

## TAX IMPLICATIONS OF SALE OF PROHIBITED SECURITIES

Certain NRC employees, as well as their spouses and minor children, are prohibited by regulation from owning any securities issued by entities on the most recent list published annually by the Office of the General Counsel. 5 C.F.R. 5801.102. The policies and procedures on this regulation are contained in Management Directive 7.7 (Security Ownership).

This prohibition includes all senior employees (i.e., Senior Executive Service, Senior Level Service, or above). It also includes employees at grade GG-15 or below with regulatory responsibilities whose positions are listed in Management Directive 7.7. Members of the NRC Advisory Committee on Reactor Safeguards and the Atomic Safety and Licensing Board Panel are also subject to this restriction.

Employees who become subject to this restriction as a result of initial employment or subsequent assignment to a covered position are required to certify that they are in compliance with the NRC security ownership restrictions. If an employee or the spouse or minor child of an employee covered by the restriction owns any prohibited securities, the employee must notify the Office of the General Counsel within 30 days of appointment.

The employee has 90 days from the date of appointment to divest those securities. The employee should inform the Office of the General Counsel when the securities are divested. The NRC Chairman may extend the 90-day deadline in cases of unusual hardship. The NRC Chairman is also authorized to waive the divestiture requirement under very limited circumstances, such as legal constraints that prevent divestiture.

Employees should contact the Office of the General Counsel if they have any questions about the prohibited securities restriction or need assistance at [ethics@nrc.gov](mailto:ethics@nrc.gov) or 301-415-1607.

### Capital Gains Taxes—Certificate of Divestiture

Employees required to divest themselves of prohibited securities as a result of this regulation may be liable to pay capital gains taxes if they sell the securities for more than the basis of those securities. In that situation, they can defer to a later date the payment of those taxes by obtaining a Certificate of Divestiture from the Office of Government Ethics.<sup>1</sup>

There obviously would be no need to obtain a Certificate of Divestiture if the employee sells prohibited securities for a capital gains loss. There also would be no need if the sold securities were in a retirement account (such as a 401(k) plan or Individual Retirement Account) because there would be no capital gains taxes from the sale if the employee rolls over the proceeds into another asset in the retirement account.

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<sup>1</sup> Special Government employees are not eligible for a Certificate of Divestiture. Special Government employees are employees appointed to serve an agency for not more than 130 days during a 365-day period. NRC consultants and advisory committee members are generally appointed as special Government employees.

To obtain a Certificate of Divestiture, an employee should submit to the Office of the General Counsel the following:

- Written request that contains the following information (sample request can be found in Management Directive 7.7)—
  - Employee title and general job description;
  - Description of the security interest, including the precise number of shares to be divested (e.g., 105 shares of General Electric common stock);
  - Explanation of the facts and circumstances requiring divestiture, including how and when the securities were acquired (e.g., “On July 11, 2012, I was appointed a Resident Inspector in Region II, a position subject to the NRC prohibited securities restriction. I own 250 shares of Exelon stock through purchase. None of these shares is in a retirement account.”)
  - Intent to sell these securities not later than 3 months from the date the employee became subject to the restriction or had obtained the securities.
  
- Financial disclosure report: A financial disclosure report must be submitted with the request even if the employee is not required to file such a report. Senior employees must submit a public financial disclosure report (OGE Form 278); other employees must submit a confidential financial disclosure report (OGE Form 450). Both forms can be found on the NRC public or internal websites.

The Office of the General Counsel will submit the employee’s request and the financial disclosure report to the Office of Government Ethics. The Office of the General Counsel will provide the employee with the Certificate of Divestiture when received from the Office of Government Ethics.

An employee should not sell any prohibited securities prior to obtaining the Certificate of Divestiture because the Office of Government Ethics cannot issue this Certificate retroactively.

The employee should inform the Office of the General Counsel in writing when the prohibited securities are sold. After the sale, the employee must invest the proceeds in “permitted property” within 60 days of the date of sale. “Permitted property” includes the following:

- Obligations of the United States Government; or
- “Diversified investment funds,” which are open-ended mutual funds or common trust funds maintained by a financial institution that do not devote their investments to particular or limited industrial, economic, or geographic sectors.

The employee should attach a completed Internal Revenue Service Form 8824 (Like-Kind Exchanges) to the employee’s Federal income tax return for the year in which the prohibited securities were sold. This form informs the Internal Revenue Service that the employee is not required to pay any capital gains tax that year from the sale of the prohibited securities.