



## Tax Policy & Politics: A View from Inside the Beltway

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IMPACT THAT  
MATTERS**  
*since 1845*

# The Inflation Reduction Act of 2022

# Inflation Reduction Act: Key tax provisions



## 15% corporate minimum tax on book income (alternative minimum tax)

- Imposed on **adjusted financial statement income (AFSI)** over the corporate AMT foreign tax credit for the taxable year
- Generally applicable to corporations (other than S corps, regulated investment companies, or REITs) with **3-year average annual AFSI >\$1B**
- Modified treatment of amounts deductible under sections 168 or 197 with respect to **qualified wireless spectrum**
- Effective for **taxable years beginning after 12/31/22**

## 1% excise tax on corporate stock buybacks

- Generally imposed on **fair market value** of any stock repurchased during the taxable year
- Effective for **buybacks made after 12/31/22**

## Extension of excess business loss rules

- Rules under section 461(l), which disallow certain business losses for non-corporate taxpayers, extended for 2 years **through taxable years beginning before 1/1/29**

## Superfund excise tax

- Reinstates and increases **hazardous substance financing rate** on crude oil and imported petroleum products, indexed to inflation
- Effective **1/1/23 through 12/31/32**

## Pharmaceutical excise tax

- Manufacturers that do not participate in **mandatory price-setting program** are subject to tax beginning at 65%, up to max 95%
- Effective for **sales after date of enactment**

# Inflation Reduction Act: New IRS resources



➤ The bill provides the Internal Revenue Service about **\$80B in additional appropriations** (over 10 years)

**\$45.6B for tax enforcement activities** (e.g., determining and collecting owed taxes, legal and litigation support, conducting criminal investigations, digital asset monitoring and compliance activities, enforcing criminal statutes related to violations of internal revenue laws and other financial crimes)

**\$25.3B for operations support** (e.g., rent; facilities services; printing; postage; physical security; HQ and other IRS-wide administration activities; research and statistics of income; IT development, enhancement, operations, maintenance, and security; operations of the Internal Revenue Service Oversight Board)

**\$4.8B for business systems modernization** (e.g., development of callback technology and other technology to enhance customer service but not including operation and maintenance of legacy systems)

**\$3.2B for taxpayer services** (e.g., pre-filing assistance, filing and account services, taxpayer advocacy services)

- Treasury estimates funds will let IRS **hire about 87k employees** over 10 years (gross hires—it also expects to lose 50k)
- Treasury Secretary Yellen to IRS Commissioner Rettig Aug. 10: “Specifically, I direct that any additional resources—including any new personnel or auditors that are hired—**shall not be used to increase the share of small business or households below the \$400,000 threshold that are audited** relative to historical levels... [E]nforcement resources will **focus on high-end noncompliance.**”
- Personnel flexibility such as expedited hiring processes and higher pay rates for certain employees *not included*

# Inflation Reduction Act: Energy tax incentives



- Certain tax credits in the legislation include a **direct-pay option** as well as **transferability** provisions

Most incentives fit into one of the following buckets (the “Core 4”):

- **Manufacturing**
  - Expansion to list of manufactured products that will qualify for the **advanced energy project** credit
  - Production tax credits to **accelerate US manufacturing** of solar panels, wind turbines, and critical minerals processing
- **Transportation and Fuel**
  - Tax credits for **clean fuels and clean commercial vehicles** to reduce emissions within transportation sector
  - Tax credits to support **domestic production of biofuels** and to build infrastructure needed for sustainable aviation fuel and other biofuels
  - \$4000 credit for certain lower- and middle-income individuals to buy used **clean-energy vehicles**; up to \$7500 credit available for purchase of new clean-energy vehicles
- **Hydrogen/Carbon Capture**, e.g.,
  - Tax credits for capture and/or storage of carbon dioxide at **industrial facilities and power plants**, from **oil drilling**, or **direct from air**
- **Renewable Energy**
  - Production and investment tax credits for **emission-free electricity generation and storage**

# Inflation Reduction Act: What *wasn't* included?

Democrats proposed numerous tax provisions that didn't make it into the final bill



## Businesses

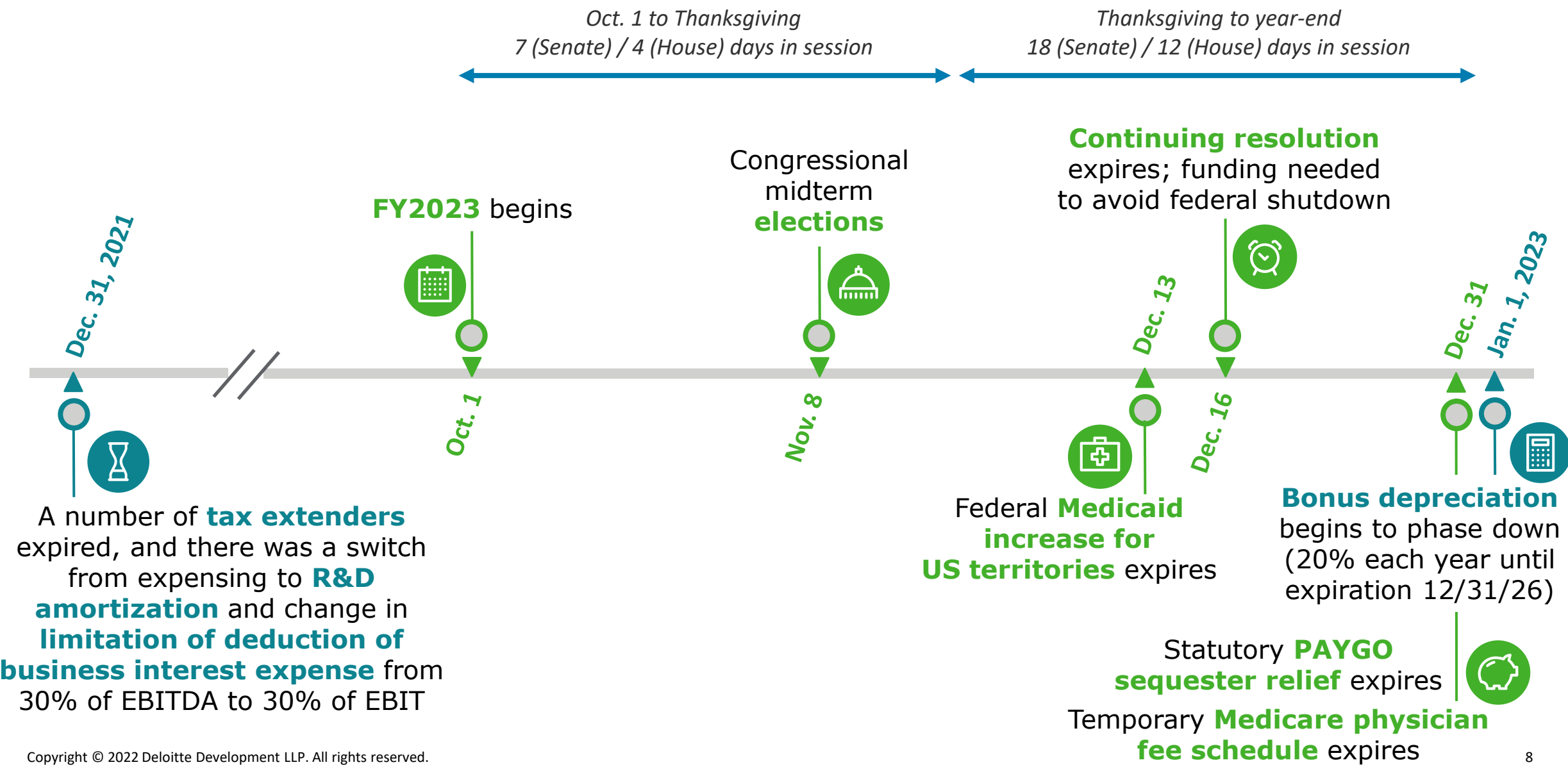
- Changes to marginal rates for corporations
- International reform
- Changes to 199A deduction
- Changes to tax treatment of carried interest
- Partnership tax overhaul
- Acceleration of effective date related to executive compensation
- Carbon tax/carbon pricing
- Most proposed changes to tax rules impacting fossil fuels
- Changes to R&D amortization
- Bank reporting to IRS of customer account inflows and outflows

## Households

- Changes to marginal rates for individuals
- Changes to capital gains rates
- Mark to market on assets of ultra high-net worth individuals
- Changes to estate and gift tax rules
- Changes to tobacco and nicotine taxes
- Changes to state and local tax (SALT) deduction
- Surcharge on highest-earning households
- Expanded scope of 3.8% NII tax
- Retirement savings changes (i.e., disallowance of mega-IRA)

# Two months to go...

# Key 2022 key legislative and tax dates





# The post-election “lame duck” session

What tax policies could be on the table?

- “Traditional” tax extenders (mainly non-energy provisions now, after IRA enactment)
- Delay research expense amortization requirement under Sec. 174 (effective 1/1/22)
- Delay EBITDA to EBIT change within the Sec. 163(j) interest deduction limitation (effective 1/1/22)
- Delay impending phase-out of 100% bonus depreciation (effective 1/1/23)
- Extension of Child Tax Credit enhancements (e.g., advance monthly payments) originally enacted in 2021
- Bipartisan retirement security legislation (“SECURE 2.0”)
- Relief from last-in first-out (LIFO) recapture for auto dealers due to supply chain issues
- \$10,000 SALT deductibility cap
- Tax technical corrections to 2017 GOP tax reform bill and/or 2022 Inflation Reduction Act

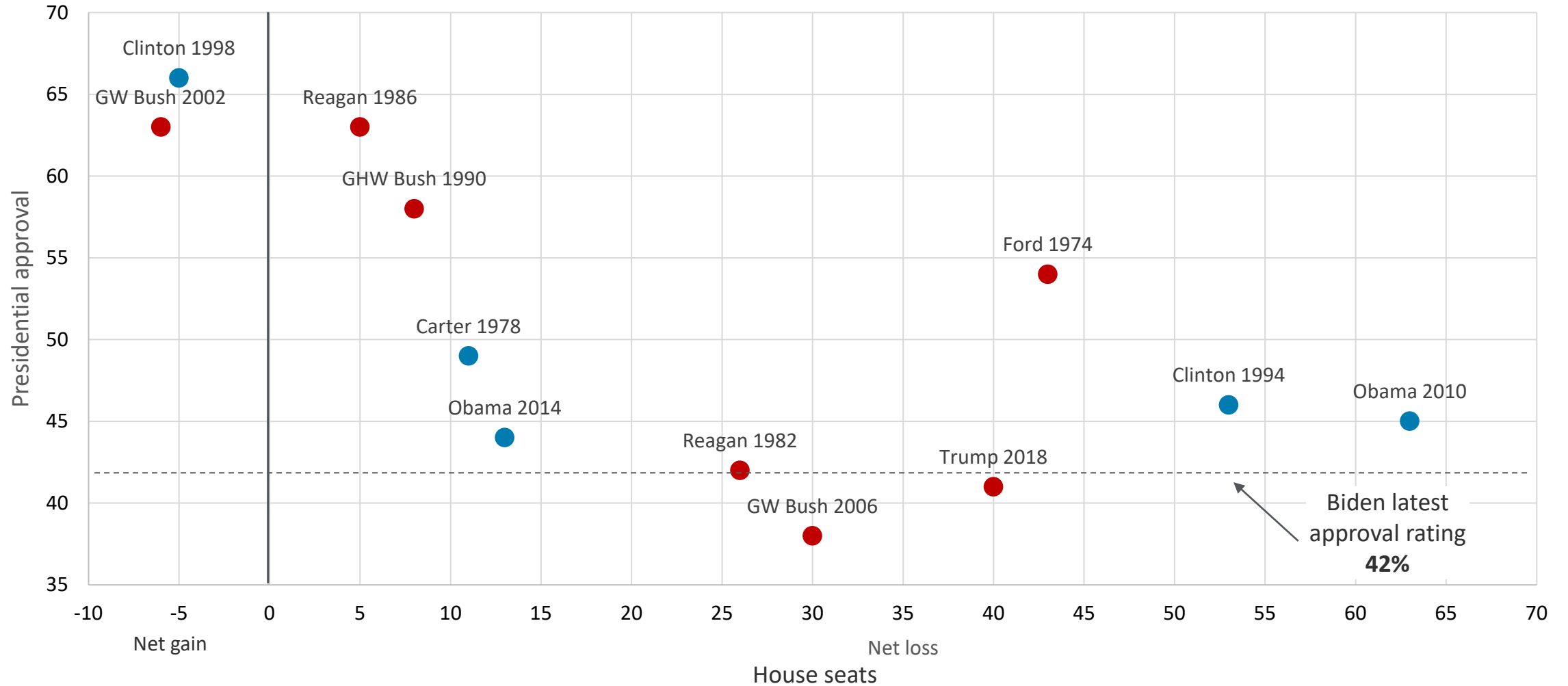
## Will this year's Lame Duck session be productive?

<p>Winners want to clear the deck for action on other priorities next year</p> <p>Losers want to get done what they can while they still have some power</p>	<p>Winners want to clear the deck for action on other priorities next year</p> <p>Losers want to delay action to cause a traffic jam for the winners next year</p>
<p>Winners want to delay action in order to write the bill next year in a manner more to their liking</p> <p>Losers want to get done what they can while they still have some power</p>	<p>Winners want to delay action in order to write the bill next year in a manner more to their liking</p> <p>Losers want to delay action to cause a traffic jam for the winners next year</p>

# Midterm elections

# Mid-term elections historically tough on president's party

House losses typically larger when executive's approval rating was below 50%



**Source:** [“Usual Midterm Indicators Very Unfavorable for Democrats,”](#) by Jeffrey M. Jones and Lydia Saad, Gallup News, June 14, 2022; most recent Biden approval rating from [Gallup Presidential Job Approval Center](#)

# The last four presidents have lost Senate and House majorities

Seven of those eight losses were in midterm elections



**President  
Bill Clinton (D)**

**Republican gains** in  
the 1994 midterms:

**52 seats** in the  
House

**8 seats** in the  
Senate



**President  
George W. Bush (R)**

**Democratic gains** in  
the 2006 midterms:

**30 seats** in the  
House

**6 seats** in the  
Senate



**President  
Barack Obama (D)**

**Republican gains** in  
the 2010 midterms:

**63 seats** in the  
House

**6 seats** in the  
Senate

**Republican gains** in  
the 2014 midterms:

**13 seats** in the  
House

**9 seats** in the  
Senate



**President  
Donald Trump (R)**

**Democratic gains** in  
the 2018 midterms:

**40 seats** in the  
House

**-2 seats** in the  
Senate

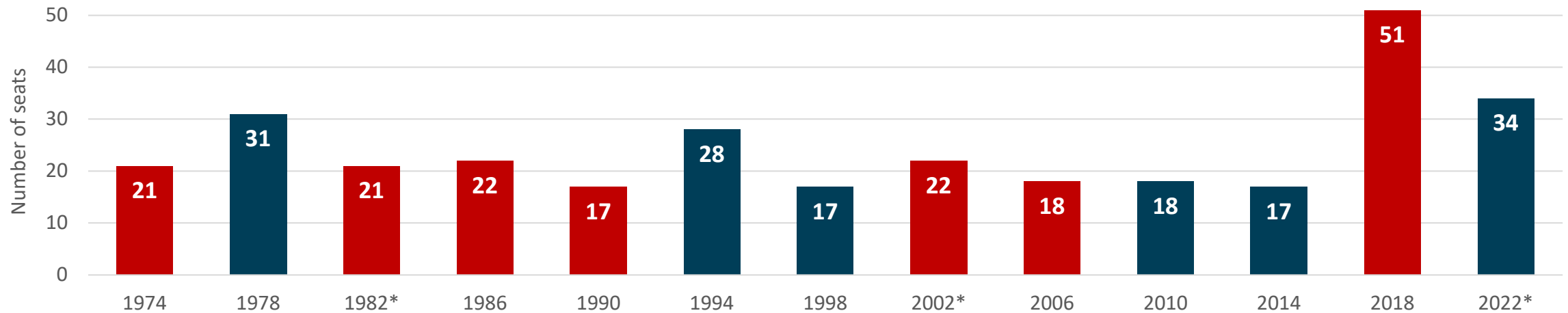
*Note: Trump's loss  
of the Senate In  
2016 was the only  
loss of a chamber  
in the past four  
presidencies not to  
occur during a  
midterm.*

**Source:** The American Presidency Project

# House Democratic departures are relatively high, ahead of a potential majority loss

History is not on the side of the President's party going into the midterms

Midterm House retirement announcements/departures by the President's party



\* Redistricting year

**Note:** Data as of Oct. 24, 2022; includes resignations since Nov. 2, 2021; 2022 number does not include primary losses

**Source:** [Sabato's Crystal Ball](#), "Exit Stage Left or Right: Midterm Retirements and Open Seats in the House From 1974 to 2018," Geoffrey Skelley, March 22, 2018; updated by Deloitte

History suggests the House GOP may pick up seats in the 2022 midterms:

- In the 7 midterm elections of a president's first term since 1978, the president's party has lost an average of 28 House seats
  - Only twice in the past 12 midterms has the majority party lost fewer than 5 seats (and in both cases had fewer open seats than this year), which is what Republicans need to net this November to retake the House majority
- The only such election in which the president's party gained seats was in 2002 (barely one year after 9/11)
- One bright spot for House Democrats is that their challenge will not be significantly exacerbated by the decennial Congressional redistricting process, as many in the party feared.

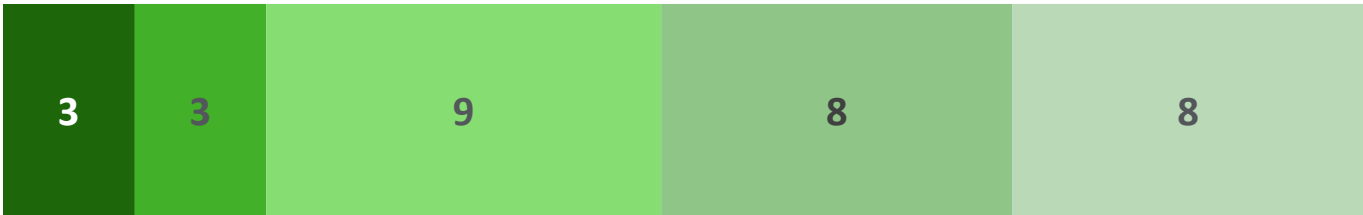
# House Democratic departures are relatively high, ahead of a potential majority loss

Primary losses have also begun to occur on both sides of the aisle

Democrats



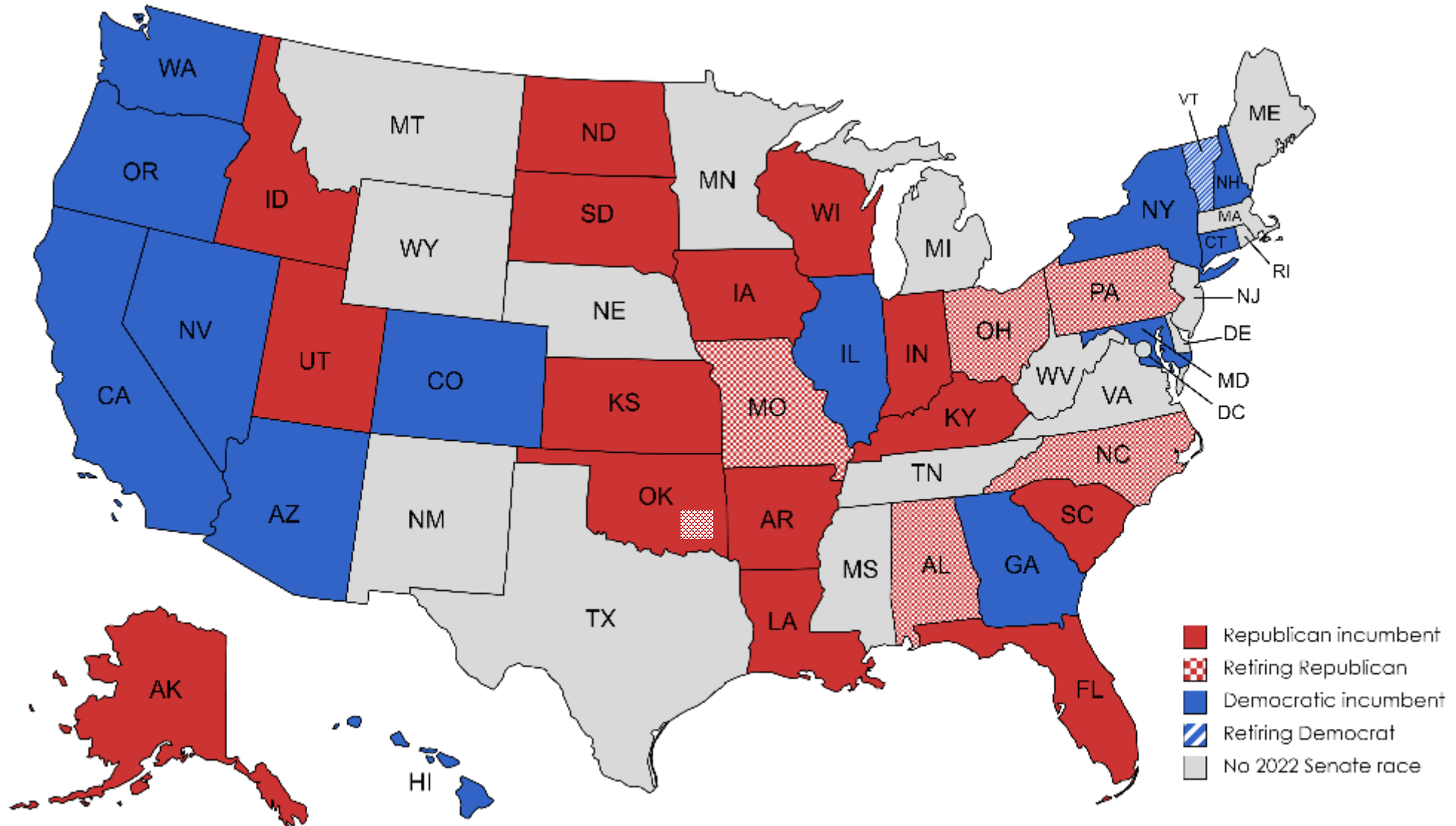
Republicans



■ Died\*   ■ Resigned\*   ■ Retiring   ■ Seeking Other Office   ■ Lost Primary

\*Since Nov. 2, 2021  
Data as of Oct. 24, 2022

## 2022 Senate map

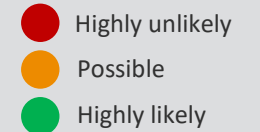




# A look ahead to 2023-2024

# The art of the possible in a divided Congress

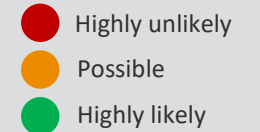
Tax policy prospects if the **House** flips to **Republican**



	GOP House	Dem Senate	Biden WH
Increase in corporate tax rate	●	●	●
Increase in top individual tax rate	●	●	●
Increase in GILTI rate/shift to CbC	●	●	●
Repeal of tax incentives for fossil fuel industry	●	●	●
Changes to treatment of carried interests	●	●	●
Extension of TCJA non-corporate rate cuts	●	●	●
Mark-to-market of wealthy households' assets	●	●	●
Mark-to-market of wealthy households' unrealized gains	●	●	●
Repeal of stepped-up basis	●	●	●
Repeal of SALT deduction cap	●	●	●
Extension of SALT deduction cap	●	●	●
Surtax on highest-earning households	●	●	●
Increase in capital gains/dividends tax rate	●	●	●
Repeal of book minimum tax	●	●	●
Impose excess profits tax on large corporations	●	●	●
Impose excess profits tax on oil & gas companies	●	●	●
Cuts to IRS funding	●	●	●
Policymaking by regulation	N/A	N/A	●

# The art of the possible in a divided government

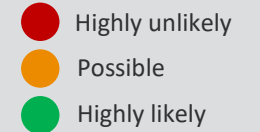
Tax policy prospects if both **Senate** and **House** flip to **Republican**



	GOP House	GOP Senate	Biden WH
Increase in corporate tax rate	●	●	●
Increase in top individual tax rate	●	●	●
Increase in GILTI rate/shift to CbC	●	●	●
Repeal of tax incentives for fossil fuel industry	●	●	●
Changes to treatment of carried interests	●	●	●
Extension of TCJA non-corporate rate cuts	●	●	●
Mark-to-market of wealthy households' assets	●	●	●
Mark-to-market of wealthy households' unrealized gains	●	●	●
Repeal of stepped-up basis	●	●	●
Repeal of SALT deduction cap	●	●	●
Extension of SALT deduction cap	●	●	●
Surtax on highest-earning households	●	●	●
Increase in capital gains/dividends tax rate	●	●	●
Repeal of book minimum tax	●	●	●
Impose excess profits tax on large corporations	●	●	●
Impose excess profits tax on oil & gas companies	●	●	●
Cuts to IRS funding	●	●	●
Policymaking by regulation	N/A	N/A	●

# The art of the possible in the next Congress

Tax policy prospects if Democrats hold the House and Senate



	Dem House	Dem Senate	Biden WH
Increase in corporate tax rate	●	●	●
Increase in top individual tax rate	●	●	●
Increase in GILTI rate/shift to CbC	●	●	●
Repeal of tax incentives for fossil fuel industry	●	●	●
Changes to treatment of carried interests	●	●	●
Extension of TCJA non-corporate rate cuts	●	●	●
Mark-to-market of wealthy households' assets	●	●	●
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Repeal of stepped-up basis	●	●	●
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Impose excess profits tax on oil & gas companies	●	●	●
Cuts to IRS funding	●	●	●
Policymaking by regulation	N/A	N/A	●



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