

either constructed by the acquired person for sale or held at all times by the acquired person solely for resale. The new facility may include realty, equipment or other assets associated with the operation of the new facility. In an acquisition that includes a new facility, the transfer of any other assets shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(b) *Unproductive real property.* An acquisition of unproductive real property shall be exempt from the requirements of the act. In an acquisition that includes unproductive real property, the transfer of any assets that are not unproductive real property shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(1) Unproductive real property is any real property, including raw land, structures or other improvements and natural resources, that has not generated total revenues in excess of \$5 million during the thirty-six (36) months preceding the acquisition.

(2) Unproductive real property does not include manufacturing and non-manufacturing facilities that have not yet begun operation or manufacturing or non-manufacturing facilities that began operation within the twelve (12) months preceding the acquisition.

(c) *Office and residential property.* (1) An acquisition of office or residential property shall be exempt from the requirements of the act. In an acquisition that includes office or residential property, the transfer of any assets that are not office or residential property shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

(2) Office and residential property is real property, the acquisition of which is not exempt under another provision of the act, that is used primarily for office and residential purposes and includes:

- (i) Office buildings,
- (ii) Residences,
- (iii) Common areas on the property, including parking and recreational facilities, and
- (iv) Assets incidental to the ownership of such property, including cash, prepaid taxes or insurance, rental receivables and the like.

(3) If the acquisition includes the purchase of a business conducted on the office and residential property, the transfer of that business, including the space in which the business is conducted, shall be subject to the requirements of the act and these rules

as if such business were being transferred in a separate acquisition.

(d) *Hotels and motels.* (1) An acquisition of a hotel or motel shall be exempt from the requirements of the act. In an acquisition that includes a hotel or motel, the transfer of any assets that are not a hotel or motel shall be subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(2) An acquisition of a hotel or motel that includes a casino, or a hotel or motel that is being acquired as part of the acquisition of a ski resort, shall be subject to the requirements of the act and these rules.

(e) *Agricultural property.* An acquisition of agricultural property and associated agricultural assets shall be exempt from the requirements of the act. Agricultural property is real property and assets that primarily generate revenues from the production of crops, fruits, vegetables, livestock, poultry, milk and eggs.

(1) Associated agricultural assets are assets integral to the agricultural business activities conducted on the property. Associate agricultural assets include, but are not limited to, inventory (e.g., livestock, poultry, crops, fruit, vegetables, milk, eggs); equipment dedicated to the income-generating activities conducted on the real property; structures that house livestock and other animals raised on the real property; and fertilizer and animal feed. Associated agricultural assets do not include processing facilities, such as poultry slaughtering and processing facilities.

(2) If an acquisition of agricultural property includes processing facilities and other assets that are not associated agricultural assets, these facilities and assets are subject to the requirements of the act and these rules as if they were being acquired in a separate acquisition.

(f) *Retail rental space; warehouses.* An acquisition of retail rental space (including shopping centers) or warehouses shall be exempt from the requirements of the act, except when the retail rental space or warehouse is to be acquired in an acquisition of a business conducted on the real property. In an acquisition of retail rental space or warehouses, the transfer of any assets that are neither retail rental space nor warehouses shall be subject to the requirements of the act and these rules as if such assets were being transferred in a separate acquisition.

*Examples:* 1. "A," a major automobile manufacturer, builds a new automobile plant in anticipation of increased demand for its cars. The market does not improve and "A" never occupies the facility. "A" then sells the

facility to "B," another automobile manufacturer. This acquisition is not exempt as an acquisition of a new facility, even though the facility has not produced any income, since "A" did not construct the facility for sale. Also, the acquisition is not exempt as an acquisition of unproductive property since manufacturing facilities that have not yet begun operations are explicitly excluded from that exemption.

2. "A" proposes to acquire a \$100 million tract of wilderness land from "B." Copper deposits valued at \$17 million and timber reserves valued at \$20 million are situated on the land and will be conveyed as part of this transaction. During the last three fiscal years preceding the sale, the property generated \$50,000 from the sale of a small amount of timber cut from the reserves. "A's" acquisition of the wilderness land from "B" is exempt as an acquisition of unproductive real property because the property did not generate annual revenues exceeding \$5 million during the thirty-six months preceding the acquisition. The copper deposits and timber reserves are by definition unproductive real property and, thus, are not separately subject to the notification requirements.

3. "A" proposes to purchase from "B" for \$40 million an old steel mill that is not currently operating to add to "A's" existing steel production capacity. The mill has not generated revenues during the 36 months preceding the acquisition but contains equipment valued at \$16 million that "A" plans to refurbish for use in its operations. "A's" acquisition of the mill and the land on which it is located is exempt as unproductive real property. However, the transfer of the equipment and any other assets other than the unproductive property is not exempt and is separately subject to the notification requirements of the act.

4. "A" proposes to purchase two downtown lots, Parcels 1 and 2, from "B" for \$40 million. Parcel 1 contains no structures or improvements. A hotel is located on Parcel 2 and has generated \$9 million in revenues during the past 3 years. The purchase of Parcel 1 is exempt if it qualifies as unproductive real property; i.e., it has not generated annual revenues in excess of \$5 million in the three fiscal years prior to the acquisition. Parcel 2 is not unproductive real property, but its acquisition is exempt under § 802.2(d) as the acquisition of a hotel.

5. "A" intends to purchase a poultry farm from "B." The acquisition of the poultry farm is a transfer of agricultural property that is exempt pursuant to § 802.2(e). If, however, "B" has a poultry slaughtering and processing facility on his farm, "A" would be required to file notification for the acquisition of the processing facility if the higher of the acquisition price or the fair market value of the facility exceeds \$15 million.

6. "A" proposes to purchase the prescription drug wholesale distribution business of "B" for \$50 million. The business includes six regional warehouses used for "B's" national wholesale drug distribution business. Since "A" is acquiring the warehouses in connection with the acquisition of "B's" prescription drug