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*NOT ADMITTED TO THE NEW YORK BAR

September 1, 2009

Mr. R. Joseph Durbala
Internal Revenue Service
Room 6129
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Mr. Durbala:

Re: OMB 1545-0160
Form 3520-A

This letter responds to a notice published in the Federal Register on July 6, 2009 (74 Fed. Reg. 32,033), in which the Internal Revenue Service requested comments concerning Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner. Our comment is that Form 3520-A filings should either be eliminated or have a reduced scope where the income and distributions of a foreign grantor trust are de minimis.

The authority for Form 3520-A is found in section 6048(b) of the Internal Revenue Code of 1986, as amended (the "Code"), which provides that a United States person treated as the owner of a foreign grantor trust is responsible to ensure that the reporting requirements of the section are met, including the filing of a return that sets forth a full and complete accounting of all trust activities and operations for the year and such other information as the Secretary may require. Further, the trust is required to provide such information as the Secretary prescribes to each United States person who is treated as an owner or a beneficiary of the trust. Unlike other information reporting sections in

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Subpart B of part III of Subchapter A of Chapter 61 of the Code, such as sections 6042 (dividends) and 6049 (interest), the statute does not specify what information the Secretary is authorized or expected to collect. The existing regulations under section 6048 offer the Secretary flexibility, providing for the Form 3520-A but not specifying its content. Treas. Reg. §404.6048-1(a)(1).

Like other information provisions, Form 3520-A seeks to ensure that information relating to the income of U.S. taxpayers is reported to the Internal Revenue Service. We note, however, that foreign grantor trusts may be formed for a number of reasons other than holding economic assets that generate income. For example, shareholders of a corporation may establish a voting trust, which, in the case of a foreign corporation, may well be a foreign grantor trust. Such trust may have limited activities and assets, no operations, little or no income and make no distributions.

The current Form 3520-A and instructions thereto require any foreign grantor trust to list the full name and identification number of, and date and fair market value of the distribution to, each of United States owners and beneficiaries of the trust (Lines 17b and 17c of Part II of Form 3520-A) and to prepare a Foreign Grantor Trust Owner Statement (page 3 of Form 3520-A) for each of its United States owners and a Foreign Grantor Trust Beneficiary Statement (page 4 of Form 3520-A) for each of its United States beneficiaries (together, the "Individual Beneficiary Information Requirements"). This information is of relatively little use to the Internal Revenue Service if the income, assets and distributions of the trust are de minimis. This is particularly true for the Foreign Grantor Trust Beneficiary Statements, which can be burdensome to prepare where the number of beneficiaries is large. We believe that if a foreign grantor trust has only a de minimis amount of income, if any, and makes only a de minimis amount of distributions, if any, the Individual Beneficiary Information Requirements currently required to be furnished are not necessary for the proper performance of the functions of the Internal Revenue Service and, indeed, may distort any statistical information it gathers from Forms 3520-A. At the same time, these requirements may be unduly burdensome to a foreign grantor trust if such trust has a large number of owners and/or beneficiaries that have little or no economic interests in the trust. Eliminating the Individual Beneficiary Information Requirements where the amounts they would otherwise show would be de minimis would appropriately balance the interests of the Internal Revenue Service in collecting information and the taxpayer's legitimate interest in avoiding unduly burdensome paperwork that provides little benefit to the Internal Revenue Service.

De minimis rules are common in the information reporting area. Where Congress has specified the specific information to be reported, it has included a specific de minimis rule (e.g., no payment under \$10 needs to be reported under sections 6042 (dividends), 6044 (patronage dividends), 6049 (interest), 6050B (unemployment compensation), 6050E (state and local income tax refunds) and 6050N (royalties); and no amount under \$600 is required to be reported under sections 6041 (trade or business payments), 6041A (service recipient payments), 6050H (certain mortgage interest), 6050P (cancellation of

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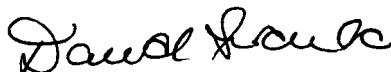
indebtedness), 6050R (purchases of fish) and 6050S(a)(3) (qualified education loans)). In addition, a non-grantor trust is not required to file a Form 1041 for any taxable year if it has no taxable income and its gross income is less than \$600. Treas. Reg. §1.6012-3(a)(1)(ii).

While there is no specific de minimis threshold for Form 3520-A, we believe that Congress's determination in other areas provides helpful guidance for the choice of an appropriate de minimis threshold for this purpose. Our specific recommendation for Form 3520-A is as follows:

- (1) if the aggregate amount of distributions made by a foreign grantor trust to a United States owner or beneficiary is less than \$10 during any taxable year, then the foreign grantor trust would not be required to include such owner in Line 17b or such beneficiary in Line 17C, whichever applicable, or furnish a Foreign Grantor Trust Owner Statement or Foreign Grantor Trust Beneficiary Statement, whichever applicable, with respect to that owner or beneficiary; and
- (2) if, in addition, for any taxable year, the foreign grantor trust has no taxable income and its gross income or distributions are less than \$600, no Form 3520-A would be required to be filed by that trust.

We appreciate your consideration of our comments. If you have any questions or concerns regarding these comments, please call me at (212) 373-3082.

Very truly yours,

A handwritten signature in black ink, appearing to read "David R. Sicular", written in a cursive style.

David R. Sicular