

Note: In 2004, the Internal Revenue Code was amended and now the sale of stock acquired through a qualified incentive stock option plan may qualify for a Certificate of Divestiture in accordance with 26 U.S.C. § 421(d).

OFFICE OF GOVERNMENT ETHICS

98 X 10

**Letter to a Designated Agency Ethics Official
dated July 13, 1998**

This is in response to a request of June 30, 1998, by [a] Deputy Ethics Official for [a division within your Department], which was signed and approved by you, in which a Certificate of Divestiture was requested for an employee of the [division within the] Department. As indicated in the submitted materials, the holdings for which [the employee] seeks a Certificate of Divestiture were purchased through a [corporation's] Qualified Incentive Stock Option plan under which [the employee's] income will be taxed as ordinary earned income because he will have held the stock for less than one year. Thus, we are denying your request.

Our rules regarding Certificates of Divestiture provide for nonrecognition of gain in the case of sales to comply with conflict of interest requirements. However, the Office of Government Ethics (OGE) does not issue Certificates of Divestiture for holdings which, upon sale, result in ordinary earned income. Under 5 C.F.R. § 2634.1002(e)(3), income from the sale of holdings purchased through an employer's stock option plan which is treated as ordinary income is property received as compensation for services. Certification of such property would confer an unfair or unintended benefit on the employee. Because the income from the [corporation's] stock purchased by [the employee] will result in ordinary earned income, OGE will not issue a Certificate of Divestiture for [the employee's] stock.

If there are any questions, you may contact [our Office].

Sincerely,

Stephen D. Potts
Director