



## Ohio Administrative Code

### Rule 5703-3-32 Dealer in intangibles tax definition of "primarily".

Effective: January 7, 2024

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(A)

(1) Division (B)(1) of section 5725.01 of the Revised Code defines "dealer in intangibles."

Paragraphs (B) to (D) of this rule define "primarily" as used in section 5725.01 of the Revised Code. In addition to the primarily requirement defined in this rule, a person needs to meet all other legal requirements in order to meet the definition of "dealer in intangibles."

(2) As used in this rule:

(a) "Affiliated group" means two or more persons related in such a way that one person owns or controls the business operation of another member of the group. In the case of corporations with stock, one corporation owns or controls another if it owns more than fifty per cent of the other corporations common stock with voting rights.

(b) "Dealer activities" means lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness, or buying or selling bonds, stocks, or other investment securities, whether on the persons own account with a view to profit, or as agent or broker for others, with a view to profit or personal earnings. "Dealer activities" includes the servicing of loans originated or purchased by or on behalf of the person or another member of the persons affiliated group.

(c) "Gross income," except as otherwise provided in this rule, has the same meaning as in section 61 of the Internal Revenue Code, as amended. In no event will "gross income" include the recovery of basis from the sale, exchange, or other disposition of an asset.

(d) "Hedging transactions" means transactions engaged in for the purpose of reducing exposure to risk from market fluctuations in price or availability.



(B)

(1) As used in division (B)(1) of section 5725.01 of the Revised Code, and except as otherwise provided in this rule, a persons business consists primarily of dealer activities if either paragraph (B)(1)(a) or (B)(1)(b) of this rule applies:

(a) For a person that had an office or other place of business in Ohio at the end of each of the three preceding calendar years, such persons gross income from one or more dealer activities exceeds fifty per cent of the persons total gross income in at least two of the three preceding calendar years; or

(b) For a person that had an office or other place of business in Ohio at the end of the immediately preceding calendar year but did not have an office or other place of business in Ohio at the end of one or both of the other two of the three preceding calendar years, such persons gross income from one or more dealer activities exceeds fifty per cent of the persons total gross income in the immediately preceding calendar year.

(2) For purposes of paragraph (B)(1) of this rule, the computation of the applicable percentages will not include, in the numerator or the denominator, any gross income from hedging transactions.

(C)

(1) A person whose business does not meet the percentage test in paragraph (B) of this rule may show that such persons business nonetheless consists primarily of dealer activities. Paragraph (C)(1) of this rule applies only if the person files a written notice with the tax commissioner, in person or by certified mail, of the persons intent to apply such paragraph to the tax year no later than the later of the following:

(a) The due date, without extension, for filing the dealer in intangibles tax return for that tax year;

(b) Sixty days from the date the person receives written notice from the tax commissioner that it appears that the person does not meet the percentage test in paragraph (B) of this rule for that tax year.

(2) The tax commissioner may show that a persons business that meets the percentage test in



paragraph (B) of this rule nonetheless does not consist primarily of dealer activities. Paragraph (C)(2) of this rule applies only if the tax commissioner sends to the person a written notice, in person or by certified mail, of the tax commissioner's intent to apply such paragraph no later than two years after the date the person files a dealer in intangibles tax return for the tax year to which the commissioner seeks to apply such paragraph.

(3) Whoever seeks to apply paragraph (C) of this rule bears the burden of showing, based on the totality of the circumstances, that the person's business consists primarily of activities other than as shown by the percentage test in paragraph (B) of this rule. Factors to consider in addition to the person's gross income from dealer activities include, but are not limited to, the proportion of the person's assets related to dealer activities, the proportion of time the person or the person's employees spend engaging in dealer activities, the proportion of costs incurred in performing dealer activities, and substantial changes in the character of the person's business.

(D) As used in division (B)(1) of section 5725.01 of the Revised Code, the determination of whether a person winding up a dealer business conducted on the person's own account remains in business primarily for the purpose of realizing upon the assets of the business is based on the totality of the circumstances.

(E) This rule is not intended to address whether a person meeting the definition of "dealer in intangibles" may be a "dual capacity" enterprise in accordance with *Gen. American Transp. Corp. v. Limbach* (1984), 15 Ohio St.3d 302.