

Sheinberg, Samuel I.

To: [REDACTED]
Subject: RE: Size-of-Transaction with Real Estate

From: Sheinberg, Samuel I. <[SSHEINBERG@ftc.gov](mailto:ssheinberg@ftc.gov)>
Sent: Tuesday, March 12, 2019 2:42 PM
To: [REDACTED]
Subject: [REDACTED]

[REDACTED]

Yes, you should include the real estate in the SOT, unless an exemption applies.

Sam

From: [REDACTED]
Sent: Tuesday, March 12, 2019 12:55 PM
To: Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <kberg@ftc.gov>; Biagioli, Kimberley <kbiagioli@ftc.gov>; Carson, Timothy <tcarson@ftc.gov>; Sheinberg, Samuel I. <ssheinberg@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>
Subject: FW: Size-of-Transaction with Real Estate

From: [REDACTED]
Sent: Tuesday, March 12, 2019 12:54:36 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Size-of-Transaction with Real Estate

Hi,

Question below regarding the size-of-transaction test with respect to the sale of a business (voting securities) and real estate (asset) to the same Buyer.

FACTS

Target is an operating business, structured as a corporation. Up the chain of ownership, Target has two individuals as UPEs. Buyer will be acquiring 100% of the voting securities of the Target from Target's owners. As part of the same proposed transaction (same Purchase Agreement), Buyers will be acquiring a piece of real estate from a separate entity, an LLC that is similarly (but not exactly) owned as Target. The LLC does not have the exact same ownership as Target, but does have the same two UPEs as Target. The Purchase Agreement has one total purchase price, but allocates a portion of that purchase price to the real estate (asset) portion of the acquisition.

The real estate owned by the LLC is a manufacturing/office facility that is leased solely to Target for use by Target in Target's business.

The total purchase price for the acquisition of voting securities of Target and the real estate owned by the LLC is above the size-of-transaction filing threshold, but the value of the real estate (if excluded) is sufficient to bring the size-of-transaction with respect to Target's voting securities to an amount below the filing threshold.

QUESTION

Should the value allocated to the real estate be included in the size-of-transaction test or should it be excluded under a real estate exemption? Alternatively, is it possible that the real estate (asset) transaction would be viewed as a separate unreportable transaction?

Your guidance is much appreciated.

Thank you,

[Redacted signature block]

[Redacted name block]

[Redacted body text block]