



January 14, 2025

The Honorable Jason Smith
Chairman
Committee on Ways and Means
1139 Longworth House Office Building
Washington, DC 20515

The Honorable Richard Neal
Ranking Member
Committee on Ways and Means
1129 Longworth House Office Building
Washington, DC 20515

On behalf of Associated Builders and Contractors, a national construction industry trade association with 67 chapters representing more than 23,000 members, I write to applaud the U.S. House Committee on Ways and Means for holding a hearing on the significance of making permanent the Tax Cuts and Jobs Act for America's working families. We also appreciate the opportunity to submit comments as the committee considers legislative action to make provisions of the TCJA permanent.

The Tax Cuts and Jobs Act included important tax relief for contractors. The scheduled expiration of many of these policies would have grave effects, not only for our contractor members, but for the construction market more broadly. We urge the committee to support these critical tax policies, which are vital to the continued success and economic prosperity of our industry.

Maintaining Parity for Pass-Through Entities

One of the most significant achievements of the TCJA, alongside establishing an internationally competitive corporate tax rate, was its innovative approach to pass-through business taxation. As you know, pass-through entities comprise 95% of businesses, more than 60% of private employment and more than half of all business activity in the United States. The TCJA provided the pass-through sector crucial relief via two key mechanisms: an across-the-board reduction in individual tax rates and the introduction of a new 20% deduction for qualified business income. Together, these provisions reduced the effective marginal tax rate for pass-through entities to 29.6%, moving Main Street toward a level playing field with their corporate counterparts.

[Recent analysis by EY](#) reveals the stark consequences of allowing these provisions to sunset: the combination of the top individual rate returning to 39.6% and the expiration of the Section 199A deduction would trigger a 20% effective rate hike for pass-through businesses. To preserve the vitality of America's Main Street businesses, ABC strongly urges Congress to make these critical tax provisions permanent and maintain the competitive balance that has enabled small, family-owned and closely held businesses to flourish in construction and across the economy.

In 2024, ABC participated in several events with other Main Street businesses and organizations nationwide, advocating for section 199A deduction permanence. These events included roundtables with Ways and Means Committee members in [Florida](#), [Oklahoma](#), [Tennessee](#) and [Texas](#). These events were part of the process initiated by Chairman Smith to create various tax teams tasked with identifying legislative solutions to avert the 2025 fiscal cliff—including the expiration of section 199A.

Continuation of TCJA Estate Tax Treatment

The TCJA's estate tax provisions were implemented with the understanding that family-owned businesses, including those in the construction industry, face unique challenges in transitioning from one generation to the next. To prevent the breakup or sale of family businesses due to estate tax burdens, the TCJA increased the estate tax exemption amount, thereby preserving jobs and maintaining the continuity of these important economic contributors. And by indexing this figure to inflation, the TCJA ensured that rising costs would not allow a creeping death tax to entrap more and more family businesses.

The estate tax provisions under the TCJA have been crucial for family-owned construction businesses. These provisions have allowed for the smooth transition of businesses from one generation to the next,

ensuring continuity and preserving jobs. The increased estate tax exemption should be made permanent, and Congress should resist any attempts to repeal stepped-up basis.

Since TCJA was enacted in 2017, subsequent Congresses allowed several of the TCJA's important provisions to expire, while passing other problematic policies. These changes have taken the code in the wrong direction and should be addressed in 2025.

Revived Expensing of R&D Costs

The policy of allowing businesses to expense research and development costs immediately, rather than amortizing them over several years, is a longstanding feature of the tax code dating back to 1954. The construction industry benefits both directly and indirectly from the code's robust historical preference for R&D. Specifically, the combination of immediate cost recovery and incentives has allowed contractors to embrace innovative new tools, technologies and materials that continue to improve the efficiency, safety and sustainability of the construction process. From building information modeling and 3D printing to robotics, drones and AI, the construction industry is continually investing in and adopting cutting-edge practices that help contractors attain the highest standards of performance.

In addition to innovations in project delivery, the tax treatment of R&D is also a driver of new construction, as new technologies spur investments in everything from advanced manufacturing facilities and energy generation to storage and more efficient buildings. Unfortunately, despite bipartisan support for the expensing policy, R&D costs were required to be amortized over five years beginning in 2022, an unwelcome surprise to many contractors. Restoring immediate expensing of R&D should be a top priority.

Restoration of 100% Bonus Depreciation

Immediate expensing via 100% bonus depreciation was enacted in TCJA as a powerful incentive for businesses to invest in new equipment and technologies. This policy was based on the understanding that allowing immediate expensing of capital investments would encourage businesses to modernize their operations, increase productivity and, ultimately, drive economic growth. It was particularly aimed at capital-intensive industries like construction, where equipment investments can be substantial.

For the past five years, construction businesses have been able to expense or write off the purchase of tools, equipment and machinery the same year in which they were purchased. Unfortunately, since the end of 2022 this incentive has been phasing out and is slated to be eliminated altogether after 2026. Restoring the additional first-year depreciation allowance to 100% is crucial during this fraught time for the U.S. economy. Preserving this beneficial tax policy is essential to guaranteeing the success of key construction projects funded by bipartisan congressional legislation, including the Infrastructure Investment and Jobs Act and the CHIPS and Science Act.

Opposition to Exclusionary Labor Mandates in IRA Green Tax Credits

The Inflation Reduction Act dramatically altered the landscape for clean energy project tax incentives, significantly affecting ABC members. Many of our members have successfully built all aspects of "clean" and renewable energy projects under the pre-IRA tax code, which generally provided tax incentives of 30% for qualifying projects. However, the IRA reduced these incentives to a baseline of 6% for various clean energy projects covered under sections 30C, 45, 45L, 45Q, 45U, 45V, 45Y, 45Z, 48, 48C, 48E and 179D of the updated Internal Revenue Code.

To receive the full 30% incentive—five times the new baseline—developers must now meet onerous and unclear prevailing wage and apprenticeship requirements. These requirements include paying Davis-Bacon prevailing wages and utilizing apprentices from government-registered programs for 15% of all construction labor hours. All contractors with four or more employees on a jobsite must utilize at least one registered apprentice and comply with applicable apprenticeship ratios thereafter. This represents an

unprecedented expansion of these requirements onto private construction projects through the federal tax code, disadvantaging ABC members who are otherwise qualified to build these projects.

The IRS's Increased Amounts of Credit or Deduction for Satisfying Certain Prevailing Wage and Registered Apprenticeship Requirements final rule, issued on June 18, 2024, outlines punitive correction and penalty procedures for noncompliance. Developers face substantial fines and back pay requirements for any failure to meet these standards. Notably, the rule suggests that developers can avoid severe "intentional disregard" penalties by requiring contractors to sign project labor agreements. This effectively coerces owners into mandating PLAs, which are widely viewed within the construction industry as inflationary and discriminatory towards nonunion contractors and workers.

This policy change arbitrarily establishes unequal treatment between union and nonunion contractors. The exclusionary nature of these policies is more evident when considering that 89.3% of the construction industry does not belong a union. Given that the overwhelming majority of the construction workforce is nonunion, these requirements will dramatically limit the pool of qualified contractors for clean energy projects. Further, the enhanced tax incentives pushing PLA mandates on private development will needlessly increase construction costs, which will ultimately be passed on to taxpayers and energy ratepayers.

ABC strongly opposes exclusionary labor mandates in the IRA green tax credits. They unfairly restrict the ability of merit shop contractors to participate in renewable energy projects and limit competition in the marketplace. These requirements not only harm our members but also hinder the efficient and cost-effective development of clean energy infrastructure. We urge Congress to reconsider these restrictive policies and ensure that all qualified contractors, regardless of labor affiliation, have the opportunity to contribute to our nation's green energy future.

Thank you for your consideration of these critical issues. ABC stands ready to provide the committee with any additional information or insight that may be helpful as it deliberates these important decisions. ABC looks forward to working with you to extend and build on the pro-growth policies of the Tax Cuts and Jobs Act.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Swearingen". The signature is fluid and cursive, with the first name being the most prominent.

Kristen Swearingen
Vice President, Legislative & Political Affairs