

Sheinberg, Samuel I.

From: HSRHelp
Sent: Friday, January 31, 2025 12:40 PM
To: HSR Auto Forward List
Subject: FW: Question regarding net sales calculation

From: Walsh, Kathryn E.
Sent: Friday, January 31, 2025 12:39:33 PM (UTC-05:00) Eastern Time (US & Canada)
To: regina. [REDACTED]
Cc: HSRHelp
Subject: FW: Question regarding net sales calculation

That interpretation is very old. Our current position is that any deduction for taxes from the revenues must be in a line item. If not in a line item, the revenues in the financials stand as stated.

From: [REDACTED]
Sent: Tuesday, January 28, 2025 4:52:13 PM (UTC-05:00) Eastern Time (US & Canada)
To: HSRHelp
Cc: [REDACTED]
Subject: Question regarding net sales calculation

[REDACTED]
Dear PNO,

I have two questions regarding the net sales calculation for the Size-of-Person test. Our client offers an application on app stores (e.g., Apple, Google). Users download the application and pay a subscription fee through the app store. The client and app store providers have agreed that the client will pay a fixed percentage of user subscription revenue to the app store providers, which host the application for downloading ("store fees"). The app store providers act as merchants for the client: they collect subscription fees from users and pay our client the subscription revenue less taxes and store fees. The store fees are noted as direct costs in the client's financials.

1. In Interpretation 0605007 (2006), the PNO indicated that a party, which published online content for publishers, could exclude the portion of revenues that was paid to publishers. Based on this interpretation, we believe that the store fees, which are collected by the app store provider and never paid out to our client, should be excluded from the client's net sales calculation. Can you please confirm that we can exclude the store fees from the net sales calculation?
2. A portion of the client's revenue is taxes paid by users, which is collected by the app store provider. We understand that "net sales" means "gross revenues less returns, discounts, excise taxes, and the like." See The Statement of Basis and Purpose at 43 Fed. Reg. 33472-73. In this instance, the client does not receive the taxes paid by user; rather the taxes are paid to and collected by the app store provider. Can you please confirm that we can exclude the tax revenue from the net sales calculation?

Thank you,

[REDACTED]

