 30% Tax Credit or 30% Treasury Grant for Commercial Investments in Solar Equipment

The American Recovery and Reinvestment Act of 2009 ("ARRA") provides the commercial retailer with unprecedented incentives, and makes investment in solar energy equipment more cost effective and feasible than ever before.[4] As explained below, a commercial taxpayer who invests in solar equipment before December 31, 2016 may choose between a 30% Business Energy Investment Tax Credit ("ITC"), or a 30% U.S. Treasury Renewable Energy Grant, to partially finance a solar investment.

1. The 30% Business Energy Investment Tax Credit ("ITC")

Section 48 of the Tax Code provides a 30% ITC to commercial and industrial taxpayers who invest in solar energy property.[5] The ITC was expanded significantly by the Energy Improvement and Extension Act of 2008, and again by the ARRA.[6] ITCs now apply to solar equipment placed in service on or before December 31, 2016. The credit is equal to 30% of expenditures on the solar equipment and installation, with no maximum limit.

(a) Definition of Solar Energy Property Eligible for the ITC

Solar energy property eligible for the 30% ITC includes equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat. Hybrid solar lighting systems, which use solar energy to illuminate the inside of a structure using fiber-optic distributed sunlight, are also eligible.[7]

To qualify for the ITC, the taxpayer must either (1) complete the construction, reconstruction, or erection of the energy property or (2) acquire and become the original user of the energy

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is discussed here, but the reader can look at the cited statutes and regulations for information on other technologies. In addition, the reader may notice that certain prominent energy incentives are not addressed in this memorandum. These are omitted either because they do not apply directly to commercial taxpayers or because they do not currently apply to solar energy. For example, Clean Renewable Energy Bonds, also known as "CREBS," are federal loans primarily available only for the public sector, see 26 U.S.C. § 54, and Production Tax Credits or "PTCs" for solar energy have been replaced by other, more lucrative solar incentives, see 26 U.S.C. §§ 45, 48(a)(3).

[4] American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (enacted Feb. 17, 2009), (codified in scattered sections of the United States Code), *available at* http://www.gpo.gov/fdsys/pkg/PLAW-111publ5/pdf/PLAW-111publ5.pdf (last visited Jul. 29, 2009) (hereafter "ARRA").

[5] See 26 U.S.C. § 48.

[6] See ARRA § 1603.

[7] 26 U.S.C. § 48(a)(3)(A)(i)-(ii). The main exclusions from ITC eligibility, passive solar systems and solar pool-heating systems, are generally not relevant to the commercial retail sector. See 26 U.S.C. § 48(a)(3)(A)(i).

property.[8] The property must also be depreciable or amortizable, and must meet the Department of Energy's performance and quality standards in effect at the time the property is acquired.[9]

(b) ITC No Longer Reduced by Receipt of "Subsidized Energy Financing"

Prior to the enactment of the ARRA in 2009, a taxpayer's eligibility for the ITC was reduced if that taxpayer received "subsidized energy financing," (defined as "financing provided under a Federal, State, or local program a principle purpose of which is to provide subsidized financing for projects designed to conserve or produce energy").[10] The ARRA repealed the "subsidized energy financing" limitation for all projects placed into service after December 31, 2008.[11] It is important to note that, now, commercial taxpayers can take advantage of the 30% ITC *in addition to* other valuable energy finance subsidies as specified by the Internal Revenue Service. Moreover, unused commercial credits can be carried forward for up to 20 years.[12]

(c) New Option: U.S. Treasury Renewable Energy Grant in Lieu of ITC

In order to encourage investment in specified types of energy during the Great Recession, the ARRA introduced U.S. Treasury Renewable Energy Grants, giving commercial taxpayers the option to receive a prompt cash grant to fund their solar investments, rather than waiting to claim the credit.[13] The Treasury Grant alternative is an extremely valuable resource for commercial taxpayers, and is discussed in more detail in the next section. It is worth repeating, however, that the grant is an *alternative* to the ITC[14]—indeed, an alternative that many businesses, including the retail industry, will find is even more valuable than the 30% ITC.

2. U.S. Department of Treasury Renewable Energy Cash Grants

Section 1603 of the ARRA provides for U.S. Treasury cash grants to reimburse eligible taxpayers for a portion of the expense of placing in service specified energy property.[15] Congress's purpose in adopting the ARRA was to promote economic recovery and job growth to

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8 26 U.S.C. § 48(a)(3)(B).

9 26 U.S.C. § 48(a)(3)(C), (D).

10 See 26 U.S.C. § 48(a)(4)(A)-(C).

11 See 26 U.S.C. § 48(a)(4)(D) (as amended in 2009).

12 Solar Energy Industries Association, *Federal Solar Energy Incentives: Frequently-Asked Questions* (May 21, 2009) *available at* www.seia.org (last visited July 28, 2009).

13 See ARRA: H.R. 1, Div. B, §§ 1104, 1603 (2009).

14 See 26 U.S.C. § 48(d).

15 ARRA § 1603(a).

counteract the recession, and to invest in technology, environmental protection, and infrastructure that would provide long-term economic benefits.[16]

As many business people know all too well, the recession has taken a toll on company balance sheets. Companies with smaller taxable incomes owe less in federal taxes, and this has reduced the appeal and the effectiveness of corporate tax deduction incentives like the ITC. The Treasury grants were designed to "temporarily fill the gap created by the diminished investor demand for tax credits" by essentially replacing the ITC credit scheme with a rapid 30% cash reimbursement for solar investments that meet certain requirements.[17]

(a) Terms of Grant

The ARRA Renewable Energy Grants are available to commercial taxpayers under conditions very similar to those for ITCs, as described in Tax Code section 48. The main differences between the ITCs and the Grants are: (1) the timeframe within the energy property must be placed in service, and (2) the fact that a taxpayer must apply for a Grant.[18]

To qualify for the Grant, the energy property must be: (1) placed in service—i.e., ready and available for use—between January 1, 2009 and December 31, 2010 (or, under the safe harbor for solar energy, the property qualifies if it is under construction by December 31, 2010 and also placed in service by December 31, 2016);[19] (2) constructed by the taxpayer or under contract for the taxpayer, with the taxpayer as the original user; it must also be (3) tangible personal property (not the building itself) that falls under the definition of "specified energy property" provided in Tax Code section 48; and (4) the property and taxpayer must meet a series of other documentation and definitional requirements.[20]

With respect to solar property, the Grants track the definitions provided in Tax Code section 48(a), the section that establishes the framework for ITCs.[21] Commercial, industrial, and agricultural tax-paying entities are eligible for the Grants.[22]

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16 ARRA § 3.

17 See U.S. Treasury Dept. Grant Program Guidance pg. 3-5 (July 2009) *available at* www.treas.gov/recovery/docs/guidance.pdf (last visited July 29, 2009).

18 Compare ARRA § 1603(a) with 26 U.S.C. § 48(a).

19 U.S. Treasury Dept. Grant Program Guidance at 5. Construction commences for the purpose of the credit termination "safe harbor" when the taxpayer incurs or pays more than 5% of the total cost of the energy property. Id. at 6-7.

20 Id.

21 Please refer to the discussion and definitions in section II(1)(a) of this memorandum, supra.

22 The Database of State Incentives for Renewables & Efficiency ("DSIRE") provides a good summary of additional specifications:

> Federal, state and local government bodies, non-profits, qualified energy tax credit bond lenders, and cooperative electric companies are not eligible to receive this

The "eligible basis" of the energy property is the dollar amount to which the 30% measure is applied to determine the Grant—it includes the property's full cost, without depreciation, including costs incurred in installation, freight, and construction.[23] Notably, a taxpayer need not own the energy property in order to claim the ARRA Treasury Grant. A lessor who is otherwise eligible to receive a payment under ARRA section 1603 may pass the Grant on to a lessee, as long as the lessee is also eligible under section 1603 and the transaction meets certain reporting and consent requirements.[24]

The Treasury Department will make the Grant payment within 60 days of the Grant application date or the date the property is placed in service, whichever is later.[25]

If the property is acquired by a disqualified person, or otherwise ceases to be a specified energy property within five years of being placed in service, the Grant must be repaid to the Treasury (in full or in part, depending upon the timing of the disqualifying event).[26]

(b) Making the Election between a Grant and an ITC

Any property receiving a Treasury Grant under ARRA section 1603 is disqualified from the ITC, and vice versa. If both are allowed, recapture applies.[27]

Congress gave solar energy property the most favorable treatment possible under the ARRA Treasury Grant scheme. Whereas several other categories of renewable energy are bound by a more limiting termination date (before 2014) or a lower percentage-of-basis grant

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grant. Partnerships or pass-thru entities for the organizations described above are also not eligible to receive this grant, except in cases where the ineligible party only owns an indirect interest in the applicant through a taxable C corporation.

DSIRE, Summary of U.S. Department of Treasury – Renewable Energy Grants (updated Jul. 9, 2009), *available at* www.dsireusa.org/incentives (visited July 28, 2009).

[23] U.S. Treasury Dept. Grant Program Guidance at 15-16.

[24] Id. at 17. A sale-and-leaseback transaction may also qualify if it meets the Treasury's stated requirements, provided id. at 17-18.

[25] Id. at 2.

[26] Id. at 18.

[27] 26 U.S.C. § 48(d). "Recapture" has been defined as "a sort of revenge the Code imposes on taxpayers for what turns out to be, with the benefit of hindsight, claims to undue tax benefits. Recapture imposes current tax burdens, rather than adjustments to prior years, usually in the form of either (1) increased ordinary income to offset claims for undue previous deductions; or (2) direct tax liabilities as a result of what, in retrospect, were excessive claims for previous tax credits." RICHARD A. WESTIN, WG&L TAX DICTIONARY 651 (RIA 2004).

amount (10%), solar energy property enjoys the generous combination of a January 1, 2017 credit termination date and is entitled to be reimbursed with a Grant equal to 30% of basis cost.[28]

In June 2009, the U.S. Department of Treasury issued guidance on how to elect the Grant instead of the ITC.[29]

Because the economic climate is presently unkind to many balance sheets, and because the benefits of the ARRA Treasury Grants are much the same as the benefits of ITC, only better and more immediate, a commercial taxpayer investing in solar energy would be wise to apply for the ARRA Grant, if it is possible to satisfy the requirements.

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[28] U.S. Treasury Dept. Grant Program Guidance at 5. The "termination date" is simply the date the property must be placed in service. Id. at 2. The table in the Treasury's guidance document provides a nice illustration of the advantage of solar energy property:

Specified Energy Property	**Credit Termination Date**	**Applicable Percentage of Eligible Cost Basis**
Large Wind	Jan 1, 2013	30%
Closed-Loop Biomass Facility	Jan 1, 2014	30%
Open-loop Biomass Facility	Jan 1, 2014	30%
Geothermal under IRC sec. 45	Jan 1, 2014	30%
Landfill Gas Facility	Jan 1, 2014	30%
Trash Facility	Jan 1, 2014	30%
Qualified Hydropower Facility	Jan 1, 2014	30%
Marine & Hydrokinetic	Jan 1, 2014	30%
Solar	**Jan 1, 2017**	**30%**
Geothermal under IRC sec. 48	Jan 1, 2017	10%*
Fuel Cells	Jan 1, 2017	30%**
Microturbines	Jan 1, 2017	10%***
Combined Heat & Power	Jan 1, 2017	10%
Small Wind	Jan 1, 2017	30%
Geothermal Heat Pumps	Jan 1, 2017	10%

*Geothermal Property that meets the definitions of qualified property in both § 45 and § 48 is allowed either the 30% credit or the 10% credit but not both.
** For fuel cell property the maximum amount of the payment may not exceed an amount equal to $1,500 for each 0.5 kilowatt of capacity.
*** For microturbine property the maximum amount of the payment may not exceed an amount equal to $200 for each kilowatt of capacity.

Id. (highlighting added).

[29] See id.

B. Other Notable Federal Tax Incentives for Solar Investment

1. Energy-Efficient Commercial Buildings Tax Deduction

Tax Code section 179D(a) provides a tax deduction for energy efficient commercial buildings.[30] The deduction, established by the Energy Policy Act of 2005, applies to qualifying energy-efficient commercial buildings and systems placed in service between January 1, 2006 and December 31, 2013.[31] This tax deduction can provide commercial building owners and tenants with tax savings of between $0.30 and $1.80 per square foot, depending on the nature of the installations and the identity of the taxpayer (i.e., owner versus tenant; commercial versus government sector).

"Energy efficient commercial building property" is defined in Tax Code section 179D(c)(1).[32] The tax deduction is taken in the year that construction is completed.[33]

2. The Modified Accelerated Cost-Recovery System (MACRS)

Under the Modified Accelerated Cost-Recovery System ("MACRS"), codified in Tax Code section 168, certain investments in solar power and other types of projects can be recovered through accelerated income tax deductions for depreciation. The federal Economic Stimulus Act of 2008 included a 50% bonus depreciation provision for eligible renewable-energy systems acquired and placed in service in 2008; and the bonus depreciation provision was extended through the 2009 tax year by the ARRA.[34] Moreover, a MACRS-eligible commercial photovoltaic solar project taking the ITC will usually be able to further reduce the depreciable

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30 26 U.S.C. § 179D.

31 See id. (as amended by the Energy Improvement and Extension Act of 2008, H.R. 1424: Div. B § 303).

32 As provided in 26 U.S.C. § 179D(c)(1), "energy efficient building property" is property: (1) for which depreciation is allowable, (2) which is installed on or in a building in the U.S., within the scope of Standard 90.1-2001 of the American Society of heating, Refrigerating and Air Conditioning Engineers and the Illuminating Engineering Society of North America, (3) which is installed as part of the interior lighting systems, the heating, cooling, ventilation, and hot water systems, or the building envelope, and (4) which is certified as being installed as part of a plan designed to reduce the total annual energy and power costs for the interior lighting, heating, cooling, ventilation, and hot water systems of the building by 50% or more in comparison to a "reference building" that meets the minimum requirements of Standard 90.1-2001, using methods of calculation specified by the Internal Revenue Service. For more information and answers to frequently asked questions, see the website of the Commercial Building Tax Deduction Coalition, *available at* http://www.efficientbuildings.org (last visited July 29, 2009).

33 See 26 U.S.C. § 179D.

34 See 26 U.S.C. § 168(k); see also DSIRE, Modified Accelerated Cost-Recovery System (MACRS) + Bonus Depreciation (2008-2009) (last reviewed Feb. 19, 2009) *available at* http://www.dsireusa.org/incentives (visited Jul. 29, 2009).

basis, providing a cumulative depreciation of as much as 85% of the project's installed cost, using a 5-year MACRS schedule.[35]

3. U.S. Department of Energy Loan Guarantee Program

The Department of Energy ("DOE") is authorized to issue loan guarantees for new or significantly improved technologies in energy projects.[36] The ARRA extended the DOE's loan guarantee program through September 30, 2011; and appropriated $6 billion for the program.[37]

III. CALIFORNIA

California is the longtime national leader in solar energy—its solar installations produce as much as two-thirds of the nation's solar power.[38] California's widespread investment in solar energy is due in large part to a favorable taxation scheme, which gives strong economic incentives to taxpayers, including businesses, to invest in solar energy.

1. California Solar Initiative

In 2006, the California Public Utilities Commission ("CPUC") adopted the groundbreaking California Solar Initiative ("CSI"), a statewide program designed to provide financial incentives for solar energy projects. The aim of the CSI was to achieve 3,000 megawatts ("MW") of solar capacity by the year 2016.[39]

(a) CSI Incentive Structure

The CSI provides economic incentives to customers in the Public Administrator ("PA") utility territories of Pacific Gas and Electric Company ("PG&E"), Southern California Edison ("SCE"), and San Diego Gas & Electric ("SDG&E"), which together represent about 68% of California's electric load.[40] CSI cash rebates are available for solar energy systems installed on existing and new commercial, residential, industrial, government, and non-profit properties.

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[35] Mark Bolinger, *Financing Non-Residential Photovoltaic Projects: Options and Implications* at 6 (Lawrence Berkeley Nat'l Lab., Jan. 2009), *available at* http://eetd.lbl.gov/ea/emp (last visited July 24, 2009).

[36] See 42 U.S.C. § 16511 et seq., as amended by the Energy Policy Act of 2005 and extended by the ARRA of 2009.

[37] See id.; see also ARRA, Pub. L. No. 111-5, 123 Stat. 115, supra.

[38] Felicity Barringer, *With Push Toward Renewable Energy, California Sets Pace for Solar Power*, NY TIMES (Jul. 16, 2009).

[39] Legislative Digest of S.B. No. 1 (August 21, 2006) (approving California Solar Initiative), *codified at* CAL. PUB. RES. CODE § 25780 et seq., *available at* http://www.leginfo.ca.gov/pub/05-06/bill/sen/sb_0001-0050/sb_1_bill_20060821_chaptered.pdf (last visited July 29, 2009).

[40] CPUC, *California Solar Initiative Program Handbook* at 1 (July 2009), *available at* http://www.gosolarcalifornia.ca.gov/documents/CSI_HANDBOOK.PDF (updated regularly) (last visited July 29, 2009) (hereafter "CSI Handbook").

The CSI incentive structure for non-residential buildings and existing homes involves two types of incentives: Expected Performance Based Buydowns ("EPBB") and Performance-Based Incentives ("PBI").[41] CSI incentives levels can vary by PA territory, and are linked to levels of solar demand within each PA territory, rather than a static timetable.[42] As the CSI Handbook explains,

> **The EPBB incentives are paid based on verified solar energy system characteristics such as location, system size, shading, and orientation. The PBI incentive is a flat cents-per-kWh payment for all output from a solar energy system over its initial five years of operation. The amount of the EPBB or PBI incentive depends on which incentive payment levels will be reduced automatically over the duration of the CSI Program in 10 steps, based on the volume of MW of solar reservations issued by each Program Administrator.[43]**

Generally, the size of a commercial customer's solar installation determines which of the two incentive structures will apply to the CSI rebate. The following table illustrates the incentive-type distribution with respect to commercial solar projects:

Table: Determining CSI Incentive Structure for Commercial Projects[44]

Type of CSI Incentive	Payment Structure	Size Category	Maximum Incentive Level (Commercial, 2007)
Performance Based Incentive (PBI)	Payments based on the $/kWh produced over 5 year term	≥ 50 kW	$2.50/W (adjusted based on expected performance)

41 Id. at 3.

42 Id. at 2.

43 Id. at 3. A kilowatt-hour, or "kWh," is a unit of electric energy equal to 1,000 watts operating for one hour.

44 Information selected from CSI Handbook, Table 4 at 4 and Table 8 at 31.

Expected Performance Based Buydown (EPBB)	One lump sum based on $/watt	< 50 kW[45]	$0.39/kWh (first 5 years; declining thereafter)

In addition to the variations between EPBB and PBI structures and the state's gradual incentive reduction scheme, CSI incentive levels can vary based on the PA region, the size and placement of the solar installation, and other factors. However, CSI data indicates that, in many cases, CSI incentives alone reduce the cost of a solar system by 20%.[46]

Net energy metering can provide significant out-of-pocket savings in addition to CSI's cash incentives. As discussed above, California solar customers are only charged for the electricity they use in excess of what their solar equipment generates; and utilities are required by law to compensate a customer for the electricity that his or her equipment feeds into the grid.[47]

(b) Costs of Installing Solar Systems

Similar to incentive levels, the cost of a solar installation varies based upon a variety of factors, including the energy production capacity of the panels and labor required to install them. According to a 2008 industry estimate, residential systems cost between $9 and $10 per watt, and commercial systems often cost much less.[48] The CSI's prices-per-watt will likely decrease as time goes on and as more buildings install solar equipment.

Because commercial buildings vary so drastically in size and purpose, from small shops to sprawling industrial complexes, it would be difficult to estimate the "average" size of a commercial solar installation. A commercial customer could extrapolate from the residential average, which is approximately 4,000 watts (4 kilowatts).[49] For a personalized estimate of the costs and benefits of a particular solar project, customers can use the California Energy Commission's Clean Power Estimator, an online program that provides investor-specific analyses and estimates.[50]

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[45] Smaller systems may opt-in to receive a PBI incentive rather than the EPBB incentive. In 2008, PBI was required for all systems ≥ 50 kW. Id.

[46] Go Solar California, *Consumer's Guide* at 6.

[47] See CAL. PUB. UTIL. CODE § 2827, et seq. Net excess generation of electricity is carried forward to offset a customer's utility bills for up to 12 months. All major utilities except Los Angeles Department of Water and Power are required to participate in net metering.

[48] Id.

[49] Id.

[50] The Clean Power Estimator can be found at www.consumerenergycenter.org/renewables/estimator/index.html.

(c) The Cost-Benefit Analysis of Going Solar in California

A commercial solar project can be expensive, especially at the time of the initial purchase. However, PV systems are reliable—most have at least 10-year warranties, and are expected to last up to 25 years.[51] Solar installations increase a building's resale value; and energy savings combined with net metering can translate into significant long-term savings. CSI incentives are designed to decrease as more Californians invest in solar energy – so the most substantial incentives are available now, and only for a limited time.

2. BerkeleyFIRST as a Model for Municipal Incentives Statewide

Businesses that own property in Berkeley, California can take advantage of an innovative municipal program called Berkeley Financing Initiative for Renewable and Solar Technology ("BerkeleyFIRST"). BerkeleyFIRST allows residents who choose to participate to finance a solar energy installation by placing a 20-year tax lien on their property, and repaying the cost of the solar system in increments over a 20-year period.[52] In other words, the City of Berkeley pays for the solar equipment and its installation, and recoups its cost via incremental additions on the property owner's property taxes.

BerkeleyFIRST offers participating property owners a variety of benefits. Significantly, it operates in conjunction with CSI, so investors need not give up the benefits of the state incentive scheme.[53] Moreover, BerkeleyFIRST financing means that there is little or no upfront cost involved with a solar installation. In addition, because the investment is secured by a tax lien on the property benefitting from the installation, the repayment obligation passes to the purchaser of the property if the property is sold.[54]

In fact, BerkeleyFIRST has become something of a model for cities interested in facilitating solar investments.[55] In 2008, the California Legislature enacted a state statute that sanctioned and facilitated the implementation of municipal energy districts like BerkeleyFIRST in other cities throughout the state.[56]

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[51] Go Solar California, *Consumer's Guide* at 14.

[52] See BerkeleyFIRST information pages, http://www.berkeleyfirst.renewfund.com/, *operated by* Renewable Funding, LLC (last visited July 30, 2009).

[53] Id.

[54] Id.

[55] See Peter Maloney, *Pay for the Power, Not the Panels*, NY TIMES (Mar. 26, 2008) *available at* http://www.nytimes.com/2008/03/26/business/businessspecial2/26sun.html?_r=1&ref=businessspecial2 (last visited July 30, 2009).

[56] See CAL. STREETS AND HIGHWAYS CODE § 5898.10 et. seq.

3. Other Notable Economic Incentives for Solar Investment in California

(a) Property Tax Exclusion for Solar Energy Systems

California law generally requires that a property be reassessed for property tax purposes each time there is a change in ownership or new construction on the property. California Revenue and Tax Code section 73 excludes active solar energy systems and related solar equipment from the definition of "new construction," for the purpose of reassessment. The section 73 exclusion applies to specified solar equipment installed between January 1, 1999 and December 31, 2016, and allows qualifying building owners to avoid reassessment.[57]

(b) California Feed-In Tariff

As an alternative to other state incentive programs like CSI, Californians can contract to sell the electricity produced by solar systems of up to 1.5 MW to their utility companies.[58] Under 10- to 20-year contracts, the utilities compensate the solar-generating customers at roughly market price, adjusted for a series of specified factors.[59] A customer who participates in the feed-in tariff may not also participate in other state incentive programs.[60]

IV. CONCLUSION

Federal and state programs are offering unprecedented incentives to "go solar," but businesses must act quickly to take full advantage of them. The federal government's unparalleled 30% grant is available only for a limited time, and the 30% ITC is scheduled to revert back to 10% in 2017. Moreover, the cash incentives under the CSI program are gradually decreasing. At both the state and federal level, economic incentives for commercial investment in solar energy are at an all-time high. A company would be wise to consider "going solar" now, because the going may never be this good again.

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57 CAL. REV. & TAX CODE § 73.

58 See CAL. PUB. UTIL. CODE § 399.20.

59 See CPUC Resolution E-4137.

60 DSIRE, California Feed-In Tariff (updated Nov. 16, 2008), *available at* www.dsireusa.org/incentives (visited July 28, 2009).