



June 13, 2023

The Honorable Jason Smith  
Chairman  
U.S. House Committee on Ways and Means  
Washington, DC 20515

The Honorable Richard Neal  
Ranking Member  
U.S. House Committee on Ways and Means  
Washington, DC 20515

Chairman Smith, Ranking Member Neal and Members of the House Ways and Means Committee:

On behalf of Associated Builders and Contractors, a national construction industry trade association with 68 chapters representing more than 22,000 member companies, I write today in support of H.R. 3938, the Build It in America Act. This legislation would extend key provisions of the ABC-supported Tax Cuts and Jobs Act and provide additional certainty to the construction industry, including the deduction for research and development and the extension of the 100% bonus depreciation. ABC appreciates the committee's action on this critical legislation and urges Congress to pass this important relief for American companies.

Beginning in 1954, American companies were given the option to deduct costs associated with research and experimentation under Section 174(a). This immediate cost recovery allowed innovation to thrive for more than half a century, buoyed further by the tax credit for qualified research expenditures. This traditional treatment of R&D expenditures was prospectively curbed, beginning in 2022, as part of the Tax Cuts and Jobs Act, though the provision was never expected nor intended to go into effect. As a result, small business owners in construction and a host of other industries have been blindsided with higher tax bills this year.

The construction industry benefits both directly and indirectly from the tax code's robust historical preference for R&D. 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.

Not only does the loss of R&D expensing lead to higher tax bills, it adds a significant paperwork and compliance burden to contractors, owing to the complexities of construction accounting methods. Because many construction firms are required to use the percentage of completion method of accounting, R&D amortization rules could force contractors to file additional "lookback" returns for years, even after a given project is completed. Given the five-year capitalization period, a job with R&D expenses that finished within two calendar years would still have to file these time-consuming and confusing forms for three additional years.

Contractors have benefited from and come to count on the tax code's reliable treatment of R&D expenses for more than half a century. The inadvertent application of a policy that was never meant to go into effect has stuck business owners with unanticipated tax bills that will hinder cash flow as interest rates rise and credit tightens.

Further, failing to extend the 100% bonus depreciation would have a significant impact on the construction industry at a fraught time for the U.S. economy. For the past five years, under the Tax Cuts and Jobs Act, 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. Preserving this provision will be essential to guaranteeing the success of key construction projects funded by bipartisan congressional legislation, including the Infrastructure Investment and Jobs Act and the CHIPS Science Act.

ABC urges Congress to swiftly enact the Build It in America Act and appreciates the committee's consideration of our concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "Kristen Swearingen". The signature is written in a cursive, flowing style.

Kristen Swearingen  
Vice President, Legislative & Political Affairs