

Office of Government Ethics

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Letter to an Agency Ethics Official
dated September 24, 1999

This is in response to your letter of July 27, 1999, as supplemented on August 24, 1999 and September 1, 1999. By your letter, you request that this Office issue a Certificate of Divestiture for [an employee of your agency].

As indicated in the submitted materials, the holdings for which [the employee] seeks a Certificate of Divestiture were purchased through a [Corporation's] Employee Stock Investment Plan. Under Internal Revenue Service rules applicable to such plans, [the employee's] income will be taxed as ordinary earned income, because the stock must be sold within two years of the option grant date. However, property is not eligible for certification under Section 1043 of the Internal Revenue Code except to the extent that capital gains tax would be imposed on the sale of the asset for which certification is requested. (See 5 C.F.R. § 2634.1002(e)(3)). Accordingly, OGE cannot issue a Certificate of Divestiture for [the employee's] stock.

If there are any questions, you may contact my Office.

Sincerely,

Stephen D. Potts
Director