

# Elections, Taxes, and Your Business

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# Agenda

## Today, we will cover

- Macro Economic Outlook
- Political Outlook
- The Tax Outlook
- Treasury's Valuation Rules
- End on Some Good News

# Macro Economic Outlook

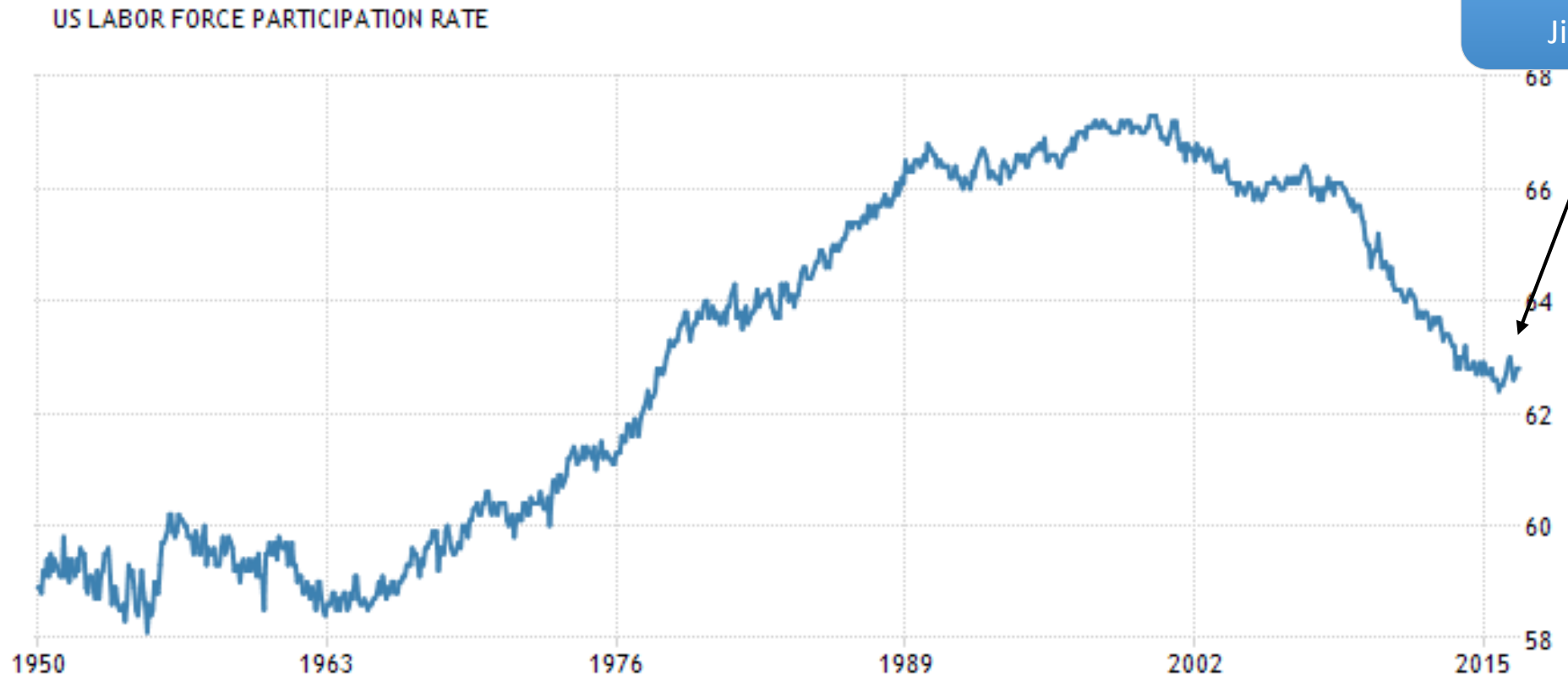
# Macro Economic Outlook

## Employment Picture

- Last month's jobs report was positive
- The unemployment rate remains low and the US economy has added jobs for 78 consecutive months
- In just the last year, we added more than two million jobs while the unemployment rate has been cut in half since the fiscal crisis
- But what about this?

# Macro Economic Outlook

## Employment Picture



63 percent —the  
lowest level since  
Jimmy Carter!

# Macro Economic Outlook

## Debt & Deficit

- Meanwhile, the, latest CBO Report paints a troubling picture
- This year, the federal government will collect \$3.2 trillion, spend \$3.7 trillion, and run a deficit of nearly \$500 billion
- Millions, billions, trillions...
- MEGO

# Macro Economic Outlook

## Debt & Deficit

- What if the typical American family acted like the federal government in 2015?
- We earned about \$50,000
- We spent \$58,000!
- We added \$8,000 to our credit card debt
- Total credit card debt: Over \$218,000!

# Macro Economic Outlook

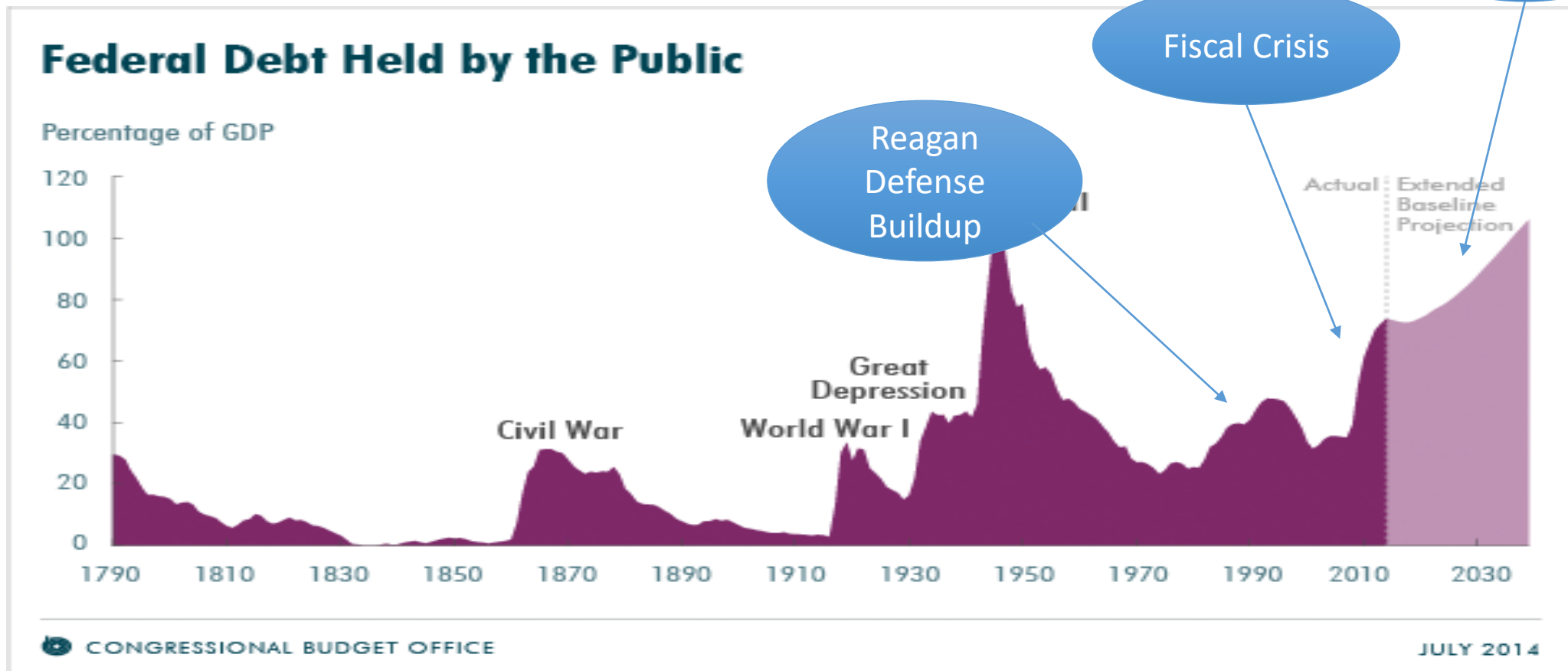
## Debt & Deficit

- So 2015 was a bad year, what about this year?
- Good news! We got a raise to \$53,000
- Bad News. We plan to spend \$61,000
- That adds another \$8,000 to our credit card
- Total credit card debt: Over \$228,000!



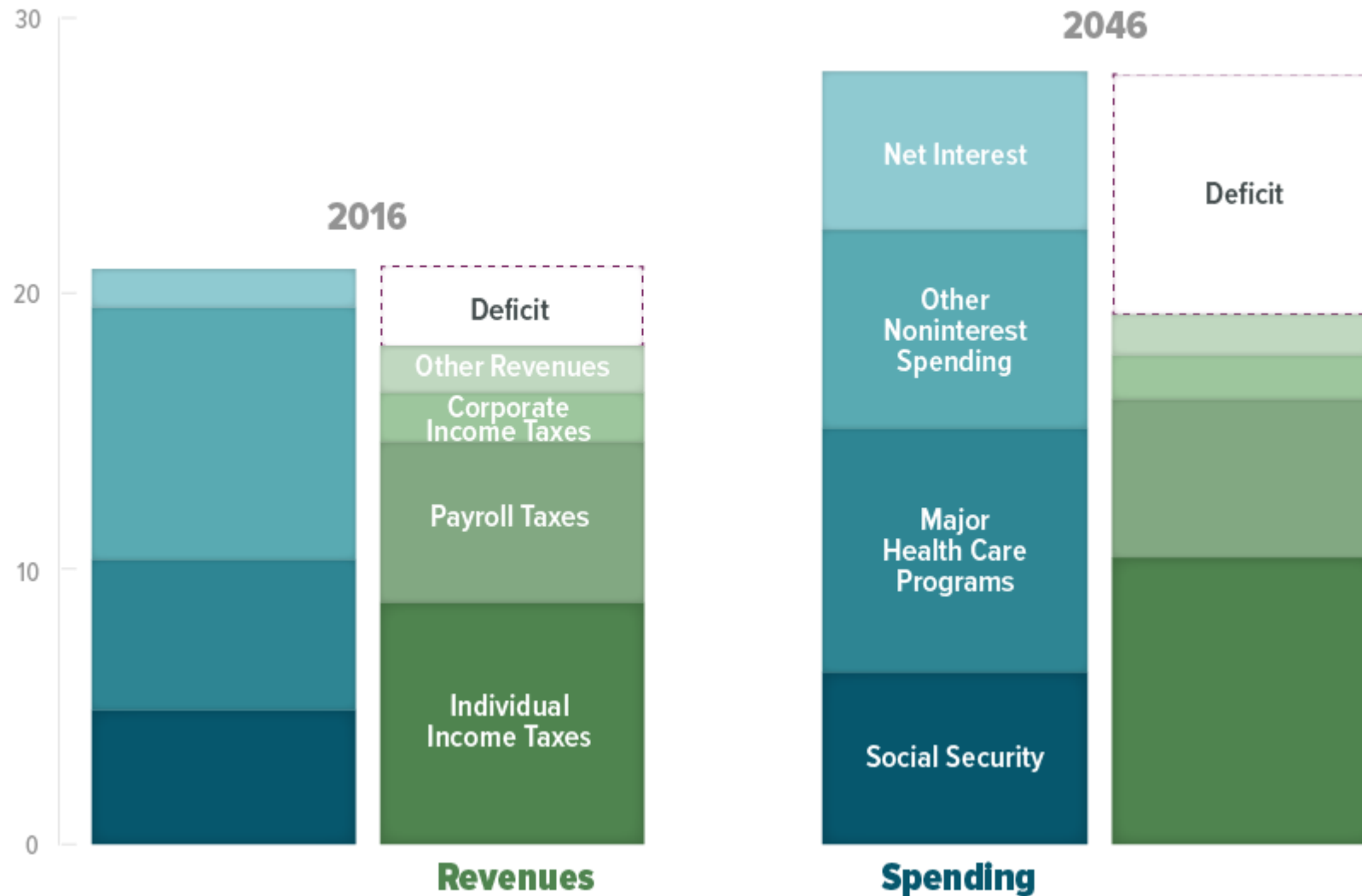
# Macro Economic Outlook

So this is just a short-term challenge? No!



# Macro Economic Outlook

Percentage of GDP



# Election Outlook

# 2016 Election

- Abnormal Year:
  - Republicans discarded multiple high-quality candidates to select Donald Trump
  - Democrats nominated the one person who could possibly lose to him
- “We have nominated two completely unelectable candidates, one of whom will be the next President” – Dick Morris
- How unelectable are they?
  - Clinton’s Unfavorable: 55.0%
  - Trump’s Unfavorable: 58.7%

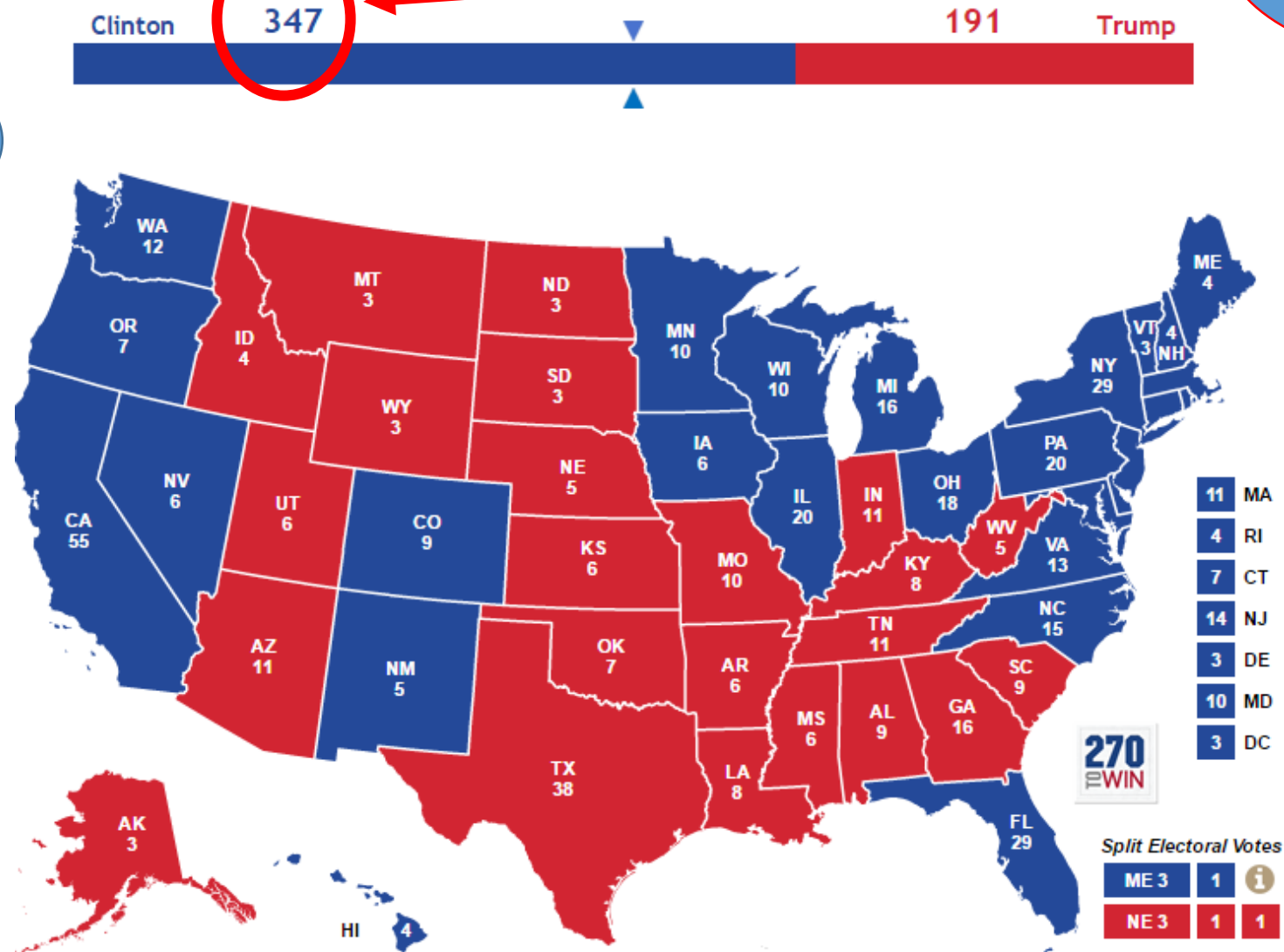
# 2016 Election

- Both are historically unpopular, but one of them will be President
- Which one? The answer *used* to be Clinton
- That's what everybody said. Why?
  - Trump's negatives among key groups are just too high
  - Clinton won the battle of the conventions – well scripted and on message
  - Trump's convention made voters “less likely” to support him
- But polls leading up to the debate show Trump closing, and even winning, in key battle ground states

# 2016 Election

RCP Polling  
Map From May,  
2016

Shows Clinton  
Easily Getting  
the 270 Votes  
she needs



# 2016 Election

Clinton

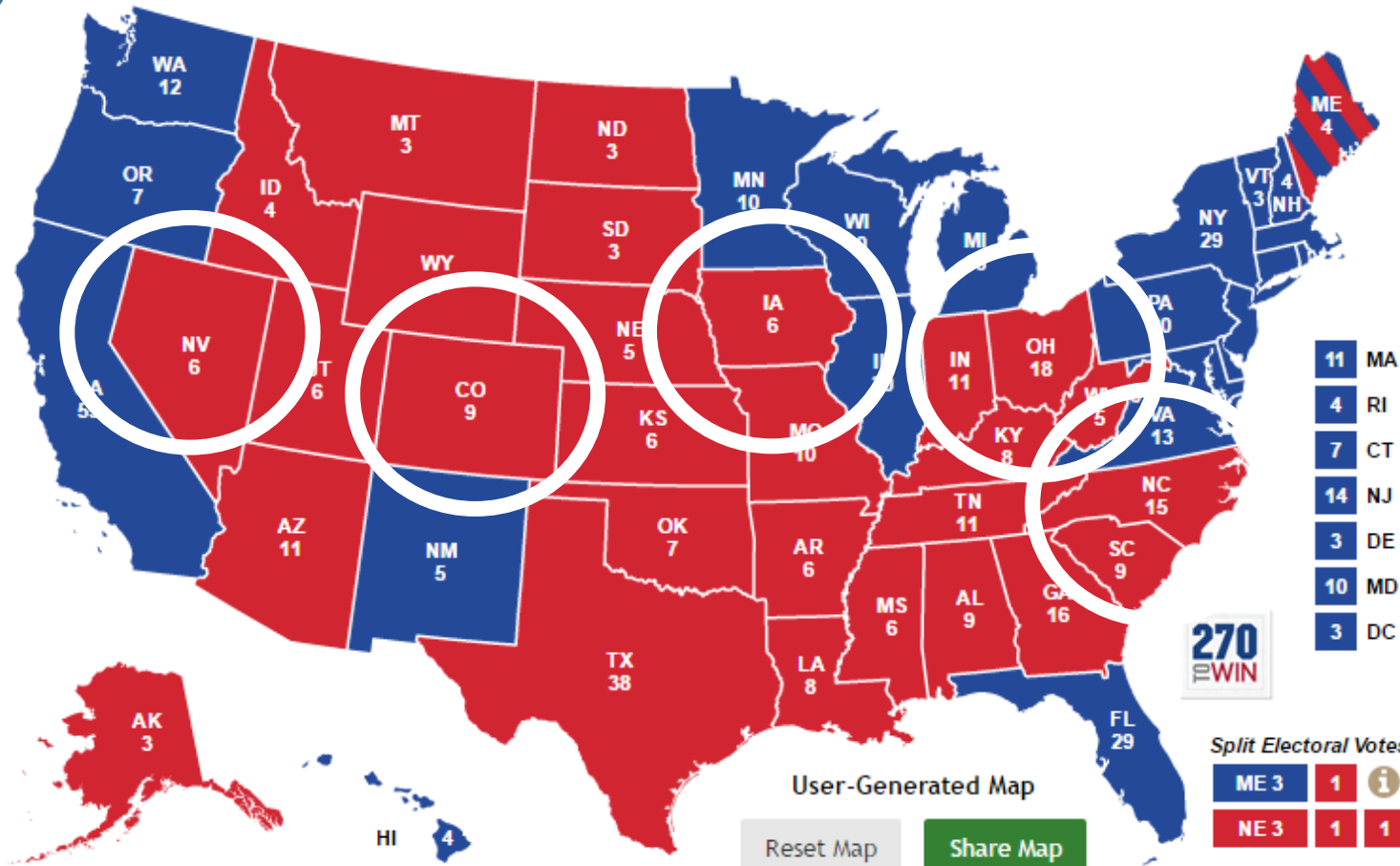
292

246

Trump

Shows Clinton  
One Big State  
Away from  
Losing

Most Recent  
Real Clear  
Politics Map



# 2016 Election

## Presidential Summary

- So the presidential race is a toss-up
- Trump continues to prove all the nay-sayers wrong
- He is not going to implode. He could even win – wow
- Taking “implosion” off the table has significant implications for the downstream candidates
- How does Congress stack up?



# 2016 Election

## House

- GOP currently has a 61 seat majority, 247-186
  - 2 vacancies in PA and HI are strong Dem districts
- Democrats must net 30 seats
- That could happen (1974, 2006) but highly unlikely – this doesn't look like a wave year
- Prediction: Absent an implosion by Trump, the House Remains Republican

# 2016 Election

## Senate

- Current breakdown is 54 R, 46 D
- Republicans are playing defense: Of the 34 seats up, 24 are Republican
- Outlook: Total Toss-Up
- Simple Outlook:
  - Republicans Win NV and Dems win WI
  - Dems would then need to win at least 4 of the following six toss up seats:
    - PA, NC, IN, NH, MO, IL
- Once again, however, key states are moving right

# 2016 Election

Likely Dem	Lean Dem	Tossup	Lean GOP	Likely GOP
	Bennet (CO)	Blunt (MO)	Rubio (FL)	McCain (AZ)
	Johnson (WI)	Reid (NV)	Grassley (IA)	Portman (OH)
		Ayotte (NH)		Vitter (LA)
		Burr (NC)		
		Kirk (IL)		
		Coats (IN)		
		Toomey (PA)		

# 2016 Election

## What's at stake?

- Supreme Court
  - The next President will be able to define the direction of the Court
  - Key Issues at Stake: Independent Contractor, Voter ID laws, campaign finance, Union fees for public employees
- Federal Agencies
  - Veritable flood of costly regulations being finalized this year
  - Whoever is President can roll them back, or add to them
  - Key Rules in Play: IRS 385 rule on related party loans, IRS 2704 rule on estate tax valuations, DOL Fiduciary Rule, DOL Overtime Rules, etc
- Senate Rules
- What about tax policy – who's better?

# The Tax Outlook

# Tax Policy & The Candidates

## S Corporation Association Mantra

- For five years, S-Corp has organized the Main Street business community around the following tax reform principles:
  1. Tax income once
  2. Tax it when its earned
  3. Tax it all at the same, reasonable top rate
  4. And then you leave it alone
- 120 National Business Trade Groups signed onto these principles earlier this year
- This mantra has formed the core of our advocacy on behalf of the pass through business community
- How do the candidate's plans stack up to the mantra?

# Tax Policy & The Candidates

## Hillary's Tax Policies

- What did the private business sector ever do to Secretary Clinton?
  - She hasn't put forward a comprehensive plan, but she has proposed to:
    1. Impose a new 5% surtax on incomes over \$5m
    2. Hike capital gains taxes from 24% to over 40%
    3. Increase the estate tax rate from 40% to 65%
    4. Creates a new "Buffett" Minimum Tax
  - She hikes your taxes when your business makes profits, when it's sold, and when you pass it on to your kids
- \*According to some, all of this is subject to the Clinton "Discount"

# Tax Policy & The Candidates

## The Donald's Tax Policies

- Meanwhile, Mr. Trump has put forward a comprehensive tax plan that's largely friendly to the business community
- Problem is, we're not sure we know exactly what it does
- We're not sure he does either



# Tax Policy & The Candidates

**"Details and  
Analysis of the 2016  
House Republican  
Tax Reform Plan,"  
Tax Foundation  
7/5/16**



"Details and Analysis of the 2016 House Republican Tax Reform Plan,"  
Tax Foundation, 7/5/16

# Tax Policy & The Candidates

## The Donald's Tax Policies

- Trump would reduce the rate for C Corps down to 15%, but it's unclear whether that rate extends to pass through businesses too
- Other Proposals:
  - Eliminates the estate tax (good)
  - Ends deferral (bad)
  - Allows expensing (good)
  - Creates a border-adjustable tax (good)
- Bottom Line: Trump's tax policies are a mixed bag

# Treasury's Valuation Rules

# Family Business Tax Challenges

## S-Corp Represents Small & Family Owned Businesses

- All we do is advocacy on business tax issues
- What are we focused on these days?
  - Parity for Main Street Employers Coalition
  - Section 385 “Related Party Loans”
  - S Corp Modernization
  - Treasury Valuation Rules
- These days, its all about the valuation rules!

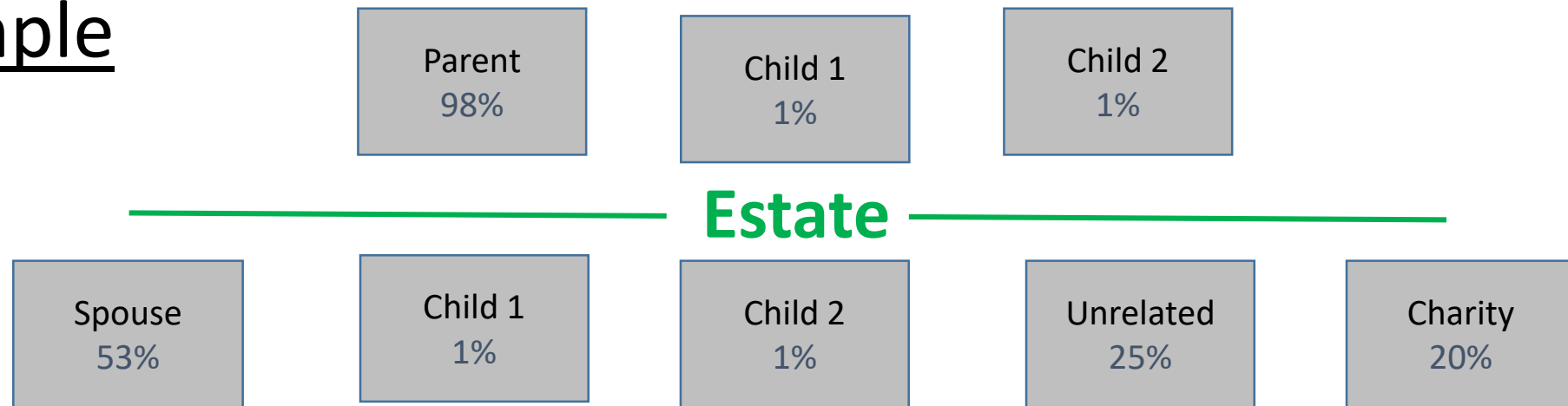
# Section 2704 Regulations

## What did Treasury do?

- Proposed rules eliminate “lack of control” and “lack of marketability” valuation discounts for family members receiving interests in a family-controlled business
- They are an effort to reprise the old, failed concept of “family attribution,” this time using section 2704 as the underlying authority
- The rules would increase estate and gift taxes by 30 percent or more on family-owned businesses:
  - This affects family businesses only
  - Public companies and businesses owned by unrelated parties are unaffected
- Bottom Line: If finalized, there will be fewer family businesses surviving from one generation to the next

# Section 2704 Regulations

## Example



## Facts:

- Partnership Agreement requires the approval of all the partners to liquidate or amend
- Parent's will transfers 53% interest to spouse, 25% to unrelated party, and 20% to charity
- Transfers to unrelated parties are disregarded for determining "family control"

# Section 2704 Regulations

## Challenges to the Rule

- “Family Attribution” means families always agree. Ha!
- Three year lookback means families without control will pay more too
- The rule results two competing valuation systems – one for family businesses, another for everybody else
- The rule exceeds the statutory authority of Section 2704
  - Congress wrote 2704 to explicitly not go after minority and similar discounts
  - Parts of the proposed rule – like the three year lookback and the four-part test for interests held by non-family owners – are completely new inventions

# Section 2704 Regulations

## Timeline

- Treasury
  - August 2<sup>nd</sup> – Valuation Rule Proposed
  - November 2<sup>nd</sup> – Comment Period Closes
  - December 1<sup>st</sup> – Treasury Hosts Public Hearing
  - January 20<sup>th</sup> – End of Obama Administration
  - 30 Days After Publication – Rule takes effect
- Congress
  - September – Short 4-week session
  - November 8<sup>th</sup> – Elections
  - Early December – Lame Duck Session



# Section 2704 Regulations

## What Can Congress Do?

- Formal Communications
  - Senator Thune has already written to Treasury opposing this policy
  - We expect to see more letters organized in the coming weeks
- Hearings
  - The rule is a direct attack on family-owned businesses
  - The tax-writing committees can and should hold hearings on this rule
  - Tough to organize in just a few weeks and need family businesses to speak out
- Legislation
  - Appropriations rider blocking Treasury from finalizing the rule (Pre-Final Rule)
  - Congressional Review Act (Post Final Rule)
  - Congressional authority expedite legal review (Post Final Rule)

# Section 2704 Regulations

## Litigation Avenues

- If the Rule is finalized in its current form, litigation is almost certain
- Treasury has lost on “Family Attribution” in the past, and it’s likely to lose this time around as well
- What might a lawsuit look like?
  - Standard Litigation between affected estate and IRS
  - Administrative Procedures Act
  - Accelerated Litigation?
- Standard litigation between estate and IRS is most likely, but it could take years to come to a resolution

# Section 2704 Regulations

## What Can the Business Community Do?

- Send in formal Comments! Official comment period ends November 2<sup>nd</sup>
- Comments should be directed to:
  - <https://www.federalregister.gov/articles/2016/08/04/2016-18370/estate-gift-and-generation-skipping-transfer-taxes-restrictions-on-liquidation-of-an-interest#open-comment>
- Contact your Representative and Senator! We can help you set up a call or meeting.
- Contact us at: [breardon@s-corp.org](mailto:breardon@s-corp.org)

# The Silver Lining

## Ending on a More Positive Note

- Remember the macro challenge we face as a country?
- They've been a no-show during the campaigns—but there is a chance Congress takes a run at them next year
- Two Rules of Thumb come into play:
  - Congress will always act to address our deficit and spending challenges, but only at the last minute and always in the most painful manner possible
  - People are policy – if you want a good outcome, you need good people working on the problem
- So what is there to be hopeful about?

Some Good News

# The Silver Lining

## Respective Lineups – This Year and Next



# Take-Aways

## What to Remember

- Macro Fiscal Challenges are daunting and should be of concern to every American
- So far those issues are a no-show in the 2016 elections
- Regardless of who wins the Presidency, divided government is most likely outcome
- Tax policy is a mess, but the real threat is the proposed regulations out of Treasury due to be finalized later this year
- Business community is rallying to fight these proposals – you should join the effort!
- New leadership next year will be much more proactive and willing to work with others than the current lineup

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