Congressional Budget Office
Cost Estimate

July 27, 2023

At a Glance

H.R. 3938, Build It in America Act

As reported by the House Committee on Ways and Means on June 30, 2023

By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	-106	-14,123	-39,534
Revenues	-83,115	-60,510	130,073
Increase or Decrease (-) in the Deficit	83,009	46,387	-169,607
Spending Subject to Appropriation (Outlays)	*	*	not estimated

Increases *net direct spending* in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply?	Yes
		Mandate Effects	
		Contains intergovernmental mandate?	No
Increases *on-budget deficits* in any of the four consecutive 10-year periods beginning in 2034?	No	Contains private-sector mandate?	Yes, Over Threshold

* = between -$500,000 and $500,000.

The bill would

- Allow businesses to deduct expenses for research and experimentation and to depreciate certain equipment more quickly
- Increase the amount of interest that businesses can deduct as an expense
- Terminate the Superfund excise tax on oil and petroleum products
- Repeal tax credits for clean electricity production and investment
- Modify tax credits for clean vehicles
- Impose private-sector mandates

Estimated budgetary effects would mainly stem from

- Additional revenues and reduced outlays attributable to repealing energy tax credits
- Reduced revenues attributable to extending tax deductions for business expenses and ending a tax on oil

Areas of significant uncertainty include

- Anticipating changes in business investments as well as demand for oil and petroleum products and clean vehicles

The Congressional Budget Act of 1974, as amended, stipulates that revenue estimates provided by the staff of the Joint Committee on Taxation (JCT) are the official estimates for all tax legislation considered by the Congress. CBO therefore incorporates such estimates into its cost estimates of the effects of legislation. Most of the estimates for the provisions of this bill were provided by JCT.

Detailed estimate begins on the next page.

See also
CBO's Cost Estimates Explained, *CBO Describes Its Cost-Estimating Process*, *Glossary*

Bill Summary

H.R. 3938 would amend portions of the Internal Revenue Code of 1986 related to business tax deductions, allowing some businesses to deduct certain expenses more quickly than under current law. The bill also would terminate the Superfund excise tax on oil and petroleum products. Other provisions would repeal or modify tax credits related to clean electricity or vehicles.

Estimated Federal Cost

The estimated budgetary effect of H.R. 3938 is shown in Table 1. The costs of the legislation fall within budget functions 270 (energy) and 300 (natural resources and environment).

Table 1.
Estimated Budgetary Effects of H.R. 3938

	By Fiscal Year, Billions of Dollars												
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023-2028	2023-2033
Decreases in Direct Spending													
Title II. Supply Chain Security													
Budget Authority	0	-0.6	-2.1	-1.5	-1.6	-1.6	-1.6	-1.7	-1.7	-1.8	-1.8	-7.4	-16.0
Outlays	0	-0.2	-0.8	-1.1	-1.3	-1.5	-1.6	-1.5	-1.6	-1.6	-1.7	-4.7	-12.7
Title III. Repeal of Special Interest Tax Provisions													
Budget Authority	-0.1	-1.1	-1.5	-1.8	-2.3	-2.6	-2.9	-3.2	-3.6	-3.8	-4.0	-9.4	-26.8
Outlays	-0.1	-1.1	-1.5	-1.8	-2.3	-2.6	-2.9	-3.2	-3.6	-3.8	-4.0	-9.4	-26.8
Total Direct Spending													
Budget Authority	-0.1	-1.7	-3.6	-3.3	-3.8	-4.2	-4.5	-4.9	-5.3	-5.6	-5.8	-16.7	-42.8
Outlays	-0.1	-1.3	-2.3	-2.8	-3.5	-4.1	-4.5	-4.8	-5.1	-5.4	-5.6	-14.1	-39.5
Increases or Decreases (-) in Revenues													
Title I. Investment in America													
Revenues	-82.3	-68.3	-69.8	6.4	58.8	43.1	30.2	18.0	8.5	4.6	3.5	-112.2	-47.4
Title II. Supply Chain Security													
Revenues	-1.1	-1.4	-1.1	-1.2	-1.1	-0.9	-1.0	-1.0	-1.0	-1.0	-1.1	-6.8	-11.9
Title III. Repeal of Special Interest Tax Provisions													
Revenues	0.3	3.3	4.6	5.3	20.5	24.4	23.2	24.6	26.8	29.0	27.2	58.5	189.3
Total Revenues	-83.1	-66.3	-66.4	10.6	78.2	66.5	52.5	41.6	34.3	32.6	29.6	-60.5	130.1
Net Increase or Decrease (-) in the Deficit From Changes in Direct Spending and Revenues													
Effect on the Deficit	83.0	65.0	64.1	-13.4	-81.7	-70.6	-56.9	-46.4	-39.5	-38.0	-35.2	46.4	-169.6

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation.

All amounts are estimated; components may not sum to totals because of rounding.

CBO estimates that implementing H.R. 3938 would increase spending subject to appropriation by less than $500,000 in any year over the 2023-2033 period.

Basis of Estimate

The Congressional Budget Act of 1974, as amended, stipulates that revenue estimates provided by the staff of the Joint Committee on Taxation (JCT) will be the official estimates for all tax legislation considered by the Congress. CBO therefore incorporates those estimates into its cost estimates of the effects of legislation. The estimates for the bill's tax provisions were provided by JCT.[1]

For this estimate, JCT assumes that the bill will be enacted in fiscal year 2023 and that, except as specified, the bill's provisions will be effective as if enacted on July 1, 2023.

Direct Spending

CBO and JCT estimate that H.R. 3938 would decrease total outlays by $39.5 billion over the 2023-2033 period. That decline would result from one provision in title II and four in title III. JCT estimates that all five provisions also would have revenue effects, which are discussed below.

Section 201, Termination of Hazardous Substance Superfund Financing Rate, would terminate the Superfund excise tax on crude oil and petroleum products. Under current law, those revenues are credited to the Hazardous Substance Superfund and made available for obligation, without further appropriation, in the year after they are collected to carry out provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.[2]

CBO estimates that terminating the Superfund excise tax on crude oil and petroleum products would reduce spending attributable to that permanent appropriation by $12.7 billion over the 2023-2033 period. That estimated reduction in spending is consistent with the spending projected in CBO's baseline, which is based on the amount of revenues that CBO projects will be credited to the Superfund from those taxes and spent under current law.

Section 301, Repeal of Clean Electricity Production Credit, would end the ability of certain tax-exempt and governmental entities to receive the clean electricity production credit as a payment from the Treasury. JCT estimates that enacting section 301 would reduce outlays by $0.3 billion over the 2023-2033 period.

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1. For JCT's preliminary estimates of the provisions that include detail beyond the summary presented below, see Joint Committee on Taxation, *Estimated Revenue Effects of H.R. 3938, The "Build It in America Act" Scheduled for Markup by the Committee on Ways and Means on June 13, 2023,* JCX-29-23 (June 9, 2023), www.jct.gov/publications/2023/jcx-29-23. Those estimates do not reflect modifications to the bill adopted during the Ways and Means Committee's markup.
2. See section 443(b) of division G of the Consolidated Appropriations Act, 2023 (Public Law 117-328). The permanent appropriation provided by that section was designated as an emergency requirement in keeping with section 4001(a)(1) and section 4001(b) of S. Con. Res 14 (117th Congress), the concurrent resolution on the budget for fiscal year 2022, and section 1(e) of H. Res. 1151 (117th Congress). In keeping with long-standing practice, estimated reductions in spending under H.R. 3938 are treated as reductions in emergency spending.

Section 302, Repeal of Clean Electricity Investment Credit, would end the ability of certain tax-exempt and governmental entities to receive the clean electricity investment credit as a payment from the Treasury. JCT estimates that enacting section 302 would reduce outlays by $1.4 billion over the 2023-2033 period.

Section 303, Modification of Clean Vehicle Credit, would repeal a requirement that the Secretary of the Treasury establish a program to make advance payments to sellers of qualifying vehicles for credits received as transfers from the vehicles' purchasers. JCT estimates that enacting section 303 would reduce outlays by $24.9 billion over the 2023-2033 period.

Section 304, Repeal of Credit for Previously Owned Clean Vehicles, would eliminate a requirement that the Secretary of the Treasury establish a program to make advance payments to sellers of qualifying vehicles for credits received as transfers from the vehicles' purchasers. JCT estimates that enacting section 304 would reduce outlays by $0.3 billion over the 2023-2033 period.

Revenues
In total, JCT estimates, H.R. 3938 would increase revenues by $130.1 billion over the 2023-2033 period.

Title I, Investment in America, would modify business deductions for various expenses. JCT estimates that enacting three provisions in title I would reduce tax revenues by $47.4 billion over the 2023-2033 period.

Section 101, Deduction for Research and Experimental Expenditures, would reinstate tax rules in effect before 2022 that allowed businesses to deduct research or experimental expenditures in the year in which the expenses are paid or incurred. Under current law, those expenditures typically are deducted over the course of 5 years, or 15 years if the research is conducted outside the United States. The provision would apply to expenditures made after December 31, 2021, and before January 1, 2026. JCT estimates that enacting section 101 would reduce revenues by $25.4 billion over the 2023-2033 period.

Section 102, Extension of Allowance for Depreciation, Amortization, or Depletion in Determining the Limitation on Business Interest, would increase the amount that businesses can deduct in interest expenses. Under current law, the limitation is based on adjusted taxable income, accounting for depreciation, amortization, or depletion. Before 2022, the limitation on the deduction was based on earnings before interest, taxes, depreciation, and amortization (EBITDA), which increased the amount that could be deducted. This provision would extend the application of EBITDA until January 1, 2026, and allow for claims to be made retroactively to 2022. JCT estimates that enacting section 102 would reduce revenues by $18.9 billion over the 2023-2033 period.

Section 103, Extension of 100 Percent Bonus Depreciation, would generally increase the amount of bonus depreciation businesses can deduct through December 31, 2025. Bonus depreciation allows businesses to immediately deduct a portion of the cost of certain investments, and over the 2017-2022 period, businesses could claim 100 percent bonus depreciation. Under current law, bonus depreciation will be reduced by 20 percentage points each year over the 2023-2026 period (thus, in 2023, the bonus depreciation allowance is 80 percent). Section 103 would extend the 100 percent bonus depreciation through December 31, 2025 (and through December 31, 2026, for some types of property with a longer production period). JCT estimates that enacting section 103 would reduce revenues by $3 billion over the 2023-2033 period.

Title II, Supply Chain Security, would affect taxation of oil and petroleum products and modify the application of the foreign tax credit. JCT estimates that enacting those provisions would reduce revenues by $11.9 billion over the 2023-2033.

Section 201, Termination of Hazardous Substance Superfund Financing Rate, would terminate the Superfund excise tax on crude oil and petroleum products, retroactive to January 1, 2023. Under current law, the excise tax on domestic crude oil and imported petroleum products is 16.4 cents per barrel. Section 201 would eliminate that tax and prevent the Superfund from borrowing from the Treasury. JCT estimates that enacting section 201 would reduce revenues by $10.5 billion over the 2023-2033 period. That change in revenues includes a reduction in excise tax collections that is offset in part by higher income and payroll taxes.[3] As discussed above, because amounts credited to the Superfund are available for obligation without future appropriation, CBO estimates that enacting section 201 also would reduce direct spending.

Section 202, Election to Determine Foreign Income Taxes Paid or Accrued to Certain Western Hemisphere Countries Without Regard to Certain Regulations, would allow taxpayers to disregard certain regulations used to determine whether taxes paid to certain Western Hemisphere countries are taxes on income, war profits, or excess profits and whether foreign tax credits are given for those taxes under U.S. law. The provision would allow taxpayers to disregard those regulations for tax years after December 31, 2021, and before January 1, 2027. The regulations also affect the way certain taxpayers determine income from remittances for purposes of the limitation on the foreign tax credit. The provision would allow taxpayers to disregard that regulation for tax years after December 31, 2019, and before January 1, 2027. JCT estimates that enacting section 202 would reduce revenues by $1.3 billion over the 2023-2033 period.

Title III, Repeal of Special Interest Tax Provisions, would repeal or modify tax incentives for production of and investment in clean electricity and for purchases of certain clean

3. For more information, see Congressional Budget Office, *CBO's Use of the Income and Payroll Tax Offset in Its Budget Projections and Cost Estimates* (October 2022), www.cbo.gov/publication/58421.

vehicles. JCT estimates that enacting the five sections in title III would increase revenues by a total of $189.3 billion over the 2023-2033 period.

Section 301, Repeal of Clean Electricity Production Credit, would repeal a credit that may be claimed by electricity producers for zero-emission generating facilities placed in service after December 31, 2024. The credit is now scheduled to phase out after 2032 or the point at which greenhouse gas emissions from the electric power sector reach 25 percent of 2022 amounts. JCT estimates that enacting section 301 would increase revenues by $24.9 billion over the 2023-2033 period. As discussed above, JCT estimates that section 301 also would affect direct spending.

Section 302, Repeal of Clean Electricity Investment Credit, would repeal the tax credit for investments in qualifying zero-emission generating facilities or for energy storage technology placed in service after December 31, 2024. The credit is scheduled to phase out after 2032 or the point at which greenhouse gas emissions from the electric power sector reach 25 percent of 2022 amounts. JCT estimates that enacting section 302 would increase revenues by $89.2 billion over the 2023-2033 period. As discussed above, JCT estimates that section 302 also would affect direct spending.

Section 303, Modification of Clean Vehicle Credit, would change the tax credit available to eligible purchasers of certain vehicles. Until December 31, 2032, current law provides a tax credit of up to $7,500 per qualifying electric vehicle—$3,750 for meeting a critical minerals requirement, and $3,750 for meeting a battery components requirement. Qualifying vehicles are subject to price limits, and taxpayers are subject to income thresholds. Section 303 would provide a credit of up to $7,500 for qualifying plug-in electric vehicles acquired after June 9, 2023; the amount of the credit would depend on battery capacity.

Section 303 also would implement a modified critical minerals requirement, requiring at least 80 percent of critical minerals in a vehicle's battery to be extracted or processed in the United States (or in a country that has a free trade agreement with the United States) or to be recycled in North America. All battery components would be required to be manufactured or assembled in North America; the requirement for a vehicle's final assembly in North America would be eliminated. The modified credit would phase out for manufacturers that sold 200,000 qualifying plug-in electric vehicles after 2009, and the December 31, 2032, termination of the credit would be repealed.

JCT estimates that enacting sections 303 and 305 (discussed below) would increase revenues by $74.8 billion over the 2023-2033 period. As discussed above, JCT estimates that section 303 also would affect direct spending.

Section 304, Repeal of Credit for Previously Owned Clean Vehicles, would repeal a tax credit of up to $4,000 for certain used plug-in electric and fuel cell vehicles purchased from a dealer by December 31, 2032. Section 304 would repeal the credit for any such vehicle acquired after June 9, 2023. JCT estimates that enacting section 304 would increase revenues by $0.4 billion over the 2023-2033 period. As discussed above, JCT estimates that section 304 also would affect direct spending.

Section 305, Repeal of Credit for Qualified Commercial Clean Vehicles, would repeal the credit for qualifying plug-in electric vehicles, mobile machinery, and fuel cell vehicles acquired by December 31, 2032. The credit can be claimed for vehicles that are depreciable property. The maximum credit per vehicle is $7,500 for vehicles weighing less than 14,000 pounds, or up to $40,000 for heavier vehicles. Section 305 would repeal the credit for any such vehicle acquired after June 9, 2023.

JCT estimates that enacting sections 303 (discussed above) and 305 would increase revenues by $74.8 billion over the 2023-2033 period.

Spending Subject to Appropriation

CBO estimates that implementing H.R. 3938 would not significantly affect the Internal Revenue Service's administrative costs, which are funded by appropriation.

Uncertainty

JCT's estimates of the budgetary effects of H.R. 3938 are subject to uncertainty because they are made on the basis of underlying projections and other factors that could change significantly. Specifically, the estimates for many of the bill's revenue provisions rely on CBO's economic projections for the next decade under current law. Additionally, the estimates rely on expectations of the way taxpayers could respond to changes in tax law, by making investments in businesses, altering their demand for oil and petroleum products, and purchasing clean energy vehicles.

Pay-As-You-Go Considerations

The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 2.

Increase in Long-Term Net Direct Spending and Deficits

CBO and JCT estimate that enacting H.R. 3938 would not increase net direct spending in any of the four consecutive 10-year periods beginning in 2034.

CBO and JCT estimate that enacting H.R. 3938 would not increase on-budget deficits in any of the four consecutive 10-year periods beginning in 2034.

Table 2.
CBO's Estimate of the Statutory Pay-As-You-Go Effects of H.R. 3938, the Build It in America Act, as Reported by the House Committee on Ways and Means on June 30, 2023

	By Fiscal Year, Billions of Dollars											
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023-2028	2023-2033
	Net Increase or Decrease (-) in the Deficit												
Total Change in Deficits	83.0	65.0	64.1	-13.4	-81.7	-70.6	-56.9	-46.4	-39.5	-38.0	-35.2	46.4	-169.6
Minus amounts designated as an Emergency Requirement[a]	0.0	-0.2	-0.8	-1.1	-1.3	-1.5	-1.6	-1.5	-1.6	-1.6	-1.7	-4.7	-12.7
Pay-As-You-Go Effect	83.0	65.2	64.8	-12.4	-80.5	-69.1	-55.3	-44.9	-37.9	-36.4	-33.6	51.1	-156.9
Memorandum:													
Changes in Outlays	-0.1	-1.1	-1.5	-1.8	-2.3	-2.6	-2.9	-3.2	-3.6	-3.8	-4.0	-9.4	-26.8
Changes in Revenues	-83.1	-66.3	-66.4	10.6	78.2	66.5	52.5	41.6	34.3	32.6	29.6	-60.5	130.1

a. Section 201 of Title II would increase direct spending from budget authority originally designated as an emergency requirement under the Infrastructure Investment and Jobs Act. In keeping with section 4(g) of the Statutory Pay-As-You-Go Act of 2010, such amounts are excluded from estimates of that law's direct spending and revenue effects.

Macroeconomic Effects

Because of the magnitude of its estimated budgetary effects, H.R. 3938 is considered major legislation as defined in House Rule XIII(8). That rule requires cost estimates, to the extent practicable, to account for the budgetary implications of certain bills' macroeconomic effects. In keeping with that requirement, CBO and JCT estimate that any budgetary effects arising from the bill's macroeconomic effects would be negligible.

In JCT's estimation, relative to the size of the economy, and in consideration of the degree of uncertainty associated with this estimate, the effects on gross domestic product would be insignificant within the context of a model of the aggregate economy. As a result, JCT estimates that the budgetary effects that would arise from any macroeconomic effects of the bill are so small as to be negligible over both the 10-year budget window and the 20-year period beginning in 2034.[4]

4. For more information, see Joint Committee on Taxation, Macroeconomic Analysis of H.R. 3938, the "Build It in America Act," as Ordered to Be Reported by the Committee on Ways and Means, on June 13, 2023, JCX-34-23, (July 11, 2023), www.jct.gov/publications/2023/jcx-34-23.

Mandates

The staff of the Joint Committee on Taxation has determined that the tax provisions of H.R. 3938 would impose private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would impose such mandates by repealing the clean electricity production credit, repealing the clean electricity investment credit, modifying the clean vehicle credit, and repealing the credit for qualified commercial clean vehicles. The cost of the mandates would exceed the private-sector threshold established in UMRA ($198 million in 2023, adjusted annually for inflation).

JCT has determined that the bill would not impose intergovernmental mandates.

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