JOSH GREEN M.D.
GOVERNOR

SYLVIA LUKE
LT. GOVERNOR

GARY S. SUGANUMA
DIRECTOR

KRISTEN M.R. SAKAMOTO
DEPUTY DIRECTOR

STATE OF HAWAIʻI
DEPARTMENT OF TAXATION
Ka ʻOihana ʻAuhau
P.O. BOX 259
HONOLULU, HAWAIʻI 96809
PHONE NO: (808) 587-1540
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TESTIMONY OF
GARY S. SUGANUMA, DIRECTOR OF TAXATION

TESTIMONY ON THE FOLLOWING MEASURE:
S.B. No. 2528, Relating to Taxation.

BEFORE THE:
Senate Committee on Housing

DATE: Tuesday, February 06, 2024
TIME: 1:15 p.m.
LOCATION: State Capitol, Room 225

Chair Chang, Vice-Chair Hashimoto, and Members of the Committee:

The Department of Taxation ("Department") offers the following comments regarding S.B. 2528 for your consideration.

S.B. 2528 temporarily disallows the income tax deduction for dividends paid by real estate investment trusts (REITs) by amending sections 235-2.3 and 235-71, Hawaii Revised Statutes (HRS). The bill also makes an exception for REITs where 100 percent of the trust's real property is used to provide affordable housing in the State. The measure applies to taxable years beginning after December 31, 2024, and repeals on December 31, 2027.

The Department notes that the term "affordable housing" is not defined in this measure. The Department strongly recommends that a definition be inserted, as the Department lacks the subject-matter expertise to determine whether real property might constitute "affordable housing," and there are often discrepancies between federal, state, and county affordable housing standards.

Thank you for the opportunity to provide comments on this measure.

SB-2528
Submitted on: 2/5/2024 6:01:11 AM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Corky Robertson	Testifying for Simon Property Group, Inc.	Oppose	Written Testimony Only

Comments:

We as a commercial property owner (landlord) have supported the Hawiian community by providing jobs, tourism attractions, property taxes and generate revenue subject to GET. We respectfully request that the State of Hawaii not impose restrictive regulations contained in SB2528 (dividends paid deductions)

January 30, 2024

Senator Stanley Chang, Chair
Senator Troy N. Hashimoto, Vice Chair
Committee on Housing

Re: Testimony **Opposing** SB 2528, Relating to Taxation

Dear Chair Chang, Vice Chair Hashimoto, and Committee Members:

On behalf of Extra Space Storage Inc. ("Extra Space"), thank you for this opportunity to provide our testimony on SB 2528. Extra Space submits this testimony in **opposition** to this bill.

Extra Space is a publicly traded real estate investment trust ("REIT") that is the largest owner and operator of self-storage facilities in the United States. Extra Space owns and/or operates 3,651 self-storage properties in 43 states, which comprise approximately 2.5 million units and approximately 279.0 million square feet of rental storage space. Extra Space owns or operates eighteen self-storage facilities in Hawaii.

REITs produce substantial economic benefits to the State of Hawaii in the form of jobs, general excise tax, and real property taxes. In 2023, Extra Space paid the state more than $1.9 million of general excise tax and almost $2.4 million of real estate taxes.

The bill seeks to eliminate the dividends paid deduction ("DPD") for all REITs operating in Hawaii. One of the many requirements a REIT must satisfy in order to maintain its REIT status is to distribute annually all of its taxable income to their shareholders. The shareholders then report and pay state and federal tax on those dividends. This allows for a single level of taxation at the shareholder level. In this respect, REITs are most comparable to other "pass-through" entities such as S corporations, LLCs, or partnerships, which are not separately subject to entity level income tax in Hawaii.

Enactment of this bill will result in negative consequences to the real estate industry in Hawaii. The bill will impose double taxation on REIT shareholders. This is inconsistent to the accepted federal and state tax treatment of REITs. No other state (other than New Hampshire) disallows the dividends paid deduction. This tax will put REITs at a disadvantage in relation to other "pass-through" entities that hold real estate.

This tax will essentially be passed on to Hawaii residents and businesses in the form of higher rental rates as REITs must now look for ways to offset this increased tax liability.

Extra Space Storage 2795 E. Cottonwood Parkway, Suite #300 Salt Lake City, 84121
(801) 562-5556
www.extraspace.com

This tax will also discourage future investment by REITs in Hawaii as it will now be more costly to operate in Hawaii as compared to other states.

For the foregoing reasons, Extra Space **<u>opposes</u>** SB 2528 and asks the committee to not move forward on this or any similar bill.

Thank you for your consideration of our testimony.

Sincerely,

Gwyn McNeal
Executive Vice President, Chief Legal Officer

Extra Space Storage 2795 E. Cottonwood Parkway, Suite #300 Salt Lake City, 84121
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SB 2528, RELATING TO TAXATION

FEBRUARY 6, 2024 · HOU HEARING

POSITION: Support.

RATIONALE: Imua Alliance **supports** SB 2528, relating to taxation, which disallows dividends paid deduction for real estate investment trusts, except for real estate investment trusts that provide affordable housing in the state.

Under state taxation law, REITs are currently afforded an exemption from paying corporate income taxes on dividends paid to shareholders. REIT shareholders, however, pay federal and state income taxes on their earnings from the REIT in which they have invested.

Unfortunately, since most shareholders of Hawai'i REITs don't live in the Aloha State, they pay income taxes in other locations (if such income is subject to taxation in the states in which they reside, which it often is not). Thus, income generated from Hawai'i properties is being taxed elsewhere, if at all, sending sorely needed revenue for public education, basic infrastructure, climate change mitigation and adaptation, human and social services, affordable housing, public health, and emergency preparedness outside of our shores during a time of economic uncertainty.

Over 30 REITs operate in our state, perhaps the most prominent of which is Alexander and Baldwin. REIT properties in the islands include Ala Moana Center, International Marketplace, and the Hilton and Hyatt Hotels. Notably, CoreCivic, formerly the corruption-plagued private prison firm Corrections Corporation of America, is also a REIT, making closure of the REITs loophole

Kris Coffield, Executive Director · (808) 679-7454 · kris@imuaalliance.org

not just a matter of economic justice, but also a hallmark of our state's commitment to criminal justice reform.

Collectively, Hawai'i REITs own over $19 billion worth of real estate and produce at least $1.3 billion in dividend income that is exempt from the corporate income tax, which amounts to $40-$60 million per year in lost tax revenue–a number that will only increase over time, as real estate and property values continue to soar.

Kris Coffield · Executive Director, Imua Alliance · (808) 679-7454 · kris@imuaalliance.org

SENATE BILL 2528, RELATING TO TAXATION

FEBRUARY 6, 2024 · HOU HEARING

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus **supports** SB 2528, relating to taxation, which disallows dividends paid deduction for real estate investment trusts, except for real estate investment trusts that provide affordable housing in the state.

Under state taxation law, REITs are currently afforded an exemption from paying corporate income taxes on dividends paid to shareholders. REIT shareholders, however, pay federal and state income taxes on their earnings from the REIT in which they have invested.

Unfortunately, since most shareholders of Hawai'i REITs don't live in the Aloha State, they pay income taxes in other locations (if such income is subject to taxation in the states in which they reside, which it often is not). Thus, income generated from Hawai'i properties is being taxed elsewhere, if at all, sending sorely needed revenue for public education, basic infrastructure, climate change mitigation and adaptation, human and social services, affordable housing, public health, and emergency preparedness outside of our shores during a time of economic uncertainty.

Over 30 REITs operate in our state, perhaps the most prominent of which is Alexander and Baldwin. REIT properties in the islands include Ala Moana Center, International Marketplace, and the Hilton and Hyatt Hotels. Notably, CoreCivic, formerly the corruption-plagued private prison firm Corrections Corporation of America, is also a REIT, making closure of the REITs loophole not just a matter of economic justice, but also a hallmark of our state's commitment to criminal justice reform.

Collectively, Hawai'i REITs own over $19 billion worth of real estate and produce at least $1.3 billion in dividend income that is exempt from the corporate income tax, which amounts to $40-$60 million per year in lost tax revenue–a number that will only increase over time, as real estate and property values continue to soar.

Kris Coffield · Chairperson, DPH Education Caucus · (808) 679-7454 · kriscoffield@gmail.com

PARK
HOTELS & RESORTS

Park Hotels & Resorts Inc.
Scott Winer, SVP Tax
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7th Floor
Tysons, VA 22102
+1 571 302 5757 Main

WRITTEN TESTIMONY OF

Scott D. Winer
Senior Vice President, Tax
Park Hotels & Resorts Inc.

IN OPPOSITION TO SB 2528

BEFORE THE COMMITTEE ON HOUSING

SENATOR STANLEY CHANG, CHAIR

SENATOR TROY N. HASHIMOTO, VICE CHAIR

HEARING ON SB 2528

February 6, 2024

On behalf of Park Hotels & Resorts Inc. ("Park"), thank you for this opportunity to provide our testimony on SB 2528. Park submits this testimony in **opposition** to SB 2528.

As described in more detail below, Park opposes SB 2528 for the following reasons:

- It would not add significant revenue to the State. The Hawaii Department of Taxation ("DoTax") has stated elimination of the DPD would raise only modest amounts of income taxes while resulting in less General Excise Tax ("GET"),
- It would threaten the GET revenue associated with the statutorily required lodging REIT structure, and
- It would threaten future capital investment by REITs in Hawai'i.

Digest

Park has been and continues to be a solid corporate citizen and partner to the state of Hawai'i – paying significant tax, supporting numerous jobs (directly and indirectly), and benefiting the community at-large since its inception.

Park is a publicly traded lodging real estate investment trust ("REIT") (NYSE:PK) with a diverse portfolio of hotels and resorts. Currently Park owns 43 premium-branded hotels and resorts, including (i) the **Hilton Hawaiian Village Waikiki Beach Resort** located along Oahu's prestigious Waikiki Beach, and (ii) the **Hilton Waikoloa Village** located on the Kohala Coast of the Big Island of Hawaii. Park strives to be the preeminent lodging REIT, focused on consistently delivering superior, risk adjusted returns for shareholders that invest in the hotel sector. Park, like most REITs, has a long-term investment focus and is committed to creating sustainable value at its properties.

As you know, Congress enacted the REIT legislation in 1960 to allow individual investors the ability to own and benefit from professionally managed, institutional quality, income-producing real estate. As with all REITs, Park must meet multiple stringent, complex and costly requirements in order to maintain its status as a REIT, including: organizational requirements, asset holding requirements, passive income generation requirements, and importantly REITs must distribute at least 90% of their taxable income annually. These stringent, complex and costly requirements do Not apply to non-REIT real estate owners and require REITs to continuously access the debt and equity capital markets to obtain funds for maintenance, capital improvements, and growth projects. By meeting these stringent, costly and complex requirements REITs are allowed to claim a dividend paid deduction ("DPD"); essentially passing through their taxable income to shareholders.

As stated above, one of the stringent requirements to be a REIT is the generation of passive income, which separates the federal tax rules for REITs and the tax rules applicable to non-REIT real estate owners. Federal tax law dictates that a REIT must earn most of its income from passive sources like "rents", and income from operating a hotel is not passive or "rents". Thus, federal law **requires** that a lodging REIT lease its hotels to a third party or one (or more) fully taxable corporate subsidiary. If leased to a taxable corporate subsidiary (which is the structure used by public lodging REITs), another requirement is the taxable corporate subsidiary must hire an independent operator, like Hilton, to manage the hotel. The rents paid by the taxable corporate subsidiary to the REIT hotel owner and the management fees paid to the independent operator are both subject to Hawaii GET.

The Hawaii GET on the rents paid by the taxable corporate subsidiary to the REIT hotel owner are true **double taxation of the same revenue source**, a direct result of mandatory REIT structure. Thus, hotels operating within the mandatory REIT structure are subject to triple GET taxation on the same revenue source. The over-whelming majority (approx..85%) of the additional GET is a direct result of federal law requirements governing hotel REIT operations and is not paid by a typical non-REIT hotel owner.

As described below, Park's ownership of the two Hawai'ian Resorts resulted in excess of **$10 million in additional GET revenue paid to the State of Hawaii in 2023,** none of which would be paid by a non-REIT owner of the two resorts.

Further, as REITs are passive real estate companies, they cannot actively trade in real estate properties without being subject to a 100% tax on any gain. Thus, unlike non-REIT owners, as a passive real estate company, REITs are long term investors in their real estate and do not "flip" properties for short term profit.

Park, as is publicly known, acquired the land adjacent to the Hilton Hawaiian Village Waikiki Beach Resort complex along Ala Moana Boulevard, and is in the process of seeking approval for the potential construction of an additional hotel tower at the site. The construction of such a new hotel tower, if approved and completed, would result in an investment by Park of in excess of $ ½ Billion dollars, which would create significant jobs and generate significant additional revenues for the State. In fact, on June 28, 2023, Park filed the Final Supplemental Environmental Impact Statement with the City and County of Honolulu, and on July 28, 2023, the City and County accepted the Final filing. The Environmental Impact Statement discusses economic impact of the potential new hotel tower to both the City of Honolulu and the state of Hawaii.

The Legislative Proposal

SB 2528 would disallow dividends paid deductions for real estate investment trusts for a three-year period, applicable to the taxable years beginning after December 31, 2024, except for real estate investment trusts that provide affordable housing in the State and thus require hotel REITs to pay corporate income tax to the State of Hawai'i.

Park's Viewpoint

We believe **the DPD should not be eliminated**. Not only is SB 2528 bad public policy, but it would also not add significant revenue to the State. DoTax has stated elimination of the DPD would raise only modest amounts of income taxes while resulting in less GET, both because of less investment by REITs and because of the tax planning that would reduce lodging REIT double GET payments. Further, elimination of the DPD would also be inconsistent with the existing rules of virtually all other states with an income-based tax system.

We believe that our investment, and the investments by other REITs, in Hawai'i is beneficial to the state and that eliminating the DPD would have the undesirable consequence of discouraging future investment by REITs in Hawai'i.

We believe the proposed legislation will not increase tax revenue for the state as the cost of doing business in Hawai'i will diminish investment returns and result in less investment. Further, elimination of the DPD could result in foundations or pension funds replacing REIT ownership of real property. Foundations and pension funds generally are passive owners that pay no federal or state income taxes and do not make the same capital investments as REITs. If hotels in Hawai'i are converted to non-REIT ownership, including ownership by taxable subsidiaries of REITs, the additional GET revenue generated solely as a result of the REIT structure will disappear.

And, as stated above, Park is currently in the regulatory approval process related to the possible construction of a hotel tower adjacent to, and to be an addition to, the Hilton Hawaiian Village Waikiki Beach Resort complex. If SB 2528 were to become law, it will force us to consider whether we will proceed with this and other future capital investment projects at either the Hilton Hawaiian Village Waikiki Beach Resort, or the Hilton Waikoloa Village, or generally in the State of Hawai'i.

We believe the GET, which is a tax on gross receipts rather than a tax on net income, is a more reliable and steadier source of revenues than Corporate income tax and SB2528's enactment would threaten this extremely valuable source of revenues to the State.

Park's Economic Impact

Park's REIT structure and hotel ownership benefits the State of Hawai'i and Kama'aina tremendously in a variety of economic and non-economic ways.

Park's economic footprint in the State of Hawai'i, before considering the economic impact of constructing a new hotel tower at the Hilton Hawaiian Village complex, includes:

Employment / Jobs:

- Currently, direct employee headcount at Park's two hotels is more than 2,200. The payroll and associated benefits for these direct employees was more than $219,000,000 in 2023.

Hawaii Tax Revenue generated / paid by Park:

- General Excise and Use Tax - Operations.
    - The tax revenues generated from our operations, including capital spending, in 2023 totaled **$40,184,872**.

- General Excise and Use Tax - Rent / Management Agreement.
    - The tax revenues generated from our intercompany rent in 2023 totaled **$10,130,406**. True double taxation as a result of the mandatory lodging REIT structure.
    - The tax revenues generated from our management fee payments in 2023 totaled **$1,773,067**.

- Property taxes.
    - Property taxes paid in 2023 on Park's two resorts totaled **$22,714,320**.

Park's community and charitable efforts in the State of Hawai'i during and after the Covid-19 pandemic continue and are too numerous to detail. However, our hotels support the homeless and housing shelters to a large degree, as well as a variety of other worthy local causes.

Summary

SB 2528 would, beginning with taxable years after December 31, 2024, disallow REITs from claiming a dividend paid deduction ("DPD"), except for REITS that provide affordable housing in the State, and thus require REITs to pay corporate income tax to the State of Hawai'i.

The preamble to the legislation states it would be more equitable to decouple from the federal DPD so that business entities doing business in Hawaii pay a fair tax burden commensurate with the substantial privileges and resources used in Hawaii, and that REITs will continue to benefit from Hawaii's low property tax rates.

As described in more detail below, Park **opposes** SB 2528 and does not believe it would be equitable to decouple from federal tax law for the following reasons:

- The Hawaii Department of Taxation ("DoTax") has been clear that adding a new Tax on REITs will Not raise the revenue being alleged. During the 2019 Legislature, DoTax officials testified that eliminating the DPD might bring in $2 million the first year, something less than $10 million in the out years and even that is a little bit fuzzy.
- It would threaten the General Excise Tax ("GET") revenue associated with the statutorily required lodging REIT structure, resulting in less GET being generated.
- REITs are taxed fairly in Hawaii, adhere to all applicable tax laws, generate hundreds of millions of dollars in state and county tax revenue, support thousands of jobs, and provide reliable dividend revenue for families' savings, retirement, college tuition, and other essential needs.
- Contrary to some misconceptions and public statements, hotels and resorts, including lodging REITs, operating in Hawaii are not subject to low property tax rates. The current Hawaii real property tax rates for hotels and resorts is $13.90 per thousand of value (1.39%) which is one of the highest when compared to other resort destination jurisdictions in which Park owns hotels and unlike residential rates is not the lowest rate in the United States.

We believe **the DPD should not be disallowed for any period of time or eliminated**. Not only is SB 2528 bad public policy, but it would also not add significant revenue to the State. DoTax has been clear that imposing a corporate income tax on REITs by repealing the DPD would Not produce the perceived additional tax revenues. And that is before accounting for all of the legal deductions and planning that would result in less GET, both because of less investment by REITs and the reduction in lodging REIT duplicate GET payments. Further, the disallowance of the DPD would be inconsistent with federal tax treatment, without a good reason, and the existing rules of virtually all other states with an income-based tax system.

If adopted, this controversial legislation would (i) put Hawai'i at a competitive disadvantage for REIT investment, (ii) penalize Hawai'ian citizens, including the Hawaii Employer-Union Health Benefits Trust Fund beneficiaries, that invest in REITs by reducing their investment returns, (iii) discourage REITs from investing in Hawai'i, (iv) require Park to reassess the level of future capital invested in Hawai'i and our Hawai'ian assets including the potential construction of an additional hotel tower as part of the Hilton Hawaiian Village Waikiki Beach Resort complex, and (v) require Park, as a publicly-traded company, to address our form of ownership and operation in Hawai'i, which could lead to implementing one or more appropriate tax planning techniques or strategies to maintain shareholder value.

This legislation would have a chilling effect on the positive economic and charitable impact Park provides through its REIT ownership and capital investment in Hawai'i.

We thank you again for this opportunity to provide testimony against SB 2528 and hope you consider our **strong opposition** to this proposed legislation.

Respectfully submitted,

Scott Winer
Senior Vice President, Tax

SUNSTONE
HOTEL INVESTORS

February 3, 2024

Hearing Date: February 6, 2024
Time: 1:15 PM
Place: State Capitol Conference Room 225

Committee on Housing
Senator Stanley Chang, Chair
Senator Troy N. Hashimoto, Vice Chair
State Capitol
415 South Beretania Street

Honorable Chair Chang & Committee Members,

Thank you for the opportunity to provide written testimony in opposition of SB 2528, relating to the taxation of Real Estate Investment Trusts in Hawaii. My name is Olivier Kolpin and I am and have been the Vice President of Tax at Sunstone Hotel Investors, Inc. ("Sunstone") since 2003. Sunstone is a publicly traded lodging real estate investment trust ("REIT") with 14 upper upscale, luxury and resort properties comprised of 6,675 rooms in 7 states (including Hawaii) and Washington DC.

Our presence in Hawaii began in 2014 with the purchase of the Marriott Wailea on the beautiful island of Maui. Soon after we made a significant capital investment of just over $130 million dollars to renovate and reposition the resort. Of that $130 million dollars in capital investment <u>76%, or just over $100 million dollars went directly to local contractors, consultants, vendors and small businesses</u>. Through 2023 we've invested an additional $30 million dollars, and as the hotel industry is capital intensive, we will continue to make millions of dollars more in capital improvements to the property. Most all of these invested dollars stay with Hawaiian businesses. Before the COVID 19 pandemic, through our manager we employed over 500 people in well-paying jobs to ensure our guests would have a wonderful time when visiting the Hawaiian Islands. To support and service these endeavors we typically maintain over $15 million in various accounts at local banks.

SB 2528 would subject hotel REIT's doing business in Hawaii to far more taxation than a regular hotel corporation doing business in the state. I bring your attention to Hawaii's General Excise Tax ("GET"). GET reaches most all transactions and has very few and limited exceptions. For example, our past and future capital investments mentioned above are all subject to GET. GET also reaches a transaction unique only to REITs that own lodging facilities. Per the federal Internal Revenue Code, REITs are required to generate a majority of their income through rents and other passive income. For hotel REITs this is accomplished by the REIT leasing the hotel property to a fully taxable subsidiary corporate entity, who in turn must hire an independent 3rd party to manage the hotel on its behalf. This arrangement is also subject to GET. In Sunstone's case, our investment in Maui has contributed more than $15M in GET taxes than our corporate non-REIT peers are not required to pay.

Not all our investments in Maui are capital in nature. As we all know the citizens and residents of Maui have had to endure significant difficulties. During the COVID pandemic and through our manager we created a program to distribute food in bulk to our hotel employees. Fresh vegetables, fruits, legumes and dry goods were sourced from local Maui farmers and distributed to our hotel employees to help ease their burden in managing their day-to-day. We continue to source as much as possible locally in support of Hawaiian businesses.

Key to Sunstone's business philosophy is the ability to listen. We listen to our investors, we listen to our employees and we listen to our guests and take what they say seriously. Over the years the Legislature has made several attempts to decouple from the federal treatment of dividend paid deductions, the reasons for which to influence social policy in regard to homelessness and basic housing needs. SB 2528 argues that decoupling is based on equity; to level the playing field between "regular" corporations and REIT's. We strongly and respectfully disagree with this notion. SB 2528 wishes to decouple from only one specific provision of the federal REIT rules, so we would still be required to distribute 90% of our earnings to our stockholders; something a regular corporation is *never* required to do. It is our opinion that the intended and unintended consequences of decoupling Hawaii's tax regime from the Internal Revenue Code would lead to less investment, less tax revenues and fewer jobs in Hawaii. For Sunstone in particular SB 2528 would make it more difficult to justify future investments in Hawaii.

In conclusion, we strongly reiterate our opposition to SB 2528.

Sincerely,

Olivier Kolpin

Olivier Kolpin
VP Tax
Sunstone Hotel Investors, Inc.

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February 6, 2024

The Honorable Stanley Chang, Chair
Senate Committee on Housing
State Capitol, Conference Room 225 & Videoconference

RE: Senate Bill 2528, Relating to Taxation

HEARING: Tuesday, February 6, 2024, at 1:15 p.m.

Aloha Chair Chang, Vice Chair Hashimoto, and Members of the Committee:

My name is Lyndsey Garcia, Director of Advocacy, testifying on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawaii and its over 11,000 members. HAR **opposes** Senate Bill 2528, which disallows dividends paid deduction for real estate investment trusts, except for real estate investment trusts that provide affordable housing in the State. Applies to taxable years beginning after 12/31/2024. Sunsets 12/31/2027.

In 1960, the United States Congress created REITs to allow all individuals, and not just the wealthy, the opportunity to invest in large-scale diversified portfolios of income producing real estate.

REITs are tied to all aspects of the economy, and have a major economic impact on our state that encompasses a full range of real estate, including:

- Affordable Housing: Moanalua Hillside Apartments and Waena Apartments
- Student Housing: Hale Mahana Student Housing
- Healthcare Facilities: Hilo Medical Center, Kapiolani Medical Center, and Pali Momi Medical Center
- Retail: Prince Kuhio Plaza, Pearlridge Center, and Ka Makana Ali'i

REITs bring in investment to help build thriving communities where residents can live, work, and play. REITs not only provide a boost to our economy through construction of these projects, but create real job opportunities. Under this measure, it proposes to remove the income tax deduction for dividends from a REIT, thereby creating a double taxation of income. HAR has concerns that this will become a disincentive to invest in Hawaii, which would negatively impact the economy.

Additionally, this would also impact those that invest in REITs, such as retirees who use this as part of their retirement income. 56% of Hawaii households own and benefit from REITs, so any additional taxes on REITs in Hawaii would hurt those households.

Mahalo for the opportunity to testify on this measure.

WRITTEN TESTIMONY OF

JEFFREY KAUFMAN
VP-TAX
HOST HOTELS & RESORTS, INC.

IN OPPOSITION TO SB 2528

BEFORE THE HAWAII SENATE
COMMITTEE ON HOUSING

THE HONORABLE STANLEY CHANG, CHAIR
THE HONORABLE TROY N. HASHIMOTO, VICE CHAIR

HEARING ON SB 2528
FEBRUARY 6, 2024
1:15 P.M.

Thank you for the opportunity to submit this testimony in opposition to SB 2528 on behalf of Host Hotels & Resorts, Inc. (Host). Host is the largest lodging real estate investment trust (REIT) and one of the largest owners of luxury and upper-upscale hotels. The Company is headquartered in Bethesda, Maryland and is traded on the Nasdaq Stock Market. Host owns 77 hotels throughout the U.S., Canada and Brazil, including four hotels in Hawaii. Host strongly opposes, and asks you to hold, SB 2528.

Host agrees with the discussion points included in the testimony of Nareit in opposition to SB 2528 that, if enacted, the State would lose revenue on a net basis and how it would cause REITs to invest more in other states since these other states do not have such anti-REIT provisions.

In addition, Host would like to emphasize that the federal tax law requirements of a hotel REIT like Host lead to the doubling or tripling of the liability for Hawaii general excise tax (GET) as compared with non-REIT hotel owners.

REITs are subject to federal income tax law requirements that do not apply to other forms of property owners. As relevant here, at least 75% of the annual gross income of a REIT must consist of "rents". Hotel room charges are not considered to be "rents" for this purpose. As a result, federal income tax law requires hotel REITs to:

- Lease their hotels to a third party or to a taxable subsidiary of the REIT, and
- If leased to a taxable subsidiary of the REIT, the subsidiary must hire an independent third-party operator to operate and manage the hotel.

Again, these requirements do not apply to non-REIT hotel owners.

Hawaii imposes GET not only on the room charges and other hotel operating income earned by the hotel from guests, but also on the rent received by the REIT from the taxable subsidiary and on the management fee paid to the operator by the taxable subsidiary. Again, this additional GET is not imposed on a non-REIT hotel owner. As a result, GET is imposed on at least three levels of income of a hotel owned in a REIT structure: the room charges and other operating income received from guests, the rent received by the REIT from the taxable subsidiary, and the management fee paid by the taxable subsidiary to the hotel operator.

For example, Host leases its four hotels in Hawaii, the Fairmont Kea Lani on Maui, the Hyatt Regency Maui Resort & Spa, the Andaz Maui, and the Hyatt Place Waikiki Beach to a taxable subsidiary, and the taxable subsidiary hires independent third-party operators (Fairmont and Hyatt) to operate and manage its four hotels. The **additional annual GET liability of approximately $5-$8 million** paid to Hawaii for each of 2021, 2022, and 2023 attributable to the rents received by the REIT from the taxable subsidiary and the management fees paid by the taxable subsidiary to Fairmont and Hyatt would not have been paid if the same entity were both the owner and the operator of the hotels. Because the GET is a gross receipts, rather than a net income, tax, it is a much more reliable source of revenue for the State. It also is a much greater source of revenue to the State than the corporate income tax. The enactment of SB 2528 immediately would risk elimination of this extremely valuable source of GET revenue to the State.

Because of these unique requirements applicable to hotel REITs, the State received more than an estimated $16 million of GET in 2023 alone from hotel REITs that own hotels in Hawaii that non-REIT hotel owners do not incur. Yet the proponents of SB 2528 claim that we operate tax-free in Hawaii.

Why own hotels in a REIT structure if it results in more aggregate tax than a non-REIT hotel owner-operator? The simple answer is that the ownership of hotels on the one hand and operating and managing the hotels on the other hand require different knowledge, experience, and expertise and separating the hotel ownership from the hotel operations and management creates more value both for the investors in the REIT and the investors in the hotel operator/manager. As an additional benefit, this separation of ownership and operations/management also creates millions of dollars of tax revenues to, and many jobs, in, this State. This creates a win-win situation, all of which could immediately be jeopardized by the enactment of SB 2528. However, if SB 2528 is enacted, lodging REITs like Host would need to evaluate whether to retain the current ownership structure to offset the corporate income taxes that the legislation would impose.

The estimate of $16 million of incremental GET generated by hotel REITs which could be eliminated if the hotel ownership were changed to a REIT's taxable subsidiary or another non-REIT owner rather than the REIT itself should be compared to the estimated amount that repealing a REIT's dividends paid deduction would raise taking into consideration the significant net operating losses that were generated in 2020 and 2021, due to the pandemic. It makes little sense to jeopardize jobs by scaring off needed investment in Hawaii, especially when the net result (even apart from the macroeconomic losses due to less investment in Hawaii) in terms of both corporate income taxes and GET is a LOSS to Hawaii.

As previously stated, Host Hotels & Resorts, Inc. currently owns four hotels in Hawaii, Hyatt Regency Maui on Kaanapali Beach, Andaz Maui at Wailea Resort, Fairmont Kea Lani, Maui and Hyatt Place Waikiki Beach. A key part of our disciplined approach to capital allocation is to make renewal and replacement capital expenditures that maintain the quality and competitiveness of our hotels. Enactment of SB 2528 would create a strong disincentive for us to employ this approach at our hotels in Hawaii and potentially lead us to deploy that capital at hotels in other states that do not have such anti-REIT provisions. It would also force us to revisit our plans to begin work at our hotels in Hawaii scheduled for 2024/2025, as well as to discourage future investments in our hotels, potentially affecting hundreds of local jobs.

Host Hotels & Resorts, Inc's commitment to the Hawaiian community runs deep. As the largest hotel real estate owner on Maui for over 20 years, Host has long shared a connection to the island, and helping to support the Lahaina and Maui communities through this difficult time is important to our company. We are proud to have aided recovery and rebuilding efforts, donating more than $250,000 to emergency response and relief organizations (American Red Cross-Maui, World Central Kitchen, Maui Food Bank and Hawaii Community Foundation Maui Strong Fund), as well as providing direct financial assistance and relief to our hotel operators' employees. We also provided food and shelter to these employees, their families and emergency response teams. The strength and resilience of the Maui community inspires us, and we are committed to supporting them as the recovery continues.

Accordingly, Host respectfully asks the Committee to hold SB 2528.

NAIOP

COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION

HAWAII CHAPTER

February 5, 2024

Senator Stanley Chang, Chair
Senator Troy Hashimoto, Vice Chair
Committee on Housing

RE: **SB2528- Relating to Taxation**
Hearing date: Tuesday, February 6, 2024 at 1:15 PM

Aloha Chair Chang, Vice Chair Hashimoto, and members of the committees,

Mahalo for allowing NAIOP Hawaii to submit testimony in **OPPOSITION** to SB 2528 – Relating to Taxation. NAIOP Hawaii is the Hawaii chapter of the nation's leading organization for office, industrial, retail, residential and mixed-use real estate. NAIOP Hawaii has over 200 members in the State including local developers, owners, investors, asset managers, lenders, and other professionals.

SB 2528 disallows dividends paid deduction for real estate investment trusts (REIT) expect for REITs that provide affordable housing in the State. The measure takes effect on 12/31/2024 and sunsets on 12/31/2027.

NAIOP Hawaii stands in opposition to this measure which would seek to remove the dividends paid deduction. Over the past few years, REIT investment has resulted in several billion dollars of construction activity, creating thousands of local jobs, both construction and permanent, and helping our community maintain a strong economy.

REITs are companies that provide a way for anyone, including Hawaii residents, to own professionally managed, income-producing real estate for the long term—just like the way mutual funds let small investors buy stock in a corporation. Instead of buying, owning, and maintaining a commercial asset themselves, many local residents own shares in REITs, either as individual investors or through mutual funds and employer or union pension plans, but may not even realize this benefit. REITs have continued to contribute to our community by investing in affordable housing, retail, healthcare, office buildings and other commercial projects that will serve our community and local families for decades to come.

NAIOP Hawaii is concerned with potential negative economic impacts SB 2528 would have on development of all product types in Hawaii. Hawaii is already among the most heavily taxed states in the entire country which stifles economic growth, and SB 2528 would make Hawaii one of only a few states to disallow the dividends paid deduction.

Disallowing the dividends pay deduction will create additional barriers to do business in our state and would negatively impact the level of interest in future investment in Hawaii and put jobs and revenues at risk. REITs provide sorely needed investment capital to Hawaii. If this measure is passed, it is very likely that potential REIT and non-REIT investors, fearing unexpected law changes post-investment, would choose to deploy their capital elsewhere, and Hawaii would be on the outside looking in.

Furthermore, the anticipated incremental increase in revenue from disallowing the dividends paid deduction is minimal in comparison to the potential loss in general excise tax (GET). The potential reduction of millions of dollars of new REIT investment may result in a significant reduction in the amount of construction projects throughout the State. This reduction in projects will lead to a significant loss of hundreds of the jobs and GET revenue for the State which would likely more than offset any increase in corporate tax revenue.

Simply put, the bill will not provide the tax benefit assumed, but would further increase the risk and cost of doing business in this state and discourage future investment. Accordingly, we respectfully urge you to defer SB 2528.

Mahalo for your consideration,

Reyn Tanaka, President
NAIOP Hawaii

126 Queen Street, Suite 305 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME TAX; Real Estate Investment Trusts; Disallow Dividends Paid Deduction; Exemption for Affordable Housing

BILL NUMBER: SB 2528

INTRODUCED BY: MORIWAKI, CHANG, FEVELLA, MCKELVEY, SHIMABUKURO, Kidani, San Buenaventura

EXECUTIVE SUMMARY: Disallows the dividends paid deduction for real estate investment trusts, except for real estate investment trusts that provide affordable housing in the State. Applies to taxable years beginning after 12/31/2024. Sunsets 12/31/2027.

SYNOPSIS: Amends HRS section 235-2.3(b) to provide that section 857(b)(2)(B) (with respect to the dividends paid deduction for real estate investment trusts) shall not be operative except where 100% of the REIT's real property is used to provide affordable housing in the State.

Amends HRS section 235-71(d) to provide that for tax years beginning after December 31, 2024, no deduction for dividends paid shall be allowed for REITs except where 100% of the REIT's real property is used to provide affordable housing in the State.

EFFECTIVE DATE: Upon approval, applicable to taxable years beginning after December 31, 2024; repealed on December 31, 2027; provided further that section 235-2.3(b) and 235-71(d), Hawaii Revised Statutes, shall be reenacted in the form in which they read prior to the effective date of this Act.

STAFF COMMENTS: Currently under federal and state income tax law, a real estate investment trust (REIT) is allowed a dividend paid deduction, unlike most other corporations, resulting in that dividend being taxed once, to the recipient, rather than to the paying corporation and the recipient. The proposed measure would make that section of the Internal Revenue Code inoperative for Hawaii income tax purposes for tax years beginning after 12/31/24, meaning that REITs would be subject to double taxation like other corporations.

All state income tax systems in the United States, including ours, have a set of rules that are used to determine which state has the primary right to tax income. For example, most tax systems say that rent from real property is sourced to the location of the property, so if a couple in Florida rents out a property they own on Maui they can expect to pay our GET and our net income tax on that rent. These sourcing rules, which do vary by state but are relatively consistent across state lines, are there to assure consistent and fair treatment between states.

Real estate investment trusts (REITs) are source shifters. For income tax purposes, they take in rent income, which is sourced to the location of the property being rented. They don't pay income tax on that income as long as they distribute the money to their shareholders as dividends. The dividend income of their shareholders, on the other hand, is generally sourced to the residence of the shareholders. So, the income that the property states expected to tax is instead taxed in the states in which the shareholders live. And, to the extent that REIT shares are held by tax-exempt entities such as labor unions and retirement funds, passive income such as dividends may not be taxed at all. Source shifting is an issue specific to state taxation.

Apparently, the evil sought to be addressed by the bill is that (1) REITs are very visible in Hawaii, but do not get taxed because of the deduction allowed for dividends paid, while (2) many REIT owners who receive the dividend income are either (a) outside of Hawaii and don't get taxed either because they are outside of Hawaii, or (b) are exempt organizations that normally are not taxed on their dividend income at all. Normally we like to have our income tax law conform to the Internal Revenue Code to make it easier for people and companies to comply with it, but our legislature has departed from conformity when there's a good reason to do so (such as if it is costing us too much money). The issue is whether such a good reason exists here.

REITs do pay general excise and property taxes on rents received and property owned – as do the rest of us who are fortunate enough to have rental income or property to our name.

In the past, an issue was raised around REITs that own hotels or other operating assets. Under federal rules, REITs cannot receive operating income, but can receive passive income from real estate (such as rent). To operate the hotels, REITs normally form a taxable REIT subsidiary (TRS), which is taxed as an ordinary corporation, to do that; the TRS then pays rent to the REIT. That rent is of course taxable under Hawaii's GET law, and the hotel REITs have suggested that if this bill passes the hotel REITs will unwind their ownership structure and eliminate the extra level of GET on those rents. In our mind this threat is not credible. The hotel REITs established their holdings before 2018 and presumably found that it was financially beneficial to do so despite the extra level of GET. Since then, the Tax Cuts and Jobs Act drastically reduced the federal corporate income tax rate, from 35% to 21%, and thereby lessened the burden that had been placed on the TRS's. If it was beneficial to adopt a REIT/TRS structure to run a hotel before the Tax Cuts and Jobs Act and the Act slashed the federal corporate rate, it is hard to imagine that unwinding the structure would be financially beneficial.

This bill is somewhat similar to SB 301 (2019), which was passed by the Legislature but was vetoed by the Governor amid concerns that enactment of the measure would chill investments in Hawaii and dry up the availability of already-scarce capital to Hawaii projects.

The bill's proponents have an answer to this concern, which is stated in the bill's preamble:

> The legislature further finds that real estate investment trusts in Hawaii own real estate assets of approximately $18,000,000,000, generating an annual income of $1,000,000,000, which, if taxed at the current corporate rate assessed to all other corporations, would generate Hawaii tax revenues of $65,000,000 per year. A 2016 analysis conducted by the department of business, economic development, and tourism concluded that the State had foregone about $36,000,000 in income tax revenues in 2014,

> and that the amount of real estate investment trust investments has risen substantially since 2014. Regardless of the amount of tax revenues foregone, the State should be collecting taxes as it does for other real estate corporations to ensure fairness to all such businesses using the State's resources to reap benefits for its shareholders.
>
> While some real estate investment trusts that do business in Hawaii reside in the State, a substantial majority do not, and thus their dividends flow to the state in which they reside rather than to the benefit of Hawaii. Further, while real estate investment trusts own more real estate in Hawaii per capita than in any other state, Hawaii ranks fortieth in the nation for the number of real estate investment trust shareholders as a percentage of the population. As a result, many real estate investment trusts and their shareholders pay a mere fraction of the Hawaii state income tax compared to what other corporations pay. During a time when Hawaii faces major budget shortfalls for this year and several years to come, it is imperative that all corporations pay the corporate income tax due to the State and its citizens for the infrastructure and other resources that the State provides them.
>
> The legislature therefore finds that it would be more equitable to decouple from the federal income tax system in regards to the dividends paid deductions for real estate investment trusts so that these corporations and other business entities doing business in Hawaii pay a fair tax burden, commensurate with the substantial privileges and resources in Hawaii that were used to generate their profits. Real estate investment trusts would continue to receive their generous federal tax exemptions and benefit from Hawaii's low property tax rates.

The bill provides an exception for REITs where 100% of its real property is used to provide affordable housing in the State. We note that many REITs have real property holdings in several States and suggest that the exemption be rewritten to apply if the REIT’s Hawaii property is used to provide affordable housing in the State. If this is not done, it may be argued that the provision violates the federal Commerce Clause because it effectively punishes REITs that have holdings in other U.S. States.

The Foundation is attempting to present both sides of the argument and is not taking a position for or against this bill’s passage.

Digested: 2/4/2024

SB-2528
Submitted on: 2/5/2024 10:06:00 AM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Nathaniel Kinney	Testifying for Hawaii Regional Council of Carpenters	Oppose	Written Testimony Only

Comments:

HRCC is opposed to this measure as it will push construction investment outside of Hawaii. We beleive that outside investment in Hawaii is needed, and that REITs have invested hundreds of millions of dollars into renovations and upgrades to their properties across the islands. A radical change in tax policy would hurt our members and yeild little revenue to the state in the process.

HAWAII APPLESEED
CENTER FOR LAW & ECONOMIC JUSTICE

Dear Chair Chang, Vice-Chair Hashimoto, and members of the Committee:

Thank you for the opportunity to testify in support of **SB 2528**, which disallows the dividend paid deduction for Real Estate Investment Trusts. Currently, the revenue earned by Real Estate Investment Trusts (or "REITs") on the property they own in Hawaiʻi is escaping the state tax system.

A REIT is a corporation that owns income-producing real estate, like hotels and shopping malls. It functions similarly to a mutual fund, in that people can purchase shares in a REIT to receive a portion of the income it generates.

REITs have been granted a special tax status that exempts them from paying corporate income tax on the dividends paid to their shareholders. However, REIT *shareholders* do pay tax on their income derived from the REIT. These shareholders pay both federal and state income tax, which helps to pay for important government services such as infrastructure, schools, and affordable housing.

As acknowledged in the language for this bill, REITs in Hawaiʻi collectively own $18 billion worth of real estate, generating $1 billion in annual revenue. Without the dividends paid deduction for REITs, the State of Hawaiʻi would capture an additional $65 million in tax revenue.

The legislature has previously considered bills that would eliminate the REIT dividends paid deduction—in 2018, one such bill received a massive amount of community and legislative support. However, REITs have argued that eliminating the deduction would be a double tax since their shareholders already pay income tax. The problem for Hawaiʻi is that most shareholders of REITs operating within the state do not live in Hawaiʻi, which means they pay their income taxes elsewhere. Instead of funding our state's critical needs, the tax revenue generated by Hawaiʻi's REITs is going to other states where many of their shareholders live.

SB 2528 would solve this problem by withholding tax generated by Hawaiʻi REITs, ensuring their income is properly taxed by the State. This solution eliminates the double-taxation concern expressed by REITs regarding eliminating the dividends paid deduction. REIT shareholders themselves would also avoid double-taxation, since they would be credited for taxes paid in Hawaiʻi when they file their income taxes in other states. Furthermore, REITs that dedicate 100% of their property to affordable housing—there is only one REIT in Hawaiʻi that belongs to this category—will not be affected by this bill.

These tax dollars could be used to address some of Hawaiʻi's most pressing issues, such as developing more affordable housing and increasing tax relief for working families.

Thank you for your consideration.

AMERICANS FOR DEMOCRATIC ACTION HAWAI'I

OFFICERS	DIRECTORS			MAILING ADDRESS
John Bickel, President	Melodie Aduja	Jan Lubin	Stephen O'Harrow	P.O. Box 23404
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Doug Pyle, Secretary	Robert Kinslow			

February 5, 2024

TO: Stanley Chang, Chair & Members of the Senate Committee on Housing

RE: SB2528 Relating to Taxation

Support for a Hearing on February 6

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support this bill as it would provide a fairer tax rate for real estate investment trusts. Currently a real estate investment trust that does business in Hawaii and pays dividends to shareholders outside the State, results in no Hawaii income tax collected either from the real estate investment trust or from its shareholders. Taxing them at the current corporate tax rate would generate Hawaii tax revenues of $65,000,000 per year. This bill taxes some of that revenue.

Thank you for your consideration.

Sincerely,

John Bickel, President

Douglas Emmett

February 5, 2024

Senator Stanley Chang, Chair
Senator Troy Hashimoto, Vice Chair
Senate Committee on Housing

RE: SB 2528 Relating to Taxation – In Opposition
Tuesday, February 6, 2024; 1:15 PM; Conference room 225

Aloha Chair Chang, Vice Chair Hashimoto and Members of the Committee:

On behalf of Douglas Emmett, Inc. ("Douglas Emmett"), we appreciate this opportunity to present testimony expressing concerns on SB 2528, which disallows dividends paid deduction ("DPD") for real estate investment trusts ("REITs"), except for REITS that provide affordable housing in the State.

Douglas Emmett has been investing in Oahu for over 22 years. We currently own over 2,500 workforce rental apartment units and recently invested over $100 million to build approximately 500 more rental apartments in downtown Honolulu by converting one of our office properties into workforce housing. The development employed hundreds of local construction workers and created desperately needed workforce housing.

We are concerned that this bill's targeted double taxation on REIT shareholders will negatively impact REIT investment into Hawaii. The bill incentivizes REITs to invest in states that recognize the intent of Congress for REITs to be a single tax entity. If SB 2528 is enacted, Hawaii will likely lose one of the best sources of capital to build workforce housing and improve our communities. The bill will also have a negative economic impact on the construction trades, building suppliers, architects, and engineers.

As a stakeholder in Hawaii, Douglas Emmett believes SB 2528 will eliminate an important source of capital that generates substantial local economic activity and creates jobs. We believe that discouraging investment is against the best interest of the residents of Hawaii so we respectfully ask that you hold SB 2528.

Respectfully,

Kevin Crummy
Chief Investment Officer

Michele Aronson
Senior Vice President

UNITE HERE!
Cade Watanabe, Financial Secretary-Treasurer Gemma G. Weinstein, President Eric W. Gill, Senior Vice-President

February 5, 2024

Committee on Housing
Senator Stanley Chang, Chair
Senator Troy Hashimoto, Vice Chair

Testimony in Support of SB2528

Chair Chang, Vice Chair Hashimoto, and Members of the Committees,

UNITE HERE Local 5 represents 10,000 working people in the hotel, food service and health care industries across Hawaii. We are in support of SB2528, which would tax REITs like other businesses. This measure has been introduced many times over the years, and each time it has failed. This is the year to pass it.

There is no justification for giving REITs a tax advantage over other hotels and commercial real estate investors. For the State to consider giving out tax breaks, we should ensure that those tax breaks are directly tied to some benefit that the State would not otherwise get – and even then, the costs and benefits should be weighed very carefully. What do REITs provide that other real estate owners do not?

SB 2528 corrects an existing loophole in our State income tax law that currently allows corporations operating profitably as REITs to take the net income they earn here out of state, tax free. The fact of the matter is that our State can no longer afford to provide this kind of a tax break to real estate speculators and investors. While we recognize the need for balancing out the interests of private enterprise and business, this bill is about first and foremost protecting the State's financial interests.

Our reality is such that the people of Hawaii are being pushed off our islands, pushed into overcrowded living situations, or pushed onto the streets while paying a disproportionately high percentage of their income in taxes. More and more of our local jobs go to mainland companies while locals struggle to earn a living wage. But Hawaii can be a place for us to continue to work, play and raise our families. Hawaii can support a robust tourism industry with good jobs. Hawaii can be economically sustainable, but we must be willing to hold large banks, developers and REITs accountable to our needs.

Thank you for your consideration.

WRITTEN TESTIMONY OF
GLADYS QUINTO MARRONE
EXECUTIVE DIRECTOR
NAREIT HAWAII

IN OPPOSITION TO S.B. 2528
BEFORE THE HAWAII SENATE COMMITTEE ON HOUSING

SENATOR STANLEY CHANG, CHAIR
SENATOR TROY HASHIMOTO, VICE-CHAIR

HEARING ON S.B. 2528
FEB. 6, 2024
1:15pm, Room 225
Hawaii State Capitol

Dear Chair Chang, Vice-Chair Hashimoto, and Members of the Senate Committee on Housing:

Thank you for the opportunity to submit this testimony on behalf of Nareit Hawaii and our REIT members active in Hawaii. Nareit Hawaii is the local office of Nareit, a worldwide representative voice for real estate investment trusts—REITs—and publicly traded real estate companies with an interest in U.S. real estate and capital markets.

For the reasons discussed in more detail below, we strongly oppose, and ask you to hold, S.B. 2528, legislation that would temporarily eliminate the REIT "dividends paid deduction" (DPD) except for REITs providing affordable housing.

- **56% of Hawaii households own and benefit from REITs, so any additional taxes on REITs in Hawaii would hurt those households. Most retirement accounts invest in a variety of companies, including REITs, either directly or through mutual funds. If the DPD were to be repealed, the overall return to these retirees may be impacted negatively.**

- **S.B. 2528 would likely produce less overall revenue than current law.**

- **Department of Taxation (DoTax) previously testified on similar legislation and they estimated, at best, an incremental increase in corporate income tax revenue:** Enactment would raise, at best, approximately $2.5 million the first year and $10 million annually thereafter, according to DoTax's public testimony.[1] This estimate was made before the pandemic when many businesses, including REITs, generated losses that can offset income tax liabilities.

- **DoTax said that actual revenue could be lower–even zero:** A DoTax representative cautioned in public testimony and a radio interview that actual revenue raised could be lower.[2]

- The DoTax estimate was prepared before the COVID pandemic. During 2020 and 2021, many REITs in Hawaii incurred substantial losses while their buildings were closed, tourism stopped or declined, and while REITs helped their tenants emerge from the shutdowns. These losses were substantive so that even if the legislature repealed the REIT DPD, Hawaii would likely not receive any additional tax revenues from the

[1] Note comments around 3:40:23 to 3:40:38 /4:01:24 of the Feb. 12, 2019 video of the House Consumer Protection & Commerce hearing on a 2019 bill that also would have eliminated the REIT DPD, HB 475, HD 1, available at this link. These estimates were calculated before the pandemic when REITs, like other Hawaii businesses, incurred significant losses that can be carried forward to offset corporate income tax liabilities.

[2] Note comments around 3:41:02 to 3:41:41 / 4:01:24 of the Feb. 12, 2019 video of the House Consumer Protection & Commerce hearing on HB 475 HD 1 available at this link and comments of Former Director of the Hawaii Department of Taxation, Linda Chu Takayama in this Feb. 4, 2019 interview with Hawaii Public Radio ("Raising Taxes on REITs"), beginning at 10:10.

corporate income tax for several years because the net operating losses from the pandemic years would offset the income generated in 2025 and beyond.

- **Loss of general excise tax (GET) would likely more than offset any increase in corporate tax revenue:** Federal law applicable to hotel REITs requires a lease structure that results in an additional level of GET **not applicable to non-hotel REITs.** As described below, jeopardizing this additional GET could more than offset any corporate tax revenue gains. Moreover, REITs would likely choose to make new investments in other states that maintain a DPD and this lack of investment would generate even lower GET revenue for Hawaii. As important, imposing virtually the only state level income tax on REITs would likely cause REITs to allocate future capital to the rest of the U.S., thereby depriving Hawaii residents of the GET and jobs arising from these investments.

- **What about the larger amounts asserted by proponents?** Prior years' DoTax testimony suggests proponents are relying on "incorrect" numbers in an earlier DBEDT study.[3]

- **S.B. 2825's enactment would risk job loss from REITs rethinking investment in any future construction projects.** It would not be prudent to risk job loss given the unlikelihood of any overall revenue gain. Much-needed future capital investment in Hawaii would also be jeopardized.

The remainder of this testimony provides additional detail and information.

REITs in Hawaii

REITs are companies that provide a way for anyone, including Hawaii residents, to own professionally managed, income-producing real estate for the long term—just like the way mutual funds let small investors buy stock in a corporation. Instead of buying, owning, and maintaining a commercial asset themselves, many local residents own shares in REITs, either as individual investors or through mutual funds and employer or union pension plans, but may not even realize that they have this benefit.

Nareit analysis of data from 2022 Federal Reserve Board Survey of Consumer Finances (SCF), the Employment Benefit Research Institute data on 401(k) equity allocations (EBRI), Census population and household counts, and Morningstar Direct data, indicates that about 56% of Hawaii households (50% nationally) own REIT stock directly and/or through mutual funds or certain retirement accounts. A November 2023 report, prepared by EY, found REITs in Hawaii supported an estimated 24,000 full-time equivalent (FTE) jobs. Consumer spending supported

[3] Note comments around 3:40:40 to 3:40:56 /4:01:24 of the Feb. 12, 2019 video of the House Consumer Protection & Commerce Committee hearing on HB 475 HD 1, available at this link.

by REIT operations, dividend distributions, interest payments, and construction activities was $1.5B in 2022[4].

REITs are long-term property holders that own, renovate, and manage affordable housing projects, commercial buildings, logistics facilities, medical facilities, shopping centers, cell phone towers, storage facilities, and hotels throughout Hawaii. Examples of REIT-owned properties in Hawaii include:

- The state-of-the-art Hale Pawa'a Medical Building in Honolulu (Healthcare Realty Trust);
- Nearly 500 affordable housing rentals at Bishop Place in Downtown Honolulu for tenants earning between 80% and 120% of area median income and workforce rentals at Moanalua Hillside apartments (Douglas Emmett Inc.);
- The recent refresh, including updating aging infrastructure, implementing energy-efficient projects, and repaving the parking lot, of Manoa Marketplace (Alexander & Baldwin), a shopping center that has served the kama`aina community for four decades;
- Ka Makana Ali'i in Kapolei, whose revenues assist DHHL in building homes for Native Hawaiians;
- Many hotels, including Embassy Suites by Hilton Waikiki Beach Walk (American Assets Trust); Hilton Hawaiian Village and Hilton Waikoloa Village (Park Hotels & Resorts, Inc.); Fairmont Kea Lani on Maui (Host Hotels & Resorts, Inc.); and Wailea Beach Marriott Resort & Spa (Sunstone Hotel Investors, Inc.), all of which, as described below, are required to use a lease structure that generates at least $19 million in general excise taxes to the state, in excess of the amount non-REIT hotels would pay.
- Over 2024 and 2025, two REITs will invest almost $40M on various capital expenditure projects, continuing to support jobs and the construction industry.

REITs also have increased student housing opportunities at the University of Hawaii. EdR developed the Hale Mahana apartments at the University of Hawaii at Manoa. American Campus Communities also redeveloped Frear Hall for the University of Hawaii a number of years ago.

S.B. 2528's Enactment Would Produce Less State Tax Revenue than Current Law

According to the DoTax, enactment would only raise an incremental amount of revenue; however, enactment could result in a potential $6 million loss when factoring in potential lost general excise tax (GET) revenue.

In an April 4, 2019 Hawaii Public Radio interview regarding similar legislation, former Department of Taxation Director Linda Chu Takayama stated the following when speaking merely of the corporate income tax impact of enactment of similar legislation (beginning at 10:10 in "Raising Taxes on REITs"): "[Our economist's analysis] is that it might bring in $2 million the

[4] https://www.reit.com/data-research/research/sponsored-research/economic-contribution-reits-united-states#:~:text=The%20total%20economic%20contribution%20of,%24263%20billion%20of%20labor%20income

first year, something less than $10 million in the out years, and even that's a little bit fuzzy because that doesn't represent all of the deductions that these companies could be taking; once you factor that in, the number goes way down." See also footnotes 1-3 above and accompanying text for more detail.

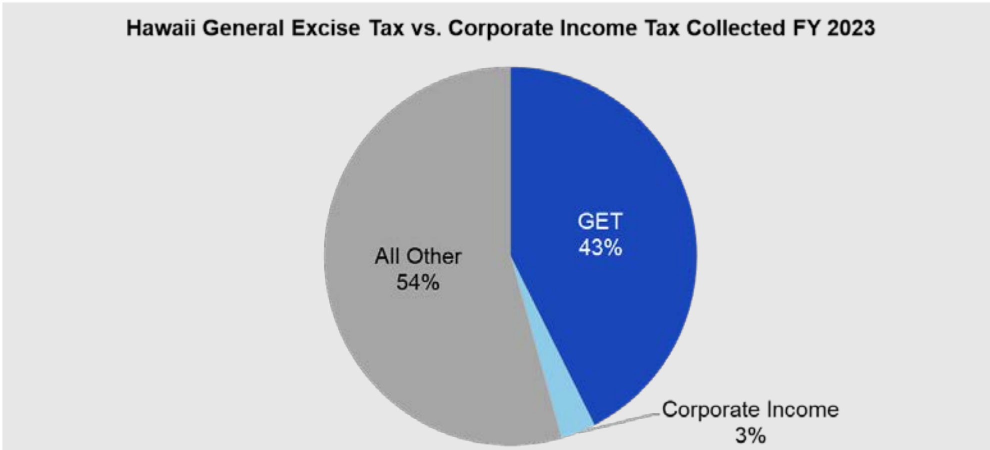
The DoTax estimate was prepared before the COVID pandemic. During 2020 and 2021, REITs in Hawaii incurred substantial losses while their buildings were closed, tourism stopped or declined, and while REITs helped their tenants emerge from the shutdowns. These losses were substantive so that even if the legislature repealed the REIT DPD, Hawaii would not receive any additional tax revenues from the corporate income tax for several years because the net operating losses from the pandemic years would offset the income generated in 2025 and beyond.

Because of unique requirements applicable to hotel REITs, essentially resulting in an additional level of GET, Hawaii received more than an estimated $19 million in annual GET in 2023 alone just from hotel REITs in Hawaii that non-REIT hotel owners wouldn't owe.

- Federal law requires that lodging REITs–**unlike non-REIT hotel owners**–to lease their hotels either to an unrelated company or to a fully taxable REIT subsidiary at market rent that must hire an unrelated hotel operator (like Marriott or Hilton).

- Park Hotels & Resorts, Inc.'s' testimony (on page 28 of the posted testimony), with respect to a similar bill in 2020, said this extra GET was over $9 million more than a non-REIT would pay in GET–and that is just one hotel REIT. Nareit understands that in 2023, this GET was $10 million. When aggregated with other REIT hotel owners in Hawaii, this additional GET is estimated to have **exceeded $19 million in 2023.**

- As a tax on gross receipts rather than a tax on net income, the GET is a very stable source of almost half of state revenues, compared with the corporate income tax (around 1-3%) (For example, see data from Council on State Revenues for FY2024 to FY 2030). **S.B. 2528's enactment would seriously endanger this extremely valuable source of GET revenues that Hawaii relies on.** Not only that, enactment also would put at risk the revenues and jobs created by non-hotel REITs that invest in Hawaii.



Source: https://files.hawaii.gov/tax/stats/stats/annual/23annrpt.pdf

- Given the risk of losing $19 million or more in GET annually, and the risk of lost jobs, it would not be prudent to enact S.B. 2528.

On a more fundamental basis even beyond the double GET taxes on lodging REITs, imposing an additional corporate income tax on REITs, contrary to the laws of virtually all other states with an income tax, would dissuade REITs from further investing in Hawaii, thereby leading to less economic activity, jobs, and general excise taxes that would more than offset any potential minor corporate income tax collections.

S.B. 2528 Would Risk Job Losses for Hawaii Residents

S.B. 2528 risks significant job loss, even at a time when the construction industry in the private sector is reportedly rebounding. Enactment of S.B. 2528 would potentially result in a reduction of millions of dollars of new REIT investment, a shift in property ownership to tax-exempt owners like pensions and endowments (who invest significantly in real estate), and loss of revenue and hundreds of the jobs generated by REITs to Hawaii. These existing and potential jobs belong to real people. Is it fair to risk significant job loss by enacting this proposal?

Enacting this proposal would signal Hawaii's discouragement of long-term capital investment in the state. REITs provide sorely needed investment capital to Hawaii. If this measure is passed, it is very likely that potential REIT and non-REIT investors, fearing unexpected law changes post-investment, would choose to deploy their capital elsewhere, risking hundreds of millions of dollars to help improve infrastructure and redevelop aging structures that help keep Hawaii's economy viable.

Hawaii's significant economic growth over the past several years is, and we hope into the future, will be, in large part a direct result of REIT investment. The popular addition to Ala Moana Center was made possible by REIT funding. That project alone was estimated to have brought in more than $146 million in state revenue in 2016. Since completion, the additional retail sales produced some estimated $33 million in GET revenue for the state, along with 3,000 new jobs.

Hawaii residents have benefitted from REIT investment. Pursuant to the testimony submitted with respect to a similar bill in 2014 by Outrigger Hotels & Resorts[5], this REIT investment made possible the renovation of Waikiki Beach Walk after no local sources of capital could be found for many years, dining at the Cheesecake Factory at Ka Makana Ali'I, family fun at Wet'n'Wild, shopping at Pearlridge Center, more eating choices and better Waikiki parking opportunities with the redevelopment of the International Market Place, which leases land from Queen Emma Land Co. and directly benefits Queens Health System.

Park Hotels & Resorts, as reported in the Star Advertiser, has plans to add a new 350-foot, 515 room tower on Ala Moana Boulevard (AMB Tower). According to the Draft Supplemental Environmental Impact Statement filed with the state, the Total Base Economic impact of the AMB Tower project, including all capital investment and on- and off-site economic activity during construction is estimated at $499.6M and $137.6M annually on a stabilized basis. The AMB Tower project is also estimated to net both the City and State over $62.4M during the build-out phase and $24.5M stabilized per year thereafter in public fiscal benefits. Hilton Hawaiian Village has also completed renovations to their Tapa Tower in 2023 and is undergoing renovations to their Rainbow Tower, a clear demonstration of Park's commitment to long-term ownership and hundreds of millions in capital investment over multiple years.

These jobs and tax revenue would not be here without REIT funding. REIT investment continued during the COVID-19 lockdown, as they did during the recession we experienced in the late 2000's. While regular investors shied away from redevelopment, REITs continued to build and improve their properties, providing a boost to the state's local economy through needed construction jobs and later retail jobs for the completed projects.

Based on a 2021 Nareit Hawaii survey conducted of REITs in Hawaii, eight REITs reported over $207M was expended in 2020 on maintenance and capital expenditures on REIT assets. This includes an $8 million renovation at The Embassy Suites by Hilton Waikiki Beach Walk, owned by American Assets Trust, including upgrades to all 369 units. In 2021, Hyatt Regency Maui Resort and Spa, a property of Host Hotels & Resorts, completed a multi-million dollar renovation to its guestrooms, suites, and lobby. Significant investments during the pandemic helped buoy the economy with jobs and capital.

Contrary to its goals of fairness, S.B. 2528's enactment would impose obligations and liabilities on REITs that are not imposed on non-REIT corporations or partnerships.

Contrary to the goals of "fairness," enactment of S.B. 2528 would be anything but fair by imposing additional obligations and liabilities on REITs not imposed on non-REIT corporations or partnerships.

[5] https://www.capitol.hawaii.gov/sessions/Session2014/Testimony/HB1726_HD2_TESTIMONY_WAM_03-20-14_LATE.PDF

Specifically, REITs are just corporations or business trusts that file a tax return with the IRS electing REIT status. If they comply with the many requirements imposed on REITs, among them, being widely-held (no family-owned, closely-held businesses); investing mostly in real estate; not "flipping" properties (or paying a 100% tax on gains if they do) and distributing all of their income, they can deduct their distributions from their taxable income. As a result, their income is taxed at the investor level–like that of partnerships. If they don't meet these requirements, they are taxed at the entity level like non-REIT corporations, and then again at the shareholder level when their income is distributed. Non-REIT corporations and partnerships aren't subject to the burdens and obligations imposed on REITs; most importantly, unlike REITs, they can retain their profits.

If enacted, S.B. 2528 wouldn't eliminate the requirements applicable to REITs–they would still need to be widely held, invest mostly in real estate; distribute all of their income, and not flip properties, but these requirements would not apply to non-REIT corporations or partnerships. Despite being subject to these requirements, REITs would be unable to claim the DPD in Hawaii. Thus, although non-REIT corporations and partnerships in Hawaii could retain 100% of their income, REITs in Hawaii would be required to distribute at least 90% of their income, and both would be unable to claim a DPD.

S.B. 2528 would not change the tax exemption of other entities that earn rental income from real property such as tax-exempt pension funds and endowments, who invest in rental real estate through partnerships, sometimes along with REITs, and pay no income tax on their earnings from those properties.

Finally, because REITs generally have no income tax liability at the entity level, they generally do not claim tax credits, and they cannot pass through credits or losses to investors. Non-REIT corporations and partnerships can and do claim tax credits, and partnerships can pass through credits and losses to investors.

S.B. 2528 Would Violate Core State Comity Principles

S.B. 2528 would be contrary to federal income tax rules and the existing laws of virtually every other state with an income-based corporate tax system. Virtually every state with an income-based tax system, including Hawaii, currently allows REITs a deduction for dividends paid. Hawaii currently taxes all REIT dividend income received by Hawaii resident shareholders, regardless of where the REIT's real estate is located or where the REIT does business.

Please Hold S.B. 2528

For the reasons described above, Nareit Hawaii requests the Committee to **HOLD** S.B. 2528.

TESTIMONY IN SUPPORT OF BILL SB 2528
Senate Committee on Housing
February 6, 2024 at 1:15 p.m.
Conference Room 225 & Video

Chair Chang, Vice Chair Hashimoto, Members,

Church of the Crossroads, Hawaii's first deliberately interracial congregation now over 100 years old, remains committed to supporting Hawaii's richly diverse population. We members of the Church's Peace, Justice, and Stewardship of Creation Mission ask you to **please pass SB 2528.** This bill, by taxing the dividends individuals gain from their Hawaii-based Real Estate Investment Trust (REIT) earnings wherever they live, will collect for Hawaii the revenue rightfully due the State from any corporation-like entity doing business here.

The nexus between *Real Estate* trust earnings and our affordable housing crisis is obvious, and Section 3 of SB 2528 provides that REIT tax collections will go 100% for affordable housing. Hawaii has the highest percentage of homeowners paying more than 30% of income on their mortgage, the recognized maximum for home payments. Our affordable household crisis drives residents away to the mainland. The State's population has declined for seven consecutive years. The people leaving include our young and others most needed for our future. It's a tragedy that more Native Hawaiians now live outside Hawaii than in Hawaii.

As noted in SB 2528's preamble, REITS in Hawaii own real estate assets of approximately $18,000,000,000, generating an annual income of $1,000,000,000, which, if taxed at the corporate rate assessed to all other corporations, would generate Hawaii tax revenues of $65,000,000 per year. A 2016 analysis conducted by DBEDT concluded that the State had foregone about $36,000,000 in income tax revenues in 2014, and that the amount of real estate investment trust investments has risen substantially since 2014. Regardless of the amount of tax revenues foregone, the State should be collecting REIT taxes as it does for other real estate corporations operating here to *ensure fairness to all*. In 2019, **93%** of the Legislature supported taxing REITS operating here, according to Faith Action.

Mahalo for your attention to the Church's testimony in support of SB 2528.

Ellen Godbey Carson, member
Peace, Justice, and Stewardship of Creation Mission
Church of the Crossroads

HAWAII LABORERS-EMPLOYERS COOPERATION AND EDUCATION TRUST
650 Iwilei Road, Suite 285 · Honolulu, HI 96817 · Phone: 808-845-3238 · Fax: 808-845-8300

THE SENATE
THE THIRTY-SECOND LEGISLATURE
REGULAR SESSION OF 2024

COMMITTEE ON HOUSING
Senator Stanley Chang, Chair
Senator Troy N. Hashimoto, Vice Chair

NOTICE OF HEARING

DATE: Tuesday, February 6, 2024
TIME: 1:15 p.m.
PLACE: Conference Room 225
State Capitol
415 South Beretania Street

TESTIMONY ON SB2528

TO THE HONORABLE CHAIR STANLEY CHANG, VICE CHAIR TROY N. HASHIMOTO AND MEMBERS OF THE SENATE COMMITTEE ON HOUSING:

Hawaii LECET is a labor-management partnership between the Hawaii Laborers' International Union of North America, Local 368, its 5000+ members and its 250+ unionized contractors. The Laborers' International Union of North America is the largest international construction trade union in the United States and Canada.

Mahalo for the opportunity to testify in strong opposition to SB2528, Relating to Taxation, which would temporarily suspend the dividends paid deduction for real estate investment trusts (REITS), with the exception of REITS that provide affordable housing in Hawaii.

REITS have a direct impact on the construction industry in Hawaii, as it is an investment vehicle that provides a source of capital for developers to finance projects. REITS are able to provide a steady source of revenue for developers, which allows for continued investment in additional projects, such as affordable housing. The affordable housing rentals at Bishop Place in downtown Honolulu and workforce rentals at Moanalua Hillside are just a few examples. During times of economic downturns, the construction industry was stabilized due to investments in property maintenance, infrastructure investment and capital expenditures by REIT assets.

Removing the dividends paid deduction for REITS is likely to result in a loss of general excise tax revenue (GET) that would more than likely offset any increase in corporate tax revenue. REITS would likely choose to invest in other states, resulting in a risk of job loss and jeopardize future capital investment in Hawaii. For these reasons, Hawaii LECET strongly opposes SB2528. Thank you for your consideration.

With Respect,

Hawaii Laborers-Employers Cooperation and Education Trust

LEAGUE OF WOMEN VOTERS® OF HAWAII

LATE

Committee on Housing
Chair Stanley Chang, Vice Chair Troy Hashimoto

Tuesday, 2/6/24 1:15 pm Room 225
SB2528 — RELATING TO TAXATION

TESTIMONY
Beppie Shapiro, Legislative Committee, League of Women Voters of Hawaii

Chair Chang, Vice Chair Hashimoto, and Committee Members:

The League of Women Voters of Hawaii supports SB2528, which would disallow dividends paid deduction for real estate investment trusts, except for those that provide affordable housing in the State.

I quote from an editorial in the Star Advertiser on 2/1/2022:

(Hotels and) "other categories of income-generating real estate figure in this, too. Shopping and retail centers, including Ala Moana Center, as well as office buildings and industrial parks, are owned by investors in the trust who pay income tax in their own home state on the dividends paid to them. The REITs get a tax deduction, as long as 90% of the profits are distributed as dividends.

This means that taxes are paid in the states of the investors, not where the property is located — a particularly acute issue for Hawaii. Property values are so high here, and many of these developments produce enormous income."

This passive loophole in our tax system robs Hawaii of an estimated **$65 million** every year! We can ill afford to let this situation continue when our state has so many urgent needs.

Please pass SB2528.

Thank you for the opportunity to submit testimony.

NORDIC PCL CONSTRUCTION, INC.
1099 Alakea Street, Suite 1600, Honolulu, HI 96813
Telephone: 808-541-9101 Fax: 808-541-9108 www.nordicpcl.com

February 5, 2024

LATE

Senator Stanley Chang, Chair
Senator Troy Hashimoto, Vice Chair
Senate Committee on Housing

Re: SB 2528 Relating to Taxation of Real Estate Investment Trusts

Aloha Chair Chang and Vice Chair Hashimoto and Members of the Committee:

My name is Glen Kaneshige. I am president of Nordic PCL Construction, Inc., and I am submitting my testimony in opposition to SB 2528. Nordic PCL Construction was founded in Honolulu in 1938 and celebrated its 85th anniversary in 2023. Over the 85 years of our tenure as a kama'aina general building contractor, our company has been fortunate to build several iconic projects in Hawaii, including the Hawaii Convention Center and the James Campbell Building in Kapolei. Our portfolio of projects includes healthcare projects for Queen's Medical Center, Hawaii Pacific Health, and Kaiser Permanente. We recently completed the Kulanihako'I High School for the Department of Education in Kihei, Maui and have restarted the construction of the 32-story Ka Haku timeshare for Hilton Grand Vacations on the former King's Village site in Waikiki.

REITs create jobs for us in the construction industry. Some of the larger projects in our portfolio have been for REITs. In 2014, we completed the 12-story Hyatt Residence Club at the Hyatt Kaanapali Beach on Maui for Host Hotels & Resorts, Inc. Not long thereafter in 2016, we completed the 800,000 square foot Ka Makana Ali'I Regional Mall on a 67-acre site ground leased by the Department of Hawaiian Home Lands to the developer, Kapolei Hawaii Property Company, LLC (KHPC), a joint venture owned in part by DeBartolo Development and OP Trust. In 2021, we completed the 4-story luxury Ilikai Villas at the Andaz in Wailea for Host Hotels. Both Host Hotels and KHPC are REITs and the aforementioned projects generated over $250M of revenues to Hawaii and over 500 construction jobs for the local workforce. Hawaii needs outside investors who commit capital for the long-term rather than speculation, which drives up property prices.

SB 2528 would disallow the dividends paid deduction for REITs and make Hawaii less attractive for future investment by REITs. These long-term investments result in stable operations and maintenance jobs for locals. But if the deduction is repealed, REITs may begin to dispose of Hawaii properties and stop future investments in the islands. We should be concerned that future developments in Hawaii will be stalled by the increase in costs that reduces investment returns because of the passage of SB 2528. Their future investments would go instead to projects in the 48 other states that do not impose a tax on the dividends distributed to shareholders.

If this bill passes, REITs will redirect their investments away from Hawaii to other states that will afford a higher return for their shareholders and developments like the Hyatt Residence Club, Andaz, and Ka Makana Ali'I may never be built consequently.

With consideration to the forgoing, we respectfully urge you to defer SB 2528.

Mahalo for the opportunity to testify on this measure.

Glen Kaneshige
President

ALEXANDER & BALDWIN
PARTNERS FOR HAWAI'I

February 5, 2024

Senator Stanley Chang, Chair
Senator Troy Hashimoto, Vice Chair
Members of the Senate Committee on Housing

Hawaii State Capitol, Conference Room 225
415 South Beretania Street

RE: SB2528 – RELATING TO TAXATION
Hearing date: February 6, 2024 at 1:15PM

Chair Chang, Vice Chair Hashimoto, and members of the Senate Committee on Housing:

Thank you for the opportunity to testify in opposition to SB2528 - RELATING TO TAXATION. Founded in 1870, Alexander & Baldwin has evolved from an agricultural partnership on Maui to a Hawaii-based commercial real estate-focused company. We own, operate and manage 39 properties at the heart of Hawaii's business, retail and industrial communities. A&B's neighborhood shopping centers include Pearl Highlands Center, Manoa Marketplace, Waianae Mall, Puunene Shopping Center, Kaneohe Bay Shopping Center and other properties throughout Windward Oahu and across the state. In 2017, A&B made the strategic decision to focus all its real estate in Hawaii. To better support our Hawaii-focused strategy and increase our ability to invest in Hawaii, in an increasingly competitive environment, A&B converted to a real estate investment trust (REIT). A REIT structure enables A&B to attract investors to its stock, giving us capital to invest in acquiring and maintaining properties in Hawaii, and puts us in a better position to compete with large, out-of-state investors—many of whom have greater access to capital than we do. The REIT structure helps keep local properties in locally-operated hands. Furthermore, REITs are structured to

822 Bishop Street Honolulu, Hawai'i 96813 p (808) 525-6611 f (808) 525-6652 alexanderbaldwin.com

be long-term holders of real estate, thus complimentary to A&B's goal of being Partners for Hawaii, with a long-term presence in our communities.

Real estate investment trusts were established by Congress in 1960 to expand access to real estate investments for all investors. REITs generally own, operate, or finance income-producing commercial real estate such as shopping malls, hotels, self-storage facilities, theme parks, and apartment, office, and industrial buildings. Unlike other corporations, REITs must meet several restrictive regulatory requirements which include a requirement under Federal Law to distribute at least 90% of its taxable income to its shareholders as dividends. So REITs don't keep their profits for the most part, rather pass them on to their shareholders. At present, all states except for one (New Hampshire) allow REITs to pass through the dividends to its shareholders without the imposition of a corporate tax, with the tax on these dividends paid by the individual shareholders in their home state of residence.

<u>Greater Negative Impact on Hawaii-Focused REITs</u>

Repeal of the dividends paid deduction (DPD) as proposed by this bill will result in the double taxation of REIT properties in Hawaii. REITs don't keep the profits, yet would be taxed on them, thus reducing the amount of the distribution to their shareholders. In addition, there will be a much more disproportionate (negative) impact on Hawaii-focused REITS versus those with holdings in other states that honor the DPD, putting Hawaii REITs at a competitive disadvantage even amongst REITs for investment dollars, as well as negatively impacting Hawaii's economy as a whole. These two factors are explained below.

It is envisioned that the repeal of the DPD in Hawaii will have a greater overall impact on locally focused REITs that have a large percentage of their commercial holdings in Hawaii such as A&B, as opposed to out of state entities that only have a few holdings in Hawaii and larger holdings in other states. If Hawaii becomes only the second state (along with New Hampshire) to double tax mandatory REIT dividend distributions to shareholders, investors are likely to migrate to entities with properties outside of Hawaii (and New Hampshire). This will put Hawaii focused REITs such as A&B at a competitive disadvantage in attracting additional investors, needed to support continued investment in the upkeep and improvement of Hawaii properties, as well as the acquisition of new properties in Hawaii.

Overall Negative Impact on Hawaii's Economy

Today, every state except for New Hampshire that imposes a corporate net income tax allows the dividends paid deduction for REITs. Should the DPD be repealed in Hawaii, REITs may be compelled to relocate their operations elsewhere or lessen their business activity in Hawaii. When combined with the direct reduction in general excise and income taxes from diminished REIT related construction, fewer jobs, lower earnings, and the reduction in business and individual incomes because of indirect and induced impacts of lower REIT related construction, the State of Hawaii may realize a significant negative impact to its overall economy.

Very few individual investors and a fairly small number of corporate players in Hawaii have capital market access equivalent to what is enabled by REITs. REITs are not limited to raising capital from one geographical area or from one type of investor, but generally seek investments from around the world. A REIT's ability to access and raise capital in the public markets makes it a unique investment vehicle for individuals—providing access to a diversified portfolio of real estate without the large capital investment required to acquire such a portfolio. Furthermore, stock in a REIT is much more liquid, so the investor has the flexibility to cash out when they would like to as opposed to investment through other forms of real estate ownership. Having healthy Hawaii REITs is what enables the Hawaii economy to have access to these worldwide capital sources, which benefits the condition of Hawaii commercial, residential, and industrial properties and the jobs and services they provide to Hawaii's residents.

In addition, if the DPD is repealed in Hawaii, REITs operating in Hawaii will likely pursue options to minimize their tax liability via tax deductions, tax credits, and other tax adjustments. Thus, any anticipated increase in State corporate tax revenue as a result of the DPD repeal may not meet previously reported projections.

Though A&B's conversion to a REIT is relatively recent, the company has continued its commitment of investing in communities across the state through charitable grants to local nonprofit partners, employee volunteer service, and decades-old community programs. Our employees live across Hawaii and continue to give back to their communities, as they have for over a century and a half.

We respectfully request that this bill be held in Committee and thank you for the opportunity to testify.

Meredith Ching, Executive Vice President of External Affairs

Dana Harvey, Director of External Affairs

SB-2528
Submitted on: 2/5/2024 10:45:03 AM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

I support the concept of taxing Real Estate Investment Trusts the same as other corporations. REITs make billions of dollars a year off of Hawaiʻi's natural beauty and resources, and pay zero dollars in corporate income tax to the state. The vast majority of REIT shareholders do not live or pay taxes in Hawaiʻi either. This is an incredibly extractive and exploitative dynamic, and the state should close this gaping loophole. Including exemptions for REITs that dedicate 100% of their holdings to affordable housing sounds like a good exemption to me to ensure this does not discourage affordable housing development and preservation of stock. Mahalo.

SB-2528
Submitted on: 2/5/2024 9:43:51 AM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Ellen Godbey Carson	Individual	Support	Written Testimony Only

Comments:

Please support a **tax on REITs** (Real Estate Investment Trusts) and/or their shareholders, to include earmarking the revenues for affordable housing, or appropriating an equivalent amount of new funds for affordable housing.

REITs own many of our largest commercial developments in Hawaii. REITs are 99% owned by nonresidents and foreign investors. While the rest of us pay taxes on our income generated in Hawaii, the REITs and their nonresident shareholders do not pay taxes in Hawaii for profits generated from these Hawaii properties. Hawaii loses major tax revenues as a result.

This is an important change to help bring greater revenues and equity to our islands.

Thank you for consideration of my testimony.

Ellen Godbey Carson, Honolulu, Hawaii

SB-2528
Submitted on: 2/4/2024 7:46:43 PM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Tamara Paltin	Individual	Support	Written Testimony Only

Comments:

Mahalo, appreciate the creativity to raise funds and/or incentivize affordable housing developments in this manner with SB2528

Tamara Paltin

LATE

SB-2528
Submitted on: 2/5/2024 3:11:48 PM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Joan Jensen	Individual	Support	Written Testimony Only

Comments:

Aloha to the Senate Housing Committee,

I would like to express my approval of SB2528. I think as REITs or real estate investment become more prevalent in scale in general and in Hawaiʻi, it is wise for Hawaiʻi lawmakers to ensure taxes are collected as intended from those living in and out of Hawaiʻi. Hawaiʻi is a vacation destination and as more and more housing goes into out-of-state hands, the state is losing out on potential tax revenues to people who benefit from their investments here without contributing positively to our community. In a time where we have an affordable housing problem for residents and kanaka maoli and for me as a Hawaiian who cannot afford to purchase land or a house in my own one hānau or hometown, it is sickening that others can profit so much of real estate here without having to pay taxes like other corporations. I see this as part of equitable taxing as well as a way to deter out-of-state ownership of our precious and limited land. Please continue to consider innovative ways to get more land in Hawaiian and generational hands.

Mahalo nui,

Joan Umiokalani Jensen

LATE

SB-2528
Submitted on: 2/5/2024 3:24:19 PM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Greg and Pat Farstrup	Individual	Support	Written Testimony Only

Comments:

Aloha,

Please support this bill.

Kū i ka pono!

LATE

SB-2528
Submitted on: 2/5/2024 5:07:33 PM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Rev. Samuel L Domingo	Individual	Support	Written Testimony Only

Comments:

Aloha Sen Chang and Committee Members,

Real Estate Investment Trusts should be taxed the same as other corporations. REITs make a billion dollars a year off of Hawaiʻi's natural beauty and resources, and pay zero dollars in corporate income tax to the state on the dividends paid to their shareholders. The vast majority of REIT shareholders do not live in or pay taxes in Hawaiʻi either. This is an incredibly extractive and exploitative dynamic that robs Hawaiʻi of an estimated $65 million annually. The state should close this loophole.

I trust that enough time has been spent on studying this issue and that this bill reflects the conclusion that many of us have had over the last 5 years concerning REITs as each state has to close the loophole that allows no tax liability.

LATE

SB-2528
Submitted on: 2/5/2024 6:09:50 PM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
brandi corpuz	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support SB2528 because our state is being robbed of $65 million dollars every year. This robs us of much needed money to pay for things like infrastructure, education, local homeownership and a number of other things that this exteme loss of revenue could provide.

Please stop the maddness and make corporations pay their fair share of taxes.

Sincerely, Brandi Corpuz

LATE

SB-2528
Submitted on: 2/5/2024 7:44:56 PM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Shannon Rudolph	Individual	Support	Written Testimony Only

Comments:

Strongly Support!

LATE

SB-2528
Submitted on: 2/6/2024 7:10:29 AM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Chang, Vice Chair Hashimoto, & Committee Members:

I am writing in strong support of this bill.

Real Estate Investment Trusts should be taxed the same as other corporations.

REITs make a billion dollars a year off of Hawaiʻi's natural beauty and resources, and pay zero dollars in corporate income tax to the state on the dividends paid to their shareholders.

The vast majority of REIT shareholders do not live in or pay taxes in Hawaiʻi.

Closing this loophole would yield an estimated $65 million annually.

Thank you for the opportunity to provide testimony on this measure.

LATE

SB-2528
Submitted on: 2/6/2024 7:10:29 AM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Nikos Leverenz	Individual	Support	Written Testimony Only

Comments:

Aloha Chair Chang, Vice Chair Hashimoto, & Committee Members:

I am writing in strong support of this bill.

Real Estate Investment Trusts should be taxed the same as other corporations.

REITs make a billion dollars a year off of Hawai‘i's natural beauty and resources, and pay zero dollars in corporate income tax to the state on the dividends paid to their shareholders.

The vast majority of REIT shareholders do not live in or pay taxes in Hawai‘i.

Closing this loophole would yield an estimated $65 million annually.

Thank you for the opportunity to provide testimony on this measure.

LATE

SB-2528
Submitted on: 2/5/2024 11:06:18 PM
Testimony for HOU on 2/6/2024 1:15:00 PM

Submitted By	Organization	Testifier Position	Testify
Tony Radmilovich	Individual	Support	Written Testimony Only

Comments:

Please do vote for passage of this bill. Its time has come!