

## **Office of Government Ethics**

**92 x 11 -- 03/16/92**

### **Letter to a Designated Agency Ethics Official dated March 16, 1992**

This is in response to your letter (with its enclosures) of March 5, 1992. By your letter, you request a Certificate of Divestiture pursuant to I.R.C. § 1043 for an employee at [your agency]. Your request relates to 200 shares of [stock in a corporation] which were sold on September 8, 1991.

The legislative history of section 1043 demonstrates the Congressional intent that this Office is not authorized to issue Certificates of Divestiture in the case of property previously divested. The Ethics Reform Act of 1989, which promulgated new section 1043, was enacted on November 30, 1989. Subsequently, special grandfather provisions were adopted to provide for the benefits of the section 1043 mechanism to apply to certain sales made prior to the issuance of certificates. The limited circumstances to which this procedure could pertain are described in section 6(a)(2) and (3) of the 1990 Technical Amendments to the Ethics Reform Act of 1989. The authority of this Office to issue Certificates of Divestiture in such circumstances ceased as of June 18, 1990. There is no longer any authority for this Office to issue a certificate relating to property no longer owned.

Even if we exceeded our authority to issue a certificate as you request, it would not help the situation of your employee. An examination of the tax deferral mechanism shows the futility, in the absence of ameliorative legislation, of issuing certificates in situations where the property has already been sold. Note that subsection (a) of section 1043 provides that the tax deferral mechanism, the basis adjustment, applies only to "permitted property purchased by the taxpayer during the 60-day period beginning on the date of such sale." From your submissions, it does not appear that permitted property was purchased by your employees during the statutorily mandated 60-day period.

If you have further questions regarding this matter, please contact this Office.

Sincerely,

Stephen D. Potts  
Director