

SMOOTH SALES

A BEGINNER'S GUIDE TO CERTIFICATES OF DIVESTITURE

Introduction

If you are an executive branch employee of the Federal Government or plan to become one, at some point you may have to sell certain assets to avoid a conflict of interest or the appearance of a conflict. Under tax rules, the sale of an asset may cause you to have a taxable capital gain which must be reported to the Internal Revenue Service. However, to make it easier for you and your family to comply with ethics rules, the tax laws provide that before you sell your asset, the Director of the Office of Government Ethics (OGE) may issue a Certificate of Divestiture (called a CD) which will allow you to defer the capital gains tax. The CD does not eliminate the capital gains tax; it simply defers payment of the tax to some future date.

The Office of Government Ethics is the agency that administers the CD program. The Director of OGE issues CDs to employees through their designated agency ethics officials.

This pamphlet provides an overview of the CD program. It contains answers to some questions often asked by employees who are required to divest property because of a conflict of interest. This pamphlet does not cover every issue that may arise, and it is not a substitute for counseling. For specific advice about your situation, you should consult your designated agency ethics official.

Frequently Asked Questions

Can I get a CD any time I sell property?

No. A CD can be obtained only if:

- you have not yet sold the property;
- the sale is required to eliminate or prevent a conflict of interest;
- there would be a capital gain; and
- the request is submitted through your designated agency ethics official and approved by the Director of OGE.

Requests for CDs are considered on a case-by-case basis and may not always be approved. If your request involves a complicated situation, such as when the property to be sold is held in a trust, you should talk to your designated agency ethics official or OGE as soon as possible.

Who is eligible for a CD?

- Officers and employees of the executive branch of the Federal Government, except a person who is a "special Government employee," as defined in 18 U.S.C § 202;
- The spouse or minor or dependent child of such persons; and
- Under certain circumstances, a trustee holding property in a trust.

How do I apply for a CD?

You must make a written request to your designated agency ethics official that includes a commitment to divest within a specified time period.

Your designated agency ethics official then sends your request to the Director of OGE with:

- 1** a description of the property to be sold;
- 2** a statement from your designated agency ethics official indicating that the divestiture is necessary; and
- 3** if you file a financial disclosure report, a copy of your report. If you do not file a financial disclosure report, your designated agency ethics official must submit a memorandum that contains the information required to be disclosed in such a report.

What are the time requirements for requesting a CD?

- If you are divesting property because of an ethics agreement, your designated agency ethics official must submit your request and the required materials to OGE within three months of the date of the ethics agreement.
- If you are selling property required to be divested by statute, regulation, or executive order, your designated agency ethics official must submit your request and the required materials to OGE within

three months and ten days after the requirement becomes applicable.

What should I do once I receive the CD?

You must sell the property described in the CD within the required time frame and reinvest in so-called “permitted property” within 60 days, including the date of sale. Keep the Certificate and file it with IRS Form 8824 along with your Federal income tax return for the year in which the sale took place.

In what “permitted property” must I reinvest?

- United States obligations, such as Treasury bills, bonds, and notes; or
- open-end diversified mutual funds.

Note that when you sell permitted property or a United States obligation matures, you will incur the capital gains tax that was deferred.

Where can I learn more about CDs?

You can consult with your designated agency ethics official or OGE

with any questions regarding CDs or the CD program. However, since your agency ethics official and OGE cannot provide you with tax advice, you should ask your personal tax advisor, accountant, or attorney if you have questions about the tax implications of a CD. They can find detailed information at:

- Section 1043 of the Internal Revenue Code of 1986; and
- Regulations starting at 5 C.F.R. § 2634.1001.

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