Congressional Inaction: The Federal Estate Tax Update

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There is no federal estate tax for decedents dying in 2010 unless Congress enacts legislation to reinstate the tax. Estate planners expected Congress to change the tax law before the end of 2010, due in part to President Obama's Fiscal Year 2010 Budget, in which he anticipated maintaining the estate tax in effect during 2009 for decedents dying after December 31, 2009. Although various bills have been introduced, with proposed estate tax exclusions ranging from $3.5 million to $5 million, Congress has not yet reached an agreement. President Obama's Fiscal Year 2011 Budget Proposal again recommends permanently reinstating the estate tax at the 2009 levels (an exclusion amount of $3.5 million and a marginal tax rate up to 45%), which would apply retroactively to the beginning of 2010. However, as time passes and the mid-term elections approach, the enactment of new legislation addressing the controversial federal estate tax seems less likely, though still possible.

Under current law, the presently repealed estate tax is scheduled to return in 2011 with an exclusion of $1 million (adjusted for inflation) and a marginal tax rate up to 55%. After a decade of increasing exclusion amounts, the return of the $1 million exclusion could result in significant federal estate tax for decedents dying in 2011 or later. In the short-term, this is a particular concern for married individuals if one spouse dies this year leaving all of his or her assets to the surviving spouse without taking advantage of the repealed estate tax. In the long-term, additional planning may be necessary for individuals with taxable estate values approaching or exceeding the reduced exclusion amount.