

Sheinberg, Samuel I.

From: [REDACTED]
Sent: Thursday, March 01, 2018 10:41 AM
To: Walsh, Kathryn E.; Berg, Karen E.; Shaffer, Kristin; Sheinberg, Samuel I.; Whitehead, Nora; Davis, Alpa D.
Subject: FW: Question re Debt Payoff

From: Carson, Timothy
Sent: Thursday, March 1, 2018 10:41:13 AM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Question re Debt Payoff

[REDACTED]

Rule 802.63 does not exempt this transaction.

Regards,

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Federal Trade Commission
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From: [REDACTED]
Sent: Wednesday, February 28, 2018 4:07:13 PM (UTC-05:00) Eastern Time (US & Canada)
To: [REDACTED]
Subject: Question re Debt Payoff

Acquiring person [A] is planning to acquire target [T], a subsidiary of acquired person [B], for \$100 million. Included as part of the consideration for the transaction, [A] will pay off (or forgive) \$20 million in debt owed to it by [S], another subsidiary of [B] (but not the target). The debt represents the receipt of goods and/or services received by [S] from [A] that occurred in the ordinary course of business.

Within the past year, the PNO has clarified its position on debt payoffs that the amount of 3rd party debt must be in the target itself, and not in an affiliate. See Informal Interpretation 1211011 (as updated). Here, however, the debt is owed by the affiliate to the acquiring person. Would 802.63 serve to reduce the transaction value by the amount of debt being paid off in this situation? Your opinion in Informal Interpretation 1505006, i.e., that 802.63 is not necessarily an all-or-nothing exemption, suggests to me that it would be available here.

Given the above scenario, would the size of the transaction be \$100 million or \$80 million?

Any insights you can provide, as always, are greatly appreciated.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]