DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

201116043

JAN 25 2011

UIL Nos. 408.03-00, 402.08-00, 403.05-00

T:EP:RA:T4

Legend:

Taxpayer A =

Individual B =

IRA X =

Annuity R =

Amount A =

Amount B =

Amount C =

Financial Institution R =

Financial Institution S =

Insurance Company Z =

Company Y =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

20111604 3

Date 9 =

Date 10 =

Dear:

This is in response to your request dated September 24, 2010, as supplemented by correspondence dated October 18, 2010, October 20, 2010 and October 28, 2010, in which you request a waiver of the 60-day rollover requirement contained in sections 408(d)(3) and 402(c)(3) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 61, represents that he received distributions from IRA X and Annuity R totaling Amount C. Taxpayer A asserts that his failure to accomplish a rollover within the 60-day period prescribed by sections 408(d)(3) and 402(c)(3) of the Code was due to the misappropriation of funds by Individual B.

Taxpayer A established IRA X and Annuity R with the assistance of Individual B, a licensed securities broker and Taxpayer A's financial advisor. Individual B was the manager and chief executive officer of Company Y, and worked as an independent contractor with Financial Institution R.

Acting on the advice of Individual B, Taxpayer A closed IRA X intending to roll the distribution over into an IRA with Financial Institution S. On Dates 1 and 2, Taxpayer A received distributions totaling Amount A from IRA X. On Date 3, Taxpayer A's spouse delivered a check for Amount A to Individual B, made payable to Company Y and Financial Institution S, to establish the rollover IRA.

Taxpayer A began receiving account statements from Financial Institution R, listing Taxpayer A as owner, and Financial Institution S as custodian of the rollover IRA monthly, beginning on Date 4 and ending on Date 5.

Acting on the advice of Individual B, Taxpayer A closed Annuity R, intending to roll the distribution over into an Annuity with Insurance Company Z. On Date 6, Taxpayer A received a distribution totaling Amount B from Annuity R. On Date 7, Taxpayer A's spouse delivered a check for Amount B to Individual B, made payable to Company Y and Insurance Company Z, to establish the rollover

Annuity. Taxpayer A received an account statement from Insurance Company Z listing Taxpayer A as owner, and Insurance Company Z as custodian of the rollover Annuity for the period beginning on Date 8 and ending on Date 9.

Taxpayer A asserts that contrary to his instructions to rollover Amounts A and B, Individual B falsely prepared the statements for the rollover IRA and Annuity, and retained the funds for her own personal benefit and use. It is further represented that the fraud perpetrated by Individual B was discovered by Financial Institution R on Date10, and has been prosecuted in federal court. Documentation shows that Individual B pled guilty, and was convicted in U.S. District Court on charges of mail fraud in connection with the theft of these funds, as well as others that were handled by her in a similar manner.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60 day rollover requirement contained in sections 408(d)(3) and 402(c)(3) of the Code, with respect to the distributions of Amount A from IRA X and Amount B from Annuity R.

Section 408(d)(1) of the Code provides that, except as otherwise provided in section 408(d), any amount paid or distributed out of an IRA shall be included in gross income by the payee or distributee, as the case may be, in the manner provided under section 72 of the Code.

Section 408(d)(3) of the Code defines, and provides the rules applicable to IRA rollovers.

Section 408(d)(3)(A) of the Code provides that section 408(d)(1) of the Code does not apply to any amount paid or distributed out of an IRA to the individual for whose benefit the IRA is maintained if

(i) the entire amount received (including money and any other property) is paid into an IRA for the benefit of such individual not later than the 60th day after the day on which the individual receives the payment or distribution; or

(ii) the entire amount received (including money and any other property) is paid into an eligible retirement plan (other than an IRA) for the benefit of such individual not later than the 60th day after the date on which the payment or distribution is received, except that the maximum amount which may be paid into such plan may not exceed the portion of the amount received which is includible in gross income (determined without regard to section 408(d)(3)).

Section 408(d)(3)(B) of the Code provides that section 408(d)(3) does not apply to any amount described in section 408(d)(3)(A)(i) received by an individual from an IRA if at any time during the 1-year period ending on the day of such receipt such individual received any other amount described in section 408(d)(3)(A)(i) from an IRA which was not includible in gross income because of the application of section 408(d)(3).

Section 408(d)(3)(D) of the Code provides a similar 60-day rollover period for partial rollovers.

Section 408(d)(3)(I) of the Code provides that the Secretary may waive the 60-day requirement under sections 408(d)(3)(A) and 408(d)(3)(D) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 408(d)(3)(I) of the Code.

Section 403(b)(8)(B) of the Code provides that the rules of section 402(c)(3) apply to rollovers of amounts distributed from a 403(b) annuity.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) of the Code states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) of the Code where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occurred after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Rev. Proc. 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted is consistent with Taxpayer A's assertion that his failure to accomplish a timely rollover was due to the misappropriation of Amounts A and B by Individual B.

Therefore, pursuant to sections 408(d)(3)(I) and 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to the distributions of Amount A from IRA X and Amount B from Annuity R. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C into a rollover IRA. Provided all other requirements of sections 408(d)(3) and 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount C will be considered a rollover contribution within the meaning of sections 408(d)(3) and 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this ruling letter has been sent to your authorized representative in accordance with power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***, I.D. No. ***, at ***. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for Laura B. Warshawsky, Manager
Employee Plans, Technical Group 4

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: