



Ohio Revised Code

Section 1707.03 Exempt transactions.

Effective: September 15, 2004

Legislation: Senate Bill 133 - 125th General Assembly

(A) As used in this section, "exempt" means that, except in the case of securities the right to buy, sell, or deal in which has been suspended or revoked under an existing order of the division of securities under section 1707.13 of the Revised Code or under a cease and desist order under division (G) of section 1707.23 of the Revised Code, transactions in securities may be carried on and completed without compliance with sections 1707.08 to 1707.11 of the Revised Code.

(B) A sale of securities made by or on behalf of a bona fide owner, neither the issuer nor a dealer, is exempt if the sale is made in good faith and not for the purpose of avoiding this chapter and is not made in the course of repeated and successive transactions of a similar character. Any sale of securities over a stock exchange that is lawfully conducted in this state and regularly open for public patronage and that has been established and operated for a period of at least five years prior to the sale at a commission not exceeding the commission regularly charged in such transactions also is exempt.

(C) The sale of securities by executors, administrators, receivers, trustees, or anyone acting in a fiduciary capacity is exempt, where such relationship was created by law, by a will, or by judicial authority, and where such sales are subject to approval by, or are made in pursuance to authority granted by, any court of competent jurisdiction or are otherwise authorized and lawfully made by such fiduciary.

(D) A sale to the issuer, to a dealer, or to an institutional investor is exempt.

(E) A sale in good faith, and not for the purpose of avoiding this chapter, by a pledgee of a security pledged for a bona fide debt is exempt.

(F) The sale at public auction by a corporation of shares of its stock because of delinquency in payment for the shares is exempt.



(G)(1) The giving of any conversion right with, or on account of the purchase of, any security that is exempt, is the subject matter of an exempt transaction, has been registered by description, by coordination, or by qualification, or is the subject matter of a transaction that has been registered by description is exempt.

(2) The giving of any subscription right, warrant, or option to purchase a security or right to receive a security upon exchange, which security is exempt at the time the right, warrant, or option to purchase or right to receive is given, is the subject matter of an exempt transaction, is registered by description, by coordination, or by qualification, or is the subject matter of a transaction that has been registered by description is exempt.

(3) The giving of any subscription right or any warrant or option to purchase a security, which right, warrant, or option expressly provides that it shall not be exercisable except for a security that at the time of the exercise is exempt, is the subject matter of an exempt transaction, is registered by description, by coordination, or by qualification, or at such time is the subject matter of a transaction that has been registered by description is exempt.

(H) The sale of notes, bonds, or other evidences of indebtedness that are secured by a mortgage lien upon real estate, leasehold estate other than oil, gas, or mining leasehold, or tangible personal property, or which evidence of indebtedness is due under or based upon a conditional-sale contract, if all such notes, bonds, or other evidences of indebtedness are sold to a single purchaser at a single sale, is exempt.

(I) The delivery of securities by the issuer on the exercise of conversion rights, the sale of securities by the issuer on exercise of subscription rights or of warrants or options to purchase securities, the delivery of voting-trust certificates for securities deposited under a voting-trust agreement, the delivery of deposited securities on surrender of voting-trust certificates, and the delivery of final certificates on surrender of interim certificates are exempt; but the sale of securities on exercise of subscription rights, warrants, or options is not an exempt transaction unless those rights, warrants, or options when granted were the subject matter of an exempt transaction under division (G) of this section or were registered by description, by coordination, or by qualification.

(J) The sale of securities by a bank, savings and loan association, savings bank, or credit union



organized under the laws of the United States or of this state is exempt if at a profit to that seller of not more than two per cent of the total sale price of the securities.

(K)(1) The distribution by a corporation of its securities to its security holders as a share dividend or other distribution out of earnings or surplus is exempt.

(2) The exchange or distribution by the issuer of any of its securities or of the securities of any of the issuer's wholly owned subsidiaries exclusively with or to its existing security holders, if no commission or other remuneration is given directly or indirectly for soliciting the exchange, is exempt.

(3) The sale of preorganization subscriptions for shares of stock of a corporation prior to the incorporation of the corporation is exempt, when the sale is evidenced by a written agreement, no remuneration is given, or promised, directly or indirectly, for or in connection with the sale of those securities, and no consideration is received, directly or indirectly, by any person from the purchasers of those securities until registration by qualification, by coordination, or by description of those securities is made under this chapter.

(L) The issuance of securities in exchange for one or more bona fide outstanding securities, claims, or property interests, not including securities sold for a consideration payable in whole or in part in cash, under a plan of reorganization, recapitalization, or refinancing approved by a court pursuant to the Bankruptcy Act of the United States or to any other federal act giving any federal court jurisdiction over such plan of reorganization, or under a plan of reorganization approved by a court of competent jurisdiction of any state of the United States is exempt. As used in this division, "reorganization," "recapitalization," and "refinancing" have the same meanings as in section 1707.04 of the Revised Code.

(M) A sale by a licensed dealer, acting either as principal or as agent, of securities issued and outstanding before the sale is exempt, unless the sale is of one or more of the following:

(1) Securities constituting the whole or a part of an unsold allotment to or subscription by a dealer as an underwriter or other participant in the distribution of those securities by the issuer, whether that distribution is direct or through an underwriter, provided that, if the issuer is such by reason of



owning one-fourth or more of those securities, the dealer has knowledge of this fact or reasonable cause to believe this fact;

(2) Any class of shares issued by a corporation when the number of beneficial owners of that class is less than twenty-five, with the record owner of securities being deemed the beneficial owner for this purpose, in the absence of actual knowledge to the contrary;

(3) Securities that within one year were purchased outside this state or within one year were transported into this state, if the dealer has knowledge or reasonable cause to believe, before the sale of those securities, that within one year they were purchased outside this state or within one year were transported into this state; but such a sale of those securities is exempt if any of the following occurs:

(a) A recognized securities manual contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date within eighteen months, and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations;

(b) Those securities, or securities of the same class, within one year were registered or qualified under section 1707.09 or 1707.091 of the Revised Code, and that registration or qualification is in full force and effect;

(c) The sale is made by a licensed dealer on behalf of the bona fide owner of those securities in accordance with division (B) of this section;

(d) Those securities were transported into Ohio in a transaction of the type described in division (L), (K), or (I) of this section, or in a transaction registered under division (A) of section 1707.06 of the Revised Code.

(N) For the purpose of this division and division (M) of this section, "underwriter" means any person who has purchased from an issuer with a view to, or sells for an issuer in connection with, the distribution of any security, or who participates directly or indirectly in any such undertaking or in the underwriting thereof, but "underwriter" does not include a person whose interest is limited to a discount, commission, or profit from the underwriter or from a dealer that is not in excess of the



customary distributors' or sellers' discount, commission, or profit; and "issuer" includes any person or any group of persons acting in concert in the sale of such securities, owning beneficially one-fourth or more of the outstanding securities of the class involved in the transactions in question, with the record owner of securities being deemed the beneficial owner for this purpose, in the absence of actual knowledge to the contrary.

(O)(1) The sale of any equity security is exempt if all the following conditions are satisfied:

(a) The sale is by the issuer of the security.

(b) The total number of purchasers in this state of all securities issued or sold by the issuer in reliance upon this exemption during the period of one year ending with the date of the sale does not exceed ten. A sale of securities registered under this chapter or sold pursuant to an exemption under this chapter other than this exemption shall not be integrated with a sale pursuant to this exemption in computing the number of purchasers under this exemption.

(c) No advertisement, article, notice, or other communication published in any newspaper, magazine, or similar medium or broadcast over television or radio is used in connection with the sale, but the use of an offering circular or other communication delivered by the issuer to selected individuals does not destroy this exemption.

(d) The issuer reasonably believes after reasonable investigation that the purchaser is purchasing for investment.

(e) The aggregate commission, discount, and other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.

(f) Any such commission, discount, or other remuneration for sales in this state is paid or given only to dealers or salespersons registered pursuant to this chapter.

(2) For the purposes of division (O)(1) of this section, each of the following is deemed to be a single purchaser of a security: husband and wife, a child and its parent or guardian when the parent or



guardian holds the security for the benefit of the child, a corporation, a limited liability company, a partnership, an association or other unincorporated entity, a joint-stock company, or a trust, but only if the corporation, limited liability company, partnership, association, entity, joint-stock company, or trust was not formed for the purpose of purchasing the security.

(3) As used in division (O)(1) of this section, "equity security" means any stock or similar security of a corporation or any membership interest in a limited liability company; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security that the division considers necessary or appropriate, by such rules as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.

(P) The sale of securities representing interests in or under profit-sharing or participation agreements relating to oil or gas wells located in this state, or representing interests in or under oil or gas leases of real estate situated in this state, is exempt if the securities are issued by an individual, partnership, limited partnership, partnership association, syndicate, pool, trust or trust fund, or other unincorporated association and if each of the following conditions is complied with:

(1) The beneficial owners of the securities do not, and will not after the sale, exceed five natural persons;

(2) The securities constitute or represent interests in not more than one oil or gas well;

(3) A certificate or other instrument in writing is furnished to each purchaser of the securities at or before the consummation of the sale, disclosing the maximum commission, compensation for services, cost of lease, and expenses with respect to the sale of such interests and with respect to the promotion, development, and management of the oil or gas well, and the total of that commission, compensation, costs, and expenses does not exceed twenty-five per cent of the aggregate interests in the oil or gas well, exclusive of any landowner's rental or royalty;

(4) The sale is made in good faith and not for the purpose of avoiding this chapter.

(Q) The sale of any security is exempt if all of the following conditions are satisfied:



- (1) The provisions of section 5 of the Securities Act of 1933 do not apply to the sale by reason of an exemption under section 4 (2) of that act.
- (2) The aggregate commission, discount, and other remuneration, excluding legal, accounting, and printing fees, paid or given directly or indirectly does not exceed ten per cent of the initial offering price.
- (3) Any such commission, discount, or other remuneration for sales in this state is paid or given only to dealers or salespersons registered under this chapter.
- (4) The issuer or dealer files with the division of securities, not later than sixty days after the sale, a report setting forth the name and address of the issuer, the total amount of the securities sold under this division, the number of persons to whom the securities were sold, the price at which the securities were sold, and the commissions or discounts paid or given.
- (5) The issuer pays a filing fee of one hundred dollars for the first filing and fifty dollars for every subsequent filing during each calendar year.
- (R) A sale of a money order, travelers' check, or other instrument for the transmission of money by a person qualified to engage in such business under section 1109.60 or Chapter 1315. of the Revised Code is exempt.
- (S) A sale by a licensed dealer of securities that are in the process of registration under the Securities Act of 1933, unless exempt under that act, and that are in the process of registration, if registration is required under this chapter, is exempt, provided that no sale of that nature shall be consummated prior to the registration by description or qualification of the securities.
- (T) The execution by a licensed dealer of orders for the purchase of any security is exempt, provided that the dealer acts only as agent for the purchaser, has made no solicitation of the order to purchase the security, has no interest in the distribution of the security, and delivers to the purchaser written confirmation of the transaction that clearly itemizes the dealer's commission. "Solicitation," as used in this division, means solicitation of the order for the specific security purchased and does not



include general solicitations or advertisements of any kind.

(U) The sale insofar as the security holders of a person are concerned, where, pursuant to statutory provisions of the jurisdiction under which that person is organized or pursuant to provisions contained in its articles of incorporation, certificate of incorporation, partnership agreement, declaration of trust, trust indenture, or similar controlling instrument, there is submitted to the security holders, for their vote or consent, (1) a plan or agreement for a reclassification of securities of that person that involves the substitution of a security of that person for another security of that person, (2) a plan or agreement of merger or consolidation or a similar plan or agreement of acquisition in which the securities of that person held by the security holders will become or be exchanged for securities of any other person, or (3) a plan or agreement for a combination as defined in division (Q) of section 1701.01 of the Revised Code or a similar plan or agreement for the transfer of assets of that person to another person in consideration of the issuance of securities of any person, is exempt if, with respect to any of the foregoing transactions, either of the following conditions is satisfied:

(a) The securities to be issued to the security holders are effectively registered under sections 6 to 8 of the Securities Act of 1933 and offered and sold in compliance with section 5 of that act;

(b) At least twenty days prior to the date on which a meeting of the security holders is held or the earliest date on which corporate action may be taken when no meeting is held, there is submitted to the security holders, by that person, or by the person whose securities are to be issued in the transaction, information substantially equivalent to the information that would be required to be included in a proxy statement or information statement prepared by or on behalf of the management of an issuer subject to section 14(a) or 14(c) of the Securities Exchange Act of 1934.

(V) The sale of any security is exempt if the division by rule finds that registration is not necessary or appropriate in the public interest or for the protection of investors.

(W) Any offer or sale of securities made in reliance on the exemptions provided by Rule 505 of Regulation D made pursuant to the Securities Act of 1933 and the conditions and definitions provided by Rules 501 to 503 thereunder is exempt if the offer or sale satisfies all of the following conditions:



(1) No commission or other remuneration is given, directly or indirectly, to any person for soliciting or selling to any person in this state in reliance on the exemption under this division, except to dealers licensed in this state.

(2)(a) Unless the cause for disqualification is waived under division (W)(2)(b) of this section, no exemption under this section is available for the securities of an issuer unless the issuer did not know and in the exercise of reasonable care could not have known that any of the following applies to any of the persons described in Rule 262(a) to (c) of Regulation A under the Securities Act of 1933:

(i) The person has filed an application for registration or qualification that is the subject of an effective order entered against the issuer, its officers, directors, general partners, controlling persons or affiliates thereof, pursuant to the law of any state within five years before the filing of a notice required under division (W)(3) of this section denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement.

(ii) The person has been convicted of any offense in connection with the offer, sale, or purchase of any security or franchise, or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, fraud, theft, or conspiracy to defraud.

(iii) The person is subject to an effective administrative order or judgment that was entered by a state securities administrator within five years before the filing of a notice required under division (W)(3) of this section and that prohibits, denies, or revokes the use of any exemption from securities registration, prohibits the transaction of business by the person as a dealer, or is based on fraud, deceit, an untrue statement of a material fact, or an omission to state a material fact.

(iv) The person is subject to any order, judgment, or decree of any court entered within five years before the filing of a notice required under division (W)(3) of this section, temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale, or purchase of any security, or the making of any false filing with any state.

(b)(i) Any disqualification under this division involving a dealer may be waived if the dealer is or



continues to be licensed in this state as a dealer after notifying the commissioner of the act or event causing disqualification.

(ii) The commissioner may waive any disqualification under this paragraph upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

(3) Not later than five business days before the earlier of the date on which the first use of an offering document or the first sale is made in this state in reliance on the exemption under this division, there is filed with the commissioner a notice comprised of offering material in compliance with the requirements of Rule 502 of Regulation D under the Securities Act of 1933 and a fee of one hundred dollars. Material amendments to the offering document shall be filed with the commissioner not later than the date of their first use in this state.

(4) The aggregate commission, discount, and other remuneration paid or given, directly or indirectly, does not exceed twelve per cent of the initial offering price, excluding legal, accounting, and printing fees.

(X) Any offer or sale of securities made in reliance on the exemption provided in Rule 506 of Regulation D under the Securities Act of 1933, and in accordance with Rules 501 to 503 of Regulation D under the Securities Act of 1933, is exempt provided that all of the following apply:

(1) The issuer makes a notice filing with the division on form D of the securities and exchange commission within fifteen days of the first sale in this state;

(2) Any commission, discount, or other remuneration for sales of securities in this state is paid or given only to dealers or salespersons licensed under this chapter;

(3) The issuer pays a filing fee of one hundred dollars to the division; however, no filing fee shall be required to file amendments to the form D of the securities and exchange commission.

(Y) The offer or sale of securities by an issuer is exempt provided that all of the following apply:

(1) The sale of securities is made only to persons who are, or who the issuer reasonably believes are,



accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933.

(2) The issuer reasonably believes that all purchasers are purchasing for investment and not with a view to or for sale in connection with a distribution of the security. Any resale of a security sold in reliance on this exemption within twelve months of sale shall be presumed to be with a view to distribution and not for investment, except a resale to which any of the following applies:

(a) The resale is pursuant to a registration statement effective under section 1707.09 or 1707.091 of the Revised Code.

(b) The resale is to an accredited investor, as defined in Rule 501 of Regulation D under the Securities Act of 1933.

(c) The resale is to an institutional investor pursuant to the exemptions under division (B) or (D) of this section.

(3) The exemption under this division is not available to an issuer that is in the development stage and that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies, or other entities or persons.

(4) The exemption under this division is not available to an issuer, if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, or beneficial owners of ten per cent or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director, or officer of such underwriter:

(a) Within the past five years, has filed a registration statement that is the subject of a currently effective registration stop order entered by any state securities administrator or the securities and exchange commission;

(b) Within the past five years, has been convicted of any criminal offense in connection with the offer, purchase, or sale of any security, or involving fraud or deceit;



(c) Is currently subject to any state or federal administrative enforcement order or judgment, entered within the past five years, finding fraud or deceit in connection with the purchase or sale of any security;

(d) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction, entered within the past five years, that temporarily, preliminarily, or permanently restrains or enjoins the party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security.

(5) Division (Y)(4) of this section is inapplicable if any of the following applies:

(a) The party subject to the disqualification is licensed or registered to conduct securities business in the state in which the order, judgment, or decree creating the disqualification was entered against the party described in division (Y)(4) of this section.

(b) Before the first offer is made under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification.

(c) The issuer did not know and, in the exercise of reasonable care based on reasonable investigation, could not have known that a disqualification from the exemption existed under division (Y)(4) of this section.

(6) A general announcement of the proposed offering may be made by any means; however, the general announcement shall include only the following information, unless additional information is specifically permitted by the division by rule:

(a) The name, address, and telephone number of the issuer of the securities;

(b) The name, a brief description, and price of any security to be issued;

(c) A brief description of the business of the issuer;



- (d) The type, number, and aggregate amount of securities being offered;
- (e) The name, address, and telephone number of the person to contact for additional information;
and
- (f) A statement indicating all of the following:
 - (i) Sales will only be made to accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933;
 - (ii) No money or other consideration is being solicited or will be accepted by way of this general announcement;
 - (iii) The securities have not been registered with or approved by any state securities administrator or the securities and exchange commission and are being offered and sold pursuant to an exemption from registration.
- (7) The issuer, in connection with an offer, may provide information in addition to the general announcement described in division (Y)(6) of this section, provided that either of the following applies:
 - (a) The information is delivered through an electronic database that is restricted to persons that are accredited investors as defined in Rule 501 of Regulation D under the Securities Act of 1933.
 - (b) The information is delivered after the issuer reasonably believes that the prospective purchaser is an accredited investor as defined in Rule 501 of Regulation D under the Securities Act of 1933.
- (8) No telephone solicitation shall be done, unless prior to placing the telephone call, the issuer reasonably believes that the prospective purchaser to be solicited is an accredited investor as defined in Rule 501 of Regulation D under the Securities Act of 1933.
- (9) Dissemination of the general announcement described in division (Y)(6) of this section to persons that are not accredited investors, as defined in Rule 501 of Regulation D under the Securities



Act of 1933, does not disqualify the issuer from claiming an exemption under this division.

(10) The issuer shall file with the division notice of the offering of securities within fifteen days after notice of the offering is made or a general announcement is made in this state. The filing shall be on forms adopted by the division and shall include a copy of the general announcement, if one is made regarding the proposed offering, and copies of any offering materials, circulars, or prospectuses. A filing fee of one hundred dollars also shall be included.