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## **Planning Your Estate if Congress Takes No Action in 2010**

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Estate tax laws changed significantly in 2001, increasing the per person estate tax exemption to \$1 million and including a preset schedule of increases in the exemption from \$1 million to \$3.5 million in 2009. Further, the estate tax rate on the value of a person's estate in excess of the exemption fell to 45 percent by 2009. The magic year was 2010. No estate taxes in 2010.

It was expected that Congress would take some action to reinstate the tax and, at a minimum, continue the exemption in an amount of at least \$3.5 million. Instead, Congress took no action prior to 2010 and has yet to address the subject in any meaningful way. Speculation is that Congress may yet take action and make that action retroactive to January 1, 2010. However, the farther we move into this calendar year, the less likely that change will occur.

This lack of action by Congress means that in 2011, the estate tax will return and the per person estate tax exemption will return to \$1 million. The excess value over the exemption will be taxed at a rate of 55 percent.

What does this mean to married persons who have no estate plan or have only a probate avoidance trust and their combined assets exceed \$1 million? On the death of the first spouse, no estate tax is payable so long as all of the assets (or at least assets in excess of \$1 million) are left to or for the benefit of the surviving spouse. On the survivor's death, there will be a 55 percent tax on the value of the assets in excess of \$1 million.

All assets in which a person owns an interest - whether or not part of a living trust - are subject to the estate tax. These assets include retirement and/or IRA accounts, life insurance, real estate, bank and brokerage accounts, etc.

One of KDG's estate planning attorneys can help you decide whether an existing trust should be modified to include tax planning provisions, or whether gifting of assets is appropriate, or can create a plan that addresses these issues.