



What to expect in Washington

November 2021



Building a better
working world

Washington division of power



President Biden
Vice President Harris

50
Democrats

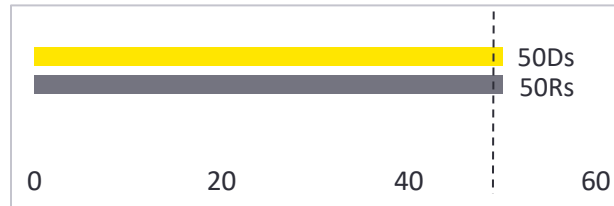
50
Republicans

221
Democrats

213
Republicans

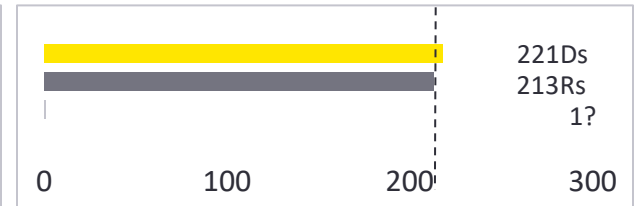
Midterms — presidents typically lose seats in first midterm

- Trump lost 40 House seats and gained 2 Senate seats in 2018
- Obama lost 63 House and 6 Senate seats in 2010
- Bush gained 8 House and 2 Senate seats in 2002
- Clinton lost 54 House and 8 Senate seats in 1994



Up for re-election in 2022:

- 20 Republicans
- 14 Democrats



Vacancy: Late Rep. Hastings' (D-FL) seat considered safely Democratic in January 11 election

Likely ratio 222-213, narrowest since at least 2003

State of Play – Pending and Upcoming Legislative activity

- ▶ **Bipartisan Infrastructure Bill** –\$1 trillion over 5 years for roads, bridges, transit and broadband
 - ▶ Signed into law Nov 15
- ▶ **“Build Back Better” plan** – spending and tax reconciliation bill
 - ▶ Original \$3.5 trillion House bill lacked votes
 - ▶ Revised \$1.8 trillion plan in House
 - ▶ Republican opposition
 - ▶ Ongoing negotiations with President and Senate moderates (Manchin and Sinema) on smaller bill
- ▶ **Funding the federal government** – Dec 3 deadline
- ▶ **Debt limit** – extended to December 3 + extraordinary measures
- ▶ **End-of-year Omnibus Spending bill with expiring programs and tax provisions**
 - ▶ Expiration of higher charitable deduction limits (individuals and corporations)

Main categories of Build Back Better spending provisions

Energy/climate

- \$320b in green energy tax incentives
- \$29b Greenhouse Gas Reduction Fund

Education

- Universal pre-K, childcare costs

Caregiving

- Home-based services for seniors and disabled

Low-income tax credits

- Expanded Child Tax Credit for 2022
- Expanded Earned Income Tax Credit for 2022

Paid leave

- 4 weeks of universal paid family and medical leave

Health care

- Medicare coverage expansion for hearing only (no dental, vision)
- ACA subsidy expansion and subsidies for Medicaid “gap” population
- Reinsurance programs

SALT Cap

- Increase in state & local deduction cap to \$80,000 through 2030

Housing

- Rental assistance
- First-time homebuyer assistance
- Low-income tax credit increase

Corporate

- R&D amortization requirement delayed from after 2021 to after 2025



Select tax increase sources in latest reconciliation bill

High-income surcharge

- ▶ Top tax rate remains 37% (increases to 39.6% in 2026 under current law)
- ▶ 5% surtax on income in excess of \$10 million, and an additional tax of 3% on income in excess of \$25 million
- ▶ Based on AGI so no deduction for charitable gifts to reduce income subject to tax
- ▶ Trusts subject to surtax at lower levels -- \$200,000 and \$500,000
- ▶ **Revenue: \$228 billion**

Retirement Accounts

- ▶ Deny contributions to Roth or traditional IRA if all retirement accounts exceed \$10 million.
- ▶ If combined retirement account balances exceed \$10 million, a minimum distribution would be required for the following year.
- ▶ Limits apply at \$400,000 (single), \$425,000 (Head Household) and \$450,000 (Married).
- ▶ Current allowable qualified charitable rollover (up to \$100,000) still available.

Expansion of Net Investment Income Tax (NIIT)

- ▶ 3.8% NIIT expanded to cover net investment income derived in the ordinary course of a trade or business for taxpayers with greater than \$400,000 in taxable income
- ▶ **Revenue: \$252 billion**

Source: Joint Committee on Taxation, X-45-21

Tax proposals considered but NOT included in House Bill

▶ **Taxation of Build in Gains and Step up in Basis at Death**

▶ President Biden Proposal

- ▶ Tax unrealized capital gains upon transfer – death, gift or to trust
- ▶ Transfer to spouse or charity retain carryover basis
- ▶ \$1 million in gain exempt

▶ Senator Wyden proposal -- “Billionaire’s Income Tax”

- ▶ Tax unrealized capital gains at end of year (ie., mark to market for tradable assets)
- ▶ Transfers of nontradable assets subject to tax and annual interest charge with payment deferred until asset sold
- ▶ Apply to taxpayers with \$100 million in income or \$1 billion in assets

▶ **Grantor Trusts**

- ▶ Directly impacted by build in gains and billionaire income tax proposals

▶ **Increases in top marginal rate (39.6%) and capital gains tax (25%) dropped from House bill**

▶ **Reduction in Estate Tax Exemption amounts not included**

Accelerate Charitable Efforts Act (ACE Act)

- ▶ Introduced in Senate (S. 1981) – Sens. King (I-ME) and Grassley (R-IA)
 - ▶ Why? To accelerate pace of giving from Donor Advised Funds (DAF)
- ▶ Key Provisions:
 - ▶ Qualified DAF -- Agreement to distribute funds within 15 years
 - ▶ Nonqualified DAF
 - ▶ No agreement to distribute
 - ▶ No charitable deduction until property sold or donated property is distributed to charity
 - ▶ Special rules for Qualified Community Foundation DAF
 - ▶ Undistributed contributions to DAF subject to 50% excise tax:
 - ▶ In year 15, for qualified DAF
 - ▶ In year 50 for nonqualified DAF
- ▶ Other changes to foundation rules
- ▶ Similar bill being considered for introduction in House

Outlook

- ▶ **General Theme – Additional spending and higher taxes on business and high income taxpayers likely**
- ▶ **“Build Back Better” plan**
 - ▶ House bill to change amid ongoing negotiations with President and Senate moderates
 - ▶ Expected to produce smaller bill with goal for passage by end of year
- ▶ **Funding the federal government and Debt limit**
 - ▶ Likely extension into early 2022

What have we done with tax law changes that have been implemented?

▶ **Cash contributions to charity with higher AGI limitations**

▶ **CARES Act**

- ▶ **For 2020 and 2021, taxpayers may apply up to 100% of their AGI, for calendar-year 2021 qualified contributions. Qualified contributions are cash contributions to qualifying charitable organizations.**
- ▶ **The 100% limit is not automatic; the taxpayer must choose to take the new limit for any qualified cash contribution. Otherwise, the usual limit applies.**
- ▶ **C corporations may apply an increased corporate limit of 25% of taxable income for charitable cash contributions made to eligible charities during calendar year 2020 and 2021.**

▶ **Donations of closely held business interests to the Church and UBIT**

▶ **Alternative options to reduce/eliminate UBIT in light of CARES Act**

- ▶ **E.g., Fidelity, National Philanthropic Trust, Community Foundation of Utah, etc.**
- ▶ **Trusts benefit from 100% AGI deduction limit, same as individuals**
- ▶ **Donations to DAF sponsor structured as trust may allow 100% elimination of UBIT**

What have we seen as a result of tax law changes that have been threatened/proposed?

- ▶ **Increased M&A Transactions.**

- ▶ **Clients/Donors have pushed to put deals into 2020 and 2021 tax years when capital gains appear to be lower**
- ▶ **We have seen more transactions in the past 18 months than probably the prior 2-3 years**

- ▶ **Estate planning clients are using estate/gift tax exemption**

- ▶ **Direct gifts to heirs**
- ▶ **Use of irrevocable trusts**
 - ▶ **IDGTs**
 - ▶ **GRATs**
 - ▶ **SLATs**
- ▶ **Accelerating contributions to ILITs (to avoid potential loss of grantor trusts)**
- ▶ **Use of LLCs/LPs**
 - ▶ **Minority interest and Lack of Marketability Discounts**