
A BILL FOR AN ACT

RELATING TO LEASEHOLDS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that elements of inequity
2 exist in the relationships between lessors of commercial and
3 industrial real property and lessees who have acquired long-term
4 leasehold interests for the purpose of developing, operating,
5 and subleasing the property. These inequities have become a
6 detriment to Hawaii's business and economic environment and harm
7 Hawaii's working and retired taxpayers.

8 The purpose of this Act is to:

9 (1) Create various protections for lessees who have long-
10 term leasehold interests in commercial and industrial
11 property; and

12 (2) Exclude proceeds from the sale of commercial or
13 industrial property, where the lessor sells the
14 property to the lessee at the termination or
15 expiration of the leasehold agreement, from gross
16 income, adjusted gross income, and taxable income.



1 SECTION 2. The Hawaii Revised Statutes is amended by
2 adding a new section to be appropriately designated and to read
3 as follows:

4 "§ - Commercial and industrial property lease
5 agreements. Notwithstanding any existing statute to the
6 contrary, a lessee who enters into an agreement with a lessor
7 for a leasehold interest in commercial or industrial property in
8 the aggregate of more than fifty thousand square feet, shall be
9 entitled to the following rights, protections, and
10 considerations:

11 (1) Where a lease requires that the lessee obtain the
12 approval of the lessor prior to transferring or
13 encumbering an interest in the property, the lessor
14 shall be prohibited from unreasonably withholding
15 approval;

16 (2) Where a lease requires that the lessee obtain the
17 approval of the lessor prior to making any repair or
18 improvement on the property, the lessor shall be
19 prohibited from unreasonably withholding approval;

20 (3) Where a lease requires that the lessee make
21 substantial improvements, subsequent to the inception
22 of the lease, to buildings or infrastructure on the



1 property, and where the term of the lease is less than
2 thirty years, the lessee shall only be required to
3 reasonably maintain the buildings and infrastructure
4 after the improvements are made in a manner that
5 satisfies any relevant federal, state, or county laws.
6 The lessee shall not be required to develop or
7 construct any new building or infrastructure on the
8 property;

9 (4) Where a lease requires that any improvements made by a
10 lessee to the property revert back to the lessor at
11 the expiration or termination of the lease, the lessor
12 shall accept the improvements in their existing
13 condition; provided that the existing condition is the
14 result of the reasonable use of the improvements
15 during the term of the lease; and

16 (5) Where a lease requires that a lessee pay a periodic
17 increase in lease rent, the amount of the increase
18 shall be derived from the financial feasibility of the
19 increase based on the current use of the property."

20 SECTION 3. Section 235-7, Hawaii Revised Statutes, is
21 amended by amending subsection (a) to read as follows:



1 "(a) There shall be excluded from gross income, adjusted
2 gross income, and taxable income:

3 (1) Income not subject to taxation by the State under the
4 Constitution and laws of the United States;

5 (2) Rights, benefits, and other income exempted from
6 taxation by section 88-91, having to do with the state
7 retirement system, and the rights, benefits, and other
8 income, comparable to the rights, benefits, and other
9 income exempted by section 88-91, under any other
10 public retirement system;

11 (3) Any compensation received in the form of a pension for
12 past services;

13 (4) Compensation paid to a patient affected with Hansen's
14 disease employed by the State or the United States in
15 any hospital, settlement, or place for the treatment
16 of Hansen's disease;

17 (5) Except as otherwise expressly provided, payments made
18 by the United States or this State, under an act of
19 Congress or a law of this State, which by express
20 provision or administrative regulation or
21 interpretation are exempt from both the normal and



1 surtaxes of the United States, even though not so
2 exempted by the Internal Revenue Code itself;

3 (6) Any income expressly exempted or excluded from the
4 measure of the tax imposed by this chapter by any
5 other law of the State, it being the intent of this
6 chapter not to repeal or supersede any such express
7 exemption or exclusion;

8 (7) Income received by each member of the reserve
9 components of the Army, Navy, Air Force, Marine Corps,
10 or Coast Guard of the United States of America, and
11 the Hawaii national guard as compensation for
12 performance of duty, equivalent to pay received for
13 forty-eight drills (equivalent of twelve weekends) and
14 fifteen days of annual duty, at an:

15 (A) E-1 pay grade after eight years of service;
16 provided that this subparagraph shall apply to
17 taxable years beginning after December 31, 2004;

18 (B) E-2 pay grade after eight years of service;
19 provided that this subparagraph shall apply to
20 taxable years beginning after December 31, 2005;



- 1 (C) E-3 pay grade after eight years of service;
- 2 provided that this subparagraph shall apply to
- 3 taxable years beginning after December 31, 2006;
- 4 (D) E-4 pay grade after eight years of service;
- 5 provided that this subparagraph shall apply to
- 6 taxable years beginning after December 31, 2007;
- 7 and
- 8 (E) E-5 pay grade after eight years of service;
- 9 provided that this subparagraph shall apply to
- 10 taxable years beginning after December 31, 2008;
- 11 (8) Income derived from the operation of ships or aircraft
- 12 if the income is exempt under the Internal Revenue
- 13 Code pursuant to the provisions of an income tax
- 14 treaty or agreement entered into by and between the
- 15 United States and a foreign country, provided that the
- 16 tax laws of the local governments of that country
- 17 reciprocally exempt from the application of all of
- 18 their net income taxes, the income derived from the
- 19 operation of ships or aircraft that are documented or
- 20 registered under the laws of the United States;



- 1 (9) The value of legal services provided by a prepaid
2 legal service plan to a taxpayer, the taxpayer's
3 spouse, and the taxpayer's dependents;
- 4 (10) Amounts paid, directly or indirectly, by a prepaid
5 legal service plan to a taxpayer as payment or
6 reimbursement for the provision of legal services to
7 the taxpayer, the taxpayer's spouse, and the
8 taxpayer's dependents;
- 9 (11) Contributions by an employer to a prepaid legal
10 service plan for compensation (through insurance or
11 otherwise) to the employer's employees for the costs
12 of legal services incurred by the employer's
13 employees, their spouses, and their dependents; ~~and~~
- 14 (12) Amounts received in the form of a monthly surcharge by
15 a utility acting on behalf of an affected utility
16 under section 269-16.3 shall not be gross income,
17 adjusted gross income, or taxable income for the
18 acting utility under this chapter. Any amounts
19 retained by the acting utility for collection or other
20 costs shall not be included in this exemption[-]; and
- 21 (13) Amounts received from the sale of commercial or
22 industrial real property, where the lessor of the



Report Title:

Leaseholds; Commercial Property; Industrial Property

Description:

Creates protections for lessees of long-term commercial and industrial property lease agreements. Excludes proceeds from the sale of commercial or industrial property, where the lessor sells the property to the lessee at the termination or expiration of the leasehold agreement, from gross income, adjusted gross income, and taxable income.

