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Harry Sachrison

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James Hill

ESTATE PROBLEMS IN ILLINOIS—POWERS OF APPOINTMENT AND RIGHTS OF WITHDRAWAL— THE CURTIS CASE

The dynamics of estate planning require the practitioner to heed new and old problems which arise, particularly in the area of powers of appointment and rights of withdrawal. A cloud of doubt has recently been removed by an Illinois Supreme Court decision in light of which draftsmen can move with confidence in preparing a will exercising a power of appointment or a right of withdrawal over trust property. The comments herein will review, or perhaps preview, the distinctions, uses, and taxation consequences of the power of appointment and the right of withdrawal.

A power of appointment involves no great mystery or magical formula. It is, primarily, a power given by one property owner to ascertain the recipients of the benefits of the property. The general principles have been explained in Illinois case law as follows:

A power of appointment is not an absolute right of property, nor is it an estate. The donor does not vest in the donee of the power title to the property but simply vests in the donee power to appoint the one to take title. The appointee under the power takes title from the donor and not from the donee of the power.¹

The donor may confer a power that is broad or limited in application. The donee may be permitted to appoint property at death, or during his lifetime. He may be permitted to appoint to any and all persons as he desires, or he may be limited to a specific individual, class, or group. Despite the scope of the power, the donor's express desire as to how the property is to be distributed is a covenant to which the donee must adhere, unless the donee has the unrestricted power to appoint as he sees fit.

¹ *People v. Kaiser*, 306 Ill. 313, 137 N.E. 826 (1922).

For federal estate tax purposes, powers of appointment are distinctly divided into general and limited powers. The general power of appointment is taxable in the estate of the person who holds the power if such person has the right to exercise the power in favor of any of the following:² (a) himself, (b) his creditors, (c) his estate, or (d) the creditors of his estate. The limited power of appointment, sometimes known as the free-tax or special power, is exempt from taxation if the holder does not have the right to appoint to any of the four groups above. The statute also makes the following distinction:

A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power.³

In Illinois, the Inheritance Tax⁴ does not prescribe any beneficial exemption for either of these types of powers, and thus it is presumed that the legislature intended all powers of appointment to be subject to the inheritance tax.

The State of Illinois, an inheritance tax state, has established the right to tax the right of succession of the value of property transferred by property owners through will or by descent and devices.⁵ Subsection 4 of section 1 of the Act provides:

Whenever any person, institution or corporation shall exercise a power of appointment derived from any disposition of property made either before or after the passage of this Act, such appointment, when made, shall be deemed a taxable transfer under the provisions of this Act, in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.⁶

The statute expressly provides for the taxation of the right of succession upon the property that the donee appoints, either to himself, or to any specific person, class of persons or group. It does not purport to exclude taxation of the right to appoint in the estate of the donor. The legislative intent behind the statute must be construed to mean that the exercise of such a power by the donee is a taxable event in the donee's estate. It is rightly presumed that the donee possesses sufficient control over the property that he can determine who will be the owner. Hence, if the power is general, the donee is substantially the owner of the property,

² See INT. REV. CODE OF 1954 § 2041(b)(1).

³ INT. REV. CODE OF 1954, § 2041(b)(1)(A).

⁴ Illinois Inheritance Tax Act, ILL. REV. STAT. ch. 120, §§ 375-403(c) (1963).

⁵ Illinois Inheritance Tax Act, § 1(4), ILL. REV. STAT. ch. 120, § 375 (1963).

⁶ *Ibid.*

because he has the power to dispose of the property as he sees fit. Therefore, the property is taxable to the donee's estate as though the property "belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will."⁷

The Illinois Inheritance Act⁸ has undergone a multitude of amendments and revisions,⁹ for which case law has provided important interpretation. In 1933, legislative attention was given to the power of appointment, resulting in amendment and repeal of portions of section 1, relevant to the taxation of such powers in the estates of donees and donors. Subsequent to such legislative enactments, the Illinois Supreme Court, in *People v. Linn*,¹⁰ held that remainder interests were not presently taxable in the estate of a donor when the donor devised a power of appointment to his sons over the remainder interests of two life estates in trust, since there was no express provision in the statute that sanctioned such a tax. With the holding of the *Linn* case in mind, there is, presently, no existing express provision that disallows the taxation of the power of appointment in the donor's estate. When the portion of subsection 4 of section 1, relating to the non-exercise of a power of appointment, was repealed in 1933,¹¹ it was not evident that the power of appointment was subject to tax in the donor's estate as it was in the donee's estate.¹²

In the *Metropolitan Trust* case,¹³ the donee held a testamentary power of appointment and could only appoint the property by his last will and testament. The rule was here established, and is presently in effect, that a tax is presently assessable in the estate of the donor of such power at the highest rate that could possibly become due but only on the assumption that the power would not be exercised. The tax may not be computed by assuming that the donee would exercise the power in favor of a stranger, because subsection 4 of section 1, providing for assessment of the tax in the donee's estate is still in force.

The *Metropolitan* rule takes into consideration the problem of contingent remainder interests and the uncertainty of vesting of possession if the contingencies provided for do not occur. Ascertaining the value to be taxed can be an excursion into futility; thus to alleviate the difficulties of administration and collection of the tax, the Illinois statute provides that the tax shall be payable out of the property transferred at the highest

⁷ *Ibid.*

⁸ Illinois Inheritance Tax Act, ILL. REV. STAT. ch. 120, §§ 375-403(c) (1963).

⁹ The basic statute (Ill. Laws of 1909, p. 311) has been amended thirty-five times.

¹⁰ *People v. Linn*, 357 Ill. 220, 191 N.E. 450 (1934).

¹¹ Ill. Laws of 1933, p. 889 (effective July 1, 1933).

¹² *People v. Cavane*, 368 Ill. 391, 14 N.E.2d 232 (1938).

¹³ *People v. Metropolitan Trust Co.*, 369 Ill. 84, 15 N.E.2d 729 (1938).

rate which would be possible on the happening of any of the proffered contingencies. Thus, the state has secured itself against all contingencies, remote as well as probable, and the rule is strictly applied no matter how remote the contingency may be.¹⁴

The prevailing concept, then, is that the value of the power of appointment is subject to tax in the donor's estate on the assumption that the power will not be exercised, and is also subject to tax in the donee's estate as though the property belonged absolutely to the donee of the power and passed by the donee's will.

Since the tax is assessed in the donor's estate at the highest possible rate, due to the assumption that the donee would not exercise the power, and due to administrative purposes to presently collect the tax,¹⁵ section 25 of the Inheritance Tax Act¹⁶ provides for the reassessment of redetermination of the tax, in the event a contingency has happened whereby a lesser tax is due, and for refund of the amount so overpaid. The legislature realized that there is a possibility, but not a certainty, at the date of death that the remainder may or may not vest, depending upon the particular contingency involved and has provided for refund of the tax paid due to contingent and defeasible interests when they occur.¹⁷ Pertinent express provisions of the statute are as follows:

When property is transferred or limited in trust or otherwise, and the rights, interests or estates of the transferees or beneficiaries are dependent upon contingencies or conditions whereby they may be wholly or in part created, defeated, extended or abridged, a tax shall be imposed upon said transfer at the highest rate which, on the happening of any of the said contingencies or conditions, would be possible under the provisions of this Act, and such tax so imposed shall be due and payable forthwith by the executors or trustees out of the property transferred. Provided, however, that on the happening of any contingency whereby the said property, or any part thereof is transferred to . . . a person, corporation or institution taxable at a rate less than the rate imposed and paid, such person, corporation, or institution shall be entitled to a reassessment or redetermination of the tax and to return by the State Treasurer of so much of the tax imposed and paid as is the difference between the amount paid and the amount which said person, corporation or institution should pay under the inheritance tax laws. . . . Where an estate for life or for years can be divested by the act of omission of the legatee or devisee it shall be taxed as if there were no possibility of such divesting.¹⁸

Section 25 does not, in any way, define what a taxable transfer consists of. It deals wholly with the assessing of a tax when the ultimate receiver,

¹⁴ *But see* *People v. Freese*, 267 Ill. 164, 107 N.E. 857 (1915).

¹⁵ *People v. Moses*, 363 Ill. 423, 2 N.E.2d 724 (1936).

¹⁶ Illinois Inheritance Tax Act, § 25, ILL. REV. STAT. ch. 120, § 398 (1963).

¹⁷ *In re Morton*, 396 Ill. 594, 72 N.E.2d 450 (1947).

¹⁸ Illinois Inheritance Tax Act, § 25, ILL. REV. STAT. ch. 120 § 398 (1963).

and his relationship to the decedent, is unknown. The legislature's foresight into areas of this nature is manifested when we consider the following situation: a grantor dies, bequeathing his assets, in trust, with a life estate to a beneficiary, remainder to descendants, yet giving the life tenant-beneficiary a right of withdrawal of the principal in whole or in part, at his discretion, while living. Who can say with certainty who is the recipient of the remainder interest? Where this is the case, the recipient being unidentifiable, or unknown, the tax is levied at the highest possible rate, and the remainderman's interest is treated as contingent for tax purposes.¹⁹ Moreover, it is to be noted in the example that the life tenant did not possess an express power of appointment. It was an express right of withdrawal vested in the tenant that would enable him to gain possession of the corpus should he desire it. He had no power to devise the property to another by discretion of his authority, unless he withdrew the property from the trust and conveyed it to that party by gift. It is apparent that a distinction can be made between the power of appointment and a right of withdrawal in the operation of a trust.

A right of withdrawal has a similarity to a power of appointment in that the party possessing the right of withdrawal can appropriate the property to himself on the exercise of the right, while living, and the holder of a power of appointment can appoint the property to himself. The right of withdrawal, then, can be called a particular type of power of appointment. The comparison between the two ceases at that point. The power of appointment is capable of being exercised by the holder through his will, while the right of withdrawal is not, the usual condition being that the holder be alive. The power of appointment can be exercised by the holder in favor of others by the holder's command or by the holder's estate, while the right of withdrawal cannot, since the holder is the only party that can realize the benefit of the privilege and thus obtain the property. Once the holder dies, the right to withdraw the trust corpus has been waived by non-use.

When these fundamental differences are noted, it is readily apparent that the power of appointment offers the greatest flexibility for the beneficiary of a trust to decide who is to enjoy the benefits of the trust income, or who will be the ultimate recipients of the trust corpus. The obvious disadvantage of the right of withdrawal of trust corpus is that it can defeat one of the principal motives for the creation of a trust, that is, the preservation of the trust principal for the beneficiary's protection and benefit. Solutions to this problem must be considered.

¹⁹ Section 25 was amended in 1959 to provide for assessment of the tax on the basis of the most probable contingency, rather than the contingency that would provide the most tax.

The right to withdraw principal may be either limited or broad. It may be unrestricted as to the entire withdrawal of the trust principal or restricted to certain specified amounts or percentages of principal at specified time intervals as designated by the grantor. When a trust is created for the benefit of a wife upon the death of her husband, it is the intent of the grantor to provide a safe and secure income for her until her death. Should the estate be small, it is obvious that strong possibilities exist that the income from the trust will be inadequate for the wife, in the event of crisis. Therefore, it is paramount that measures be taken in the drafting of the trust instrument to provide for the availability of principal for the wife's needs in the event unforeseen contingencies should arise jeopardizing her safety and comfort. Thus the right of withdrawal may be included in the trust agreement, in favor of the wife, but limited by an ascertainable standard that relates to the wife's health, support, or maintenance.²⁰

However, this standard must not be drafted to include the "happiness" or "welfare" of the beneficiary, as these terms are too vague to convey the reasonable support or maintenance of the beneficiary in his accustomed mode of living.

A specific amount or percentage can be designated in the right to withdraw; thus as an example, the beneficiary may be allowed to withdraw \$1,000.00 or 5%, whichever is greater of the trust principal at specified intervals. This will assure her additional funds for her comfort and support should the need arise, and the trust principal will likely be substantially preserved to produce income.

In drafting and planning a trust agreement, consideration should be given to the advantage of giving the trustee independent discretionary power to pay amounts of principal to the beneficiary as his needs arise or when his income is insufficient for his support and maintenance. When this power is given to the impartial trustee, it is assumed that the trust principal will be managed wisely and the beneficiary protected. A combining of this discretionary power in the trustee with the beneficiary's right to withdraw a specific amount or percentage of principal can produce a satisfactory arrangement for the economic well-being of the beneficiary, and protect the trust principal for the purpose intended.

The problem of taxability arises when we consider the appropriation of funds from a trust due to the exercise of a power of appointment or a right of withdrawal. Can it be said that there is a difference between a power of appointment and a right of withdrawal in contemplation of law? The office of the Attorney General of Illinois has argued there is.

²⁰ See INT. REV. CODE OF 1954, § 2041(b)(1)(A). This provision is similar to that espoused by the Internal Revenue Code as a nontaxable transfer not to be considered as a power of appointment.

With the previous discussion of the power of appointment and the right of withdrawal, attention is now focused on the *Curtis* case.²¹

This was an action, on appeal to the Illinois Supreme Court,²² by E. V. Hale, Florence H. Curtis, and the Northern Trust Company, as trustees of John Gurnsey Curtis, Sr., deceased, to review an order of the County Court of Lake County reassessing the Illinois inheritance tax payable by reason of the decedent's death.

At the time of his death on September 18, 1956, John Gurnsey Curtis, Sr., left a last will and testament under which assets valued in excess of \$1,360,000.00 passed to trustees under a marital trust for the benefit of his widow, Florence H. Curtis, who, in addition to receiving the net income therefrom, was granted "the right at anytime and from time to time to withdraw any part or all of the principal of the marital trust. The trustees shall make payment without question upon the written request of my said wife delivered to the trustee." The marital trust further provided that should the widow die prior to complete withdrawal of the marital trust assets, the principal remaining should be added to a residuary trust for the benefit of the trustor's descendants. The same trustees were also named as trustees of the residuary trust and were directed to pay all death taxes from the principal of the residuary trust without right of reimbursement from the beneficiaries.

In the inheritance tax appraisalment in the lower court, the life estate granted Florence H. Curtis, under the marital trust was valued at \$722,481.36, and the remainder interest under such trust was valued at \$637,611.57. Since the remainder interests were contingent in nature, the inheritance tax thereon was assessed at the highest rate, in accordance with section 25 of the Inheritance Tax Act, upon the assumption that the widow would not exercise her right to withdraw the remainder, that it would become a part of the residuary trust upon the widow's death, that all the beneficiaries of the residuary trust except a descendant of the trustor's sister would predecease the widow, and that the entire marital trust remainder would be distributed to such descendant. The tax was fixed at \$321,666.61 and paid. Florence H. Curtis terminated the marital trust by withdrawing the entire principal as her absolute property by an instrument dated November 7, 1958. The trustees of the residuary trust petitioned the County Court of Lake County for a reassessment of the tax paid upon the death of John G. Curtis, Sr., claiming that the widow had in fact exercised a power of appointment and that, as a

²¹ *In re Curtis*, 28 Ill.2d 172, 190 N.E.2d 723 (1963).

²² The appellate court was bypassed in this matter relating to revenue. The jurisdiction of the supreme court was properly invoked. See *People v. Schallerer*, 12 Ill. 2d 240, 146 N.E.2d 193 (1957).

result thereof, the value of the remainder interest of the marital trust was not taxable as a part of the John G. Curtis, Sr., estate. Therefore, the tax payable by reason of the trustor's death was only \$219,648.76, and the trustees were entitled to a refund of \$102,027.85.²³

The State of Illinois acknowledged that the contingencies upon which the original tax was based could never occur and that a reassessment was proper under section 25 of the Inheritance Tax Act, but denied that the remainder interest of the marital trust should be excluded in computing the reassessment. The state contended the value of such remainder should be taxed in the trustor's estate as a transfer to his widow, thereby resulting in a reassessment of \$308,914.38, rather than the original assessment of \$321,666.61. After hearing, the County Court of Lake County found for the State of Illinois and reassessed the inheritance tax to the amount of \$308,914.38. The present appeal followed.

The trustees contended that by withdrawing the corpus, the widow exercised a power of appointment, which, under subsection 4 of section 1 of the Inheritance Tax Act became a taxable transfer only upon her death and not upon the death of the trustor. The trustees also contended that even if the withdrawal was not technically the exercise of a power of appointment, the acquisition of the remainder of the marital trust by the widow was not a taxable transfer in the trustor's estate since it was not a property interest passing to the widow under the trustor's will, but one resulting solely from the exercise by the widow of her right to withdraw. The State of Illinois insisted that the right to withdraw is not a power of appointment within the meaning of subsection 4 of section 1 of the Inheritance Tax Act and that section 25 of the Act is applicable.

The court reviewed section 1 and section 25 of the Inheritance Tax Act, and concluded that the sections were not in conflict. Section 1 defines the transfers which are taxable and the rates to be applied; subsection 4 refers to taxation of powers of appointment, the Court indicating the Illinois Legislature "evidently felt that by determining the ultimate recipient of the property, the donee of the power of appointment thereby exercised such control over the property as to justify its being taxed as a part of her estate."²⁴ Subsection 4 makes no reference to the donor's estate, nor does it include or exclude "property subject to powers of appointment as a part of the donor's estate."²⁵

Section 25 provides the method of assessment and collection of the tax where the ultimate receiver is unknown, and "does not purport to

²³ This calculation is in error. The refund, if allowed, would be \$102,017.85.

²⁴ 28 Ill. 2d at 177-78, 190 N.E.2d at 726.

²⁵ *Id.* at 178, 190 N.E.2d at 726.

define what is or is not a taxable transfer, . . . the property thereby withdrawn is not excluded from taxation in the donee's estate by subsection 4 of section 1 of the Inheritance Tax Act."²⁶ Thus, the court eliminated all uncertainty as to the withdrawn property, subject to the withdrawal privilege possessed by Mrs. Curtis, as being included in her husband's estate and subject to tax.

The court then turned its attention to the trustees' contention that, irrespective of whether the withdrawal privilege was in fact a power of appointment, the acquisition of the remainder of the marital trust by Mrs. Curtis was not a taxable transfer in Mr. Curtis' estate. The court pointed out that section 1 imposes a tax upon the transfer of property, as well as income from the property or any interest therein, that is in trust or otherwise, to persons, institutions, or corporations, by will or intestacy laws.²⁷

The court approached the issue by observing that:

By granting to his widow the privilege of withdrawal, the trustor virtually tendered to her the principal of the marital trust which she could, . . . accept or reject at her pleasure. Until such time as she did accept the property by directing its withdrawal, the ultimate recipient thereof was unknown and the property was subject to the provisions of section 25 of the Inheritance Tax Act. However, by withdrawing this property, the widow eliminated this uncertainty and completed the transfer which had been offered by the trustor. . . . As a practical matter, the privilege of withdrawal was a valuable right flowing from the trustor to his widow, and although the right itself was not immediately taxable to the widow, when she chooses to exercise that right and accept the property, the transfer was completed and the property became taxable to her as a transfer from the trustor.²⁸

The court then considered the intent of the Inheritance Act, giving consideration to the purpose of timely collection of revenue, and held: that under the circumstances of this case, the value of the remainder interest of the marital trust was properly taxed as a transfer from John Gurnsey Curtis, Sr., to his widow. . . . [T]he order of the County Court of Lake County is affirmed.²⁹

All decisions that conflicted with the holding in the instant case were overruled.³⁰

²⁶ *Ibid.*

²⁷ *Accord*, *People v. Forsyth*, 273 Ill. 141, 112 N.E. 378 (1916). The court stated that the inheritance tax is imposed by law upon all transfers of property by will or by the intestate laws of this state.

²⁸ Ill. 2d at 178-79, 190 N.E.2d at 726-27.

²⁹ *Id.* at 179-80, 190 N.E. at 727.

³⁰ The court felt that *People v. Linn*, *supra* note 11, and *People v. Cavanaugh*, *supra* note 13, conflict with the holding in the instant case, because they were decided prior to the 1933 amendment of subsection 4 of the Inheritance Tax Act and they involved nonexercise of powers rather than their exercise.

It is evident that the court construed the act of withdrawal as ending the contingency on which the original tax under section 25 was assessed, and the tax is now presently due because of a transfer from the husband's estate directly to her. There is no basis to wait until Mrs. Curtis' death to tax the property in her estate, as subsection 4 of section 1 provides, since the property was made available to her through a testamentary disposition which she could accept or reject at her whim. Subsection 4 of section 1 does not refer to the state of the donor and makes no distinction as to the inclusion or exclusion of property subject to the power of appointment or the right of withdrawal as a part of the donor's estate. Thus, a tax is assessed in the donor's estate, and, upon the exercise of the right of withdrawal of trust principal, another tax is presently assessable to the donee, with no benefit of excluding the trust principal in the redetermination of the amount of the tax in the donor's estate under section 25.

A multitude of questions can be raised over the future application of the Illinois Inheritance Tax laws to trust dispositions subject to powers of appointment and rights of withdrawal. Observing the holding in the *Curtis* case, when similar situations occur where the life tenant has the lifetime right to withdraw the entire principal of a trust, it is to be presumed the State of Illinois will assess the tax on the life estate to the life tenant, and will also assess the life tenant for the tax on the remainder interest, under section 25, but will allow a reassessment of the tax, on the remainder interest, should the right of withdrawal not be exercised. Thus, where actuarial and annuity tables³¹ determine a life estate value of \$100,000 and a remainder value of \$60,000 the life tenant is assessed the tax on \$100,000, with no right to reassessment, and also taxed on the \$60,000 with a right to reassessment should he not exercise the right of withdrawal.³²

The identical tax consequences can be projected where a power of appointment is involved. Thus, where the life tenant can appoint the property to whomever he desires during his lifetime, the tax on the life estate will be paid by the life tenant, with no right to reassessment, and the tax on the remainder will also be paid by the life tenant, with the right to reassessment if the power is not exercised.

Where the power of appointment is exercisable only in favor of a specific person, class, or institution, and not the life tenant-donee, then extending the holding of the *Curtis* case, the tax on the remainder interest

³¹ The United States Mortality Table is used in computing the life estate.

³² If the life tenant has the lifetime right of withdrawal, his life estate would be the proper entity to apply for the reassessment and refund under Section 25, for the amount the tenant paid while alive. If a trust pays the tax the trustee would be the proper party to apply for the refund.

would be assessed in the decedent-donor's estate. The rationale would be that the tax would be assessed on the theory of non-exercise of the power by the life tenant-donee. Should the life tenant-donee then fail to exercise the power, those who would receive the remainder, as designated by the trust instrument, would be liable for the tax, and the executor could apply for reassessment under section 25 for the tax so paid by the donor's estate. The reassessment, obviously, could not be made until the death of the life tenant-donee.

In the event of exercise by the life tenant-donee of the power, a right to reassessment would be available, under section 25, to the executor of the donor's estate. The tax on the remainder would have to be paid by the life tenant-donee under subsection 4 of section 1, since the statute provides:

such appointment, when made, shall be deemed a taxable transfer . . . in the same manner as though the property to which such appointment relates belonged absolutely to the donee of such power and had been bequeathed or devised by such donee by will.³³

The projection and extension of the *Curtis* rules, as set forth above, seem to be in harmony with the new rules announced by the Attorney General of Illinois.³⁴ Future litigation will provide more interpretation of these rules by Illinois' courts. The question may be logically raised, has the Illinois Supreme Court, in the *Curtis* case, created a new kind of tax, ". . . not a transfer tax, because the donee never possessed the property, but a tax on the privilege of exercising a power"?³⁵

The *Metropolitan* rule still has effect over testamentary powers of appointment, and most probably will cover situations where the donee appoints property by will to his estate, although free to appoint to whom he chooses. With subsection 4 of section 1 evidently not applicable to the exercise of lifetime power of appointment or a right of withdrawal in favor of the donee, as per *Curtis*, Illinois has a wedge which it will drive further into the disposition of decedent's assets. Much criticism has been aimed at the decision in the *Curtis* case,³⁶ and attorneys now look to an uncertain future with speculation as to the application of the Attorney General's new rules pertaining to these inheritance tax matters. The estate planners and trust document-draftsmen must be mindful

³³ Illinois Inheritance Tax, § 1(4), ILL. REV. STAT. ch. 120, § 375 (1963).

³⁴ See *New Inheritance Tax Rules for Powers of Withdrawal and Powers of Appointment*, 52 ILL. B.J. 967 (1964).

³⁵ See Zartman, *The Inheritance Tax and Power of Appointment*, 52 ILL. B.J. 960, 963 (1964).

³⁶ For a fine discussion of this area, see Young, *Curtis Decision Makes a Significant Change in the Illinois Inheritance Tax*, 52 ILL. B.J. 226 (1963).