

Sheinberg, Samuel I.

From: Sheinberg, Samuel I.
Sent: Thursday, November 12, 2020 3:09 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Request for Guidance - Size of Person Test

[REDACTED]
Based on the facts you present, we agree that this is not income-producing property.

Sam

From: [REDACTED]
Sent: Wednesday, November 11, 2020 4:09:51 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: Request for Guidance - Size of Person Test

Dear PNO Staff:

I am writing to request guidance on whether certain real property owned by my clients (husband and wife; no regularly prepared balance sheet) constitutes "income-producing property" that must be counted as part of their total assets in determining whether they meet a relevant size of person test under HSR rules.

Background:

1. My clients acquired the real property, which is a private residence, several years ago, but they have never used it as their personal/primary residence.
2. Previously, my clients used the residence as a rental property from time to time, but they have not done so since October 2018.
3. Since October 2018, my clients have allowed family members and personal friends to stay in the residence without payment of rent, although such guests occasionally pay to have the residence cleaned after their stay.
4. The residence is not currently listed for sale, but it has been listed for sale in the past.
5. The residence is encumbered by a mortgage.
6. My clients have no present intention to rent out or sell the residence in the future. They are considering the possibility of donating the residence to a charitable foundation, and could also decide to use the property as their personal/primary residence going forward, but have not made any decisions in that regard.

Questions:

1. Does the residence constitute "income-producing property" under HSR rules? As noted above:
 1. the property is not currently producing income;

