

26 CFR 20.2041-3: Powers of appointment created after October 21, 1942.

**General power of appointment; conjunctive control of trust.** One third of the value of a trust created by three siblings, each of whom named an adult child as one of the three trustees who, through majority vote, had complete discretionary power over the assets of the trust and individually had the right to name a relative as successor, is includible in a decedent-trustee's estate as property subject to a general power of appointment under section 2041 of the Code; Rev. Rul. 76-503 amplified.

### Rev. Rul. 77-158

Advice has been requested as to the application of section 2041 of the Internal Revenue Code of 1954 and the conclusion of Rev. Rul. 76-503, 1976-2 C.B. 275, in the circumstances described below.

In 1973, three siblings named *A*, *B*, and *C* owned equal interests in their family business. They decided to place the business in trust for the benefit of their descendants and with a view toward keeping the family enterprise intact. Each sibling-grantor designated one of the sibling's adult children as one of the three trustees of the trust. Under the terms of the trust, income is to be accumulated and added to principal until the trust terminates. The trust shall terminate exactly twenty years after the death of the last surviving descendant of *A*, *B*, and *C* who is living at the date of creation of the trust.

The trustees are empowered to manage the trust assets in their complete discretion. They are also empowered to distribute trust property to whomsoever they select, including themselves, in such proportions, at such times, and for such purposes as they see fit. Each trustee is privileged to designate one of the trustee's relatives to serve as a successor trustee in the event of the trustee's death or resignation. In the

absence of such a designation, the oldest adult living descendant of the deceased or resigned trustee who is willing to serve as the new trustee shall occupy the vacant trustee position.

The terms of the trust provide that the trustees may exercise any of their powers by majority vote.

The decedent *D* was selected by *A* to be one of the three trustees and *D* continued in that position until *D*'s death in 1975.

The question presented is whether any amount is includible, with respect to the trust described above, in *D*'s gross estate under section 2041 of the Code as the value of property subject to a general power of appointment in view of the fact that the power was held by *D* and two cotrustees.

Section 2041(a)(2) of the Code requires inclusion in the gross estate of the value of all property with respect to which the decedent has, at the time of death, a "general power of appointment" created after October 21, 1942.

Section 2041(b)(1)(C)(ii) of the Code provides that a power is not a general power of appointment if it is only exercisable by the decedent in conjunction with another person who has a substantial interest, in the property subject to the power, that is adverse to exercise of the power in favor of the decedent. A person who, after the death of the decedent, may possess the power of appointment and exercise it in favor of himself or herself is, under this provision of the Code, deemed to hold a substantial interest in the property that is adverse to exercise in favor of the decedent.

Rev. Rul. 76-503 involves facts identical to those in the present case, except in Rev. Rul. 76-503 the trustees hold their powers jointly and thus act unanimously, whereas here the trustees must act by majority vote. In the present case, as in Rev. Rul. 76-503, a trustee is replaced upon death or resignation by a successor trustee. Because, as in Rev. Rul. 76-503, the surviving trustees are in no better posi-

tion to exercise the power after the decedent's death than before the death, the conclusion of that Revenue Ruling, that the interests of the cotrustees are not adverse to exercise of the power in favor of the decedent, is equally applicable in the present case.

Accordingly, in the instant case, the power held by the decedent and the other trustees is a "general power of appointment" and, under section 2041(b)(1)(C)(iii), one third of the value of the trust assets (as of the date of death of *D* or the appropriate alternate valuation date) is includible in the gross estate of *D*.

Rev. Rul. 76-503 is amplified.

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#### Part IV.—Taxable Estate

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### Section 2055.—Transfers for Public, Charitable, and Religious Uses

26 CFR 20.2055-2: Transfers not exclusively for charitable purposes.

**Charitable deduction; interests in property; undivided portion in trust.** A charitable deduction is not allowable to the estate of a decedent who bequeathed the residuary estate in trust, with the spouse and a charity each entitled to half the income and, upon the spouse's death, half of the trust corpus is to be distributed to the charity and half of the trust corpus is to be distributed to the spouse's heirs.

### Rev. Rul. 77-97

Advice has been requested whether a charitable deduction is allowable under section 2055 of the Internal Revenue Code of 1954 for an undivided interest in a decedent's residuary estate bequeathed to charity, under the circumstances described below.

The decedent died testate on January 1, 1976. The decedent's will directs that the decedent's residuary estate be placed in trust. The terms of the trust provide that 50 percent of the trust income is to be distributed