

## Sheinberg, Samuel I.

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**From:** [REDACTED]  
**Sent:** Thursday, June 10, 2021 11:34 AM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina  
**Subject:** FW: Agricultural Property 802.2(g)

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Thursday, June 10, 2021 11:33:29 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Agricultural Property 802.2(g)

[REDACTED]

We agree your analysis, except for water rights. If they are being separately acquired (i.e., the rights need not run with the land and are separately acquired), then 802.2(g) would not apply. "Assets incidental" to the ownership of agricultural property are defined as items such as "cash, prepaid taxes or insurance, rentals receivable and the like."

Best regards,  
Kristin

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**From:** [REDACTED]  
**Sent:** Tuesday, June 8, 2021 6:01 PM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** Agricultural Property 802.2(g)

Hi PNO,

We're looking at an asset acquisition of farm real property and want to make sure we're appropriately applying the 802.2(g) exemption – can you confirm?

Buyer is acquiring the real property (including structures and irrigation systems), but not the farming business itself, and not the equipment or inventory (crops or livestock). There are no processing or packing facilities on the property.

Considering the categories of assets that are exempt or non-exempt:

- Agricultural land: All exempt under 802.2(g) because there are no processing or packing facilities, and the farm business is not being acquired.
  - Any grapevines or fruit trees would be non-exempt under PNPM Int 115.

- Water rights: The vast majority of these are situated in/on the real property to be acquired (simply a natural resource of that property) so included in the 802.2(g) agricultural land exemption.
  - A small fraction are leased rights in other real property that is not being acquired – could these also be included in 802.2(g), or are they non-exempt? (We expect they would not be exempt under 802.2(c) because used “in conjunction with” productive property.)
- Storage facilities, livestock management structures, irrigation systems: Non-exempt as PNPM Int 115 refers to “structures on the land” as such.
  - The storage facilities would only be exempt as “warehouses” under 802.2(h) if they’re currently storing third party products.

Do you agree?

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]