

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Thursday, August 10, 2023 1:43 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Musick, Vesselina; Shaffer, Kristin; Sheinberg, Samuel I.; Six, Anne; Fetterman, Michelle  
**Subject:** FW: Unproductive Real Property and Agricultural Property Exemptions

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**From:** Whitehead, Nora <nwhitehead@ftc.gov>  
**Sent:** Thursday, August 10, 2023 1:42:42 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** HSRHelp <HSRHelp@ftc.gov>  
**Subject:** RE: Unproductive Real Property and Agricultural Property Exemptions

We disagree. Such agricultural revenues should be considered in determining the applicability of 802.2c.

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**From:** HSRHelp <HSRHelp@ftc.gov>  
**Sent:** Thursday, August 10, 2023 8:36 AM  
**To:** Walsh, Kathryn E. <kwalsh@ftc.gov>; Berg, Karen E. <KBERG@ftc.gov>; Musick, Vesselina <vmusick@ftc.gov>; Shaffer, Kristin <kshaffer@ftc.gov>; Sheinberg, Samuel I. <SSHEINBERG@ftc.gov>; Six, Anne <asix@ftc.gov>; Whitehead, Nora <nwhitehead@ftc.gov>; Fetterman, Michelle <mfetterman@ftc.gov>  
**Subject:** FW: Unproductive Real Property and Agricultural Property Exemptions

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**From:** [REDACTED]  
**Sent:** Thursday, August 10, 2023 8:35:28 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** Unproductive Real Property and Agricultural Property Exemptions

PNO Team,

Hope everyone is having a good summer. We wanted to get your guidance on a question related to the unproductive real property and agricultural property exemptions.

Company A is buying a solar power project in early stage development from Company B. The project is being built on farm land that Company B purchased one year ago. In the two years previous to Company B's purchase, the land generated more than \$5 million in agriculture revenues as defined in 802.2(g).

Since the previous revenues were in connection with agricultural use of the land, which would be exempt under 802.2(g), we think those agricultural revenues should not be considered in determining if the current transaction is exempt under 802.2(c) as unproductive productive real property with revenues of less than \$5 million in past 36 months. Please let us know if you agree. Thanks for your consideration.

Best,

[REDACTED]

[REDACTED]

