

## Sheinberg, Samuel I.

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**From:** HSRHelp  
**Sent:** Thursday, August 5, 2021 3:59 PM  
**To:** Walsh, Kathryn E.; Berg, Karen E.; Sheinberg, Samuel I.; Six, Anne; Whitehead, Nora; Musick, Vesselina  
**Subject:** FW: Query re: Section 1031 Like-Kind Exchange of Assets

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**From:** Shaffer, Kristin <kshaffer@ftc.gov>  
**Sent:** Thursday, August 5, 2021 3:59:10 PM (UTC-05:00) Eastern Time (US & Canada)  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Subject:** RE: Query re: Section 1031 Like-Kind Exchange of Assets

[REDACTED]  
Yes, this should be analyzed as A acquiring assets from B and B acquiring assets from A.

Best regards,

Kristin

**Kristin Shaffer**

Attorney

Premerger Notification Office

Federal Trade Commission

202-326-2388 | kshaffer@ftc.gov

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**From:** [REDACTED]  
**Sent:** Thursday, August 5, 2021 1:25 PM  
**To:** HSRHelp <HSRHelp@ftc.gov>  
**Cc:** [REDACTED]  
**Subject:** Query re: Section 1031 Like-Kind Exchange of Assets

Good afternoon,

Hope this finds you well. In connection with an anticipated transaction, we (as counsel to the respective parties) are hoping to get your feedback on the applicability of prior staff informal interpretations with respect to the facts below. Company A owns a 40% interest in a mining claim (the remaining 60% of which is owned by Company B), and an option to obtain a 100% interest in a different set of mining claims that constitute unproductive real property (the "Company A Assets"). Company B owns certain mining claims and mining leases, as well as non-operational processing facilities that constitute fixtures to the mining claims and mining leases (the "Company B Assets"). All of the abovementioned assets are located in different counties within the same U.S. state.

Company A and Company B are considering exchanging all rights, title, and interests in the respective Company A Assets and Company B Assets pursuant to Section 1031 of the Internal Revenue Code. Aside from the reimbursement of certain cash amounts attributable to advances, the payment of certain contingent consideration in the event the Company B Assets meet certain production targets, and, if exercised, the costs of exercising the abovementioned option, the parties do not contemplate additional cash consideration as part of the exchange.

We note that the staff has considered the application of the HSR Act to Section 1031 exchanges in the past (for example, within Informal Interpretation 0807011). In 0807011, we further note that the transfer of legal title, without the attendant transfer of beneficial ownership, was not regarded as an acquisition of assets for purposes of the HSR Act. In the potential transaction between Company A and Company B both legal title and beneficial ownership would be transferred. However, in light of the prior guidance indicating that certain Section 1031 exchanges are not regarded as asset acquisitions for HSR Act purposes, we wanted to inquire as to whether a Section 1031 exchange of like-kind assets where both beneficial ownership and legal title are transferred would still be regarded as an asset acquisition for purposes of the HSR Act. Many thanks in advance for your feedback.

Best regards,

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]