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# A BILL FOR AN ACT

RELATING TO REAL ESTATE INVESTMENT TRUSTS.

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

1           SECTION 1. The legislature finds that, under current law,  
2 real estate investment trusts are entitled to a deduction for  
3 dividends paid. This deduction results in the loss of  
4 potentially millions of dollars of tax revenue to the State each  
5 year. The department of business, economic development, and  
6 tourism estimates that, in 2014, this deduction resulted in  
7 \$36,000,000 in corporate income tax revenue being forgone. If  
8 dividends paid by real estate investment trusts were not  
9 deductible, the dividends would be effectively taxed prior to  
10 distribution. This is significant because trust shareholders  
11 who reside in other states receive dividends from the trust, but  
12 pay taxes on those dividends to those other states. It should  
13 be noted that very few Hawaii taxpayers (between 0.5 per cent  
14 and three per cent) invest in real estate investment trusts with  
15 property in Hawaii. As a result, a number of states other than  
16 Hawaii receive tax revenue, leaving Hawaii taxpayers to  
17 essentially subsidize the costs of the infrastructure and



1 government services that support properties owned by these  
 2 trusts. Therefore, the legislature further finds that repealing  
 3 the current deduction would promote fairness in the treatment of  
 4 similar, but differently organized, business entities and would  
 5 generate additional revenue for state programs.

6 The legislature further finds that, given the State's  
 7 affordable housing crisis, action must be taken sooner, rather  
 8 than later, to provide more revenue to the State and relieve the  
 9 pressures of this crisis.

10 The purpose of this Act is to temporarily disallow the  
 11 deductions for dividends paid by real estate investment trusts  
 12 for a period of fifteen years, but with an exception for  
 13 dividends generated from trust-owned housing that is affordable  
 14 to households with incomes at or below one hundred forty per  
 15 cent of the median family income, as determined by the United  
 16 States Department of Housing and Urban Development.

17 SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is  
 18 amended by amending subsection (b) to read as follows:

19 "(b) The following Internal Revenue Code subchapters,  
 20 parts of subchapters, sections, subsections, and parts of



1 subsections shall not be operative for the purposes of this  
2 chapter, unless otherwise provided:

3 (1) Subchapter A (sections 1 to 59A) (with respect to  
4 determination of tax liability), except section  
5 1(h)(2) (relating to net capital gain reduced by the  
6 amount taken into account as investment income),  
7 except sections 2(a), 2(b), and 2(c) (with respect to  
8 the definition of "surviving spouse" and "head of  
9 household"), except section 41 (with respect to the  
10 credit for increasing research activities), except  
11 section 42 (with respect to low-income housing  
12 credit), except sections 47 and 48, as amended, as of  
13 December 31, 1984 (with respect to certain depreciable  
14 tangible personal property), and except section  
15 48(d)(3), as amended, as of February 17, 2009 (with  
16 respect to the treatment of United States Department  
17 of Treasury grants made under section 1603 of the  
18 American Recovery and Reinvestment Tax Act of 2009).  
19 For treatment, see sections 235-110.91, 235-110.7, and  
20 235-110.8;



- 1 (2) Section 78 (with respect to dividends received from  
2 certain foreign corporations by domestic corporations  
3 choosing foreign tax credit);
- 4 (3) Section 86 (with respect to social security and tier 1  
5 railroad retirement benefits);
- 6 (4) Section 103 (with respect to interest on state and  
7 local bonds). For treatment, see section 235-7(b);
- 8 (5) Section 114 (with respect to extraterritorial income).  
9 For treatment, any transaction as specified in the  
10 transitional rule for 2005 and 2006 as specified in  
11 the American Jobs Creation Act of 2004 section 101(d)  
12 and any transaction that has occurred pursuant to a  
13 binding contract as specified in the American Jobs  
14 Creation Act of 2004 section 101(f) are inoperative;
- 15 (6) Section 120 (with respect to amounts received under  
16 qualified group legal services plans). For treatment,  
17 see section 235-7(a)(9) to (11);
- 18 (7) Section 122 (with respect to certain reduced uniformed  
19 services retirement pay). For treatment, see section  
20 235-7(a)(3);



- 1           (8) Section 135 (with respect to income from United States
- 2           savings bonds used to pay higher education tuition and
- 3           fees). For treatment, see section 235-7(a)(1);
- 4           (9) Section 139C (with respect to COBRA premium
- 5           assistance);
- 6           (10) Subchapter B (sections 141 to 150) (with respect to
- 7           tax exemption requirements for state and local bonds);
- 8           (11) Section 151 (with respect to allowance of deductions
- 9           for personal exemptions). For treatment, see section
- 10          235-54;
- 11          (12) Section 179B (with respect to expensing of capital
- 12          costs incurred in complying with Environmental
- 13          Protection Agency sulphur regulations);
- 14          (13) Section 181 (with respect to special rules for certain
- 15          film and television productions);
- 16          (14) Section 196 (with respect to deduction for certain
- 17          unused investment credits);
- 18          (15) Section 199 (with respect to the U.S. production
- 19          activities deduction);
- 20          (16) Section 222 (with respect to qualified tuition and
- 21          related expenses);



- 1 (17) Sections 241 to 247 (with respect to special  
2 deductions for corporations). For treatment, see  
3 section 235-7(c);
- 4 (18) Section 280C (with respect to certain expenses for  
5 which credits are allowable). For treatment, see  
6 section 235-110.91;
- 7 (19) Section 291 (with respect to special rules relating to  
8 corporate preference items);
- 9 (20) Section 367 (with respect to foreign corporations);
- 10 (21) Section 501(c)(12), (15), (16) (with respect to exempt  
11 organizations); except that section 501(c)(12) shall  
12 be operative for companies that provide potable water  
13 to residential communities that lack any access to  
14 public utility water services;
- 15 (22) Section 515 (with respect to taxes of foreign  
16 countries and possessions of the United States);
- 17 (23) Subchapter G (sections 531 to 565) (with respect to  
18 corporations used to avoid income tax on  
19 shareholders);
- 20 (24) Subchapter H (sections 581 to 597) (with respect to  
21 banking institutions), except section 584 (with



- 1 respect to common trust funds). For treatment, see  
2 chapter 241;
- 3 (25) Section 642(a) and (b) (with respect to special rules  
4 for credits and deductions applicable to trusts). For  
5 treatment, see sections 235-54(b) and 235-55;
- 6 (26) Section 646 (with respect to tax treatment of electing  
7 Alaska Native settlement trusts);
- 8 (27) Section 668 (with respect to interest charge on  
9 accumulation distributions from foreign trusts);
- 10 (28) Subchapter L (sections 801 to 848) (with respect to  
11 insurance companies). For treatment, see sections  
12 431:7-202 and 431:7-204;
- 13 (29) Section 853 (with respect to foreign tax credit  
14 allowed to shareholders). For treatment, see section  
15 235-55;
- 16 (30) Section 853A (with respect to credits from tax credit  
17 bonds allowed to shareholders);
- 18 (31) Section 857(b)(2)(B) (with respect to the deduction  
19 for dividends paid by real estate investment trusts);  
20 provided that the deduction shall remain available for  
21 dividends generated from trust-owned housing that is



1           affordable to households with incomes at or below one  
 2           hundred forty per cent of the median family income, as  
 3           determined by the United States Department of Housing  
 4           and Urban Development;

5       ~~[(31)]~~ (32) Subchapter N (sections 861 to 999) (with respect  
 6           to tax based on income from sources within or without  
 7           the United States), except sections 985 to 989 (with  
 8           respect to foreign currency transactions). For  
 9           treatment, see sections 235-4, 235-5, and 235-7(b),  
 10          and 235-55;

11       ~~[(32)]~~ (33) Section 1042(g) (with respect to sales of stock  
 12           in agricultural refiners and processors to eligible  
 13           farm cooperatives);

14       ~~[(33)]~~ (34) Section 1055 (with respect to redeemable ground  
 15           rents);

16       ~~[(34)]~~ (35) Section 1057 (with respect to election to treat  
 17           transfer to foreign trust, etc., as taxable exchange);

18       ~~[(35)]~~ (36) Sections 1291 to 1298 (with respect to treatment  
 19           of passive foreign investment companies);



- 1        [~~36~~] (37) Subchapter Q (sections 1311 to 1351) (with  
2                    respect to readjustment of tax between years and  
3                    special limitations);
- 4        [~~37~~] (38) Subchapter R (sections 1352 to 1359) (with  
5                    respect to election to determine corporate tax on  
6                    certain international shipping activities using per  
7                    ton rate);
- 8        [~~38~~] (39) Subchapter U (sections 1391 to 1397F) (with  
9                    respect to designation and treatment of empowerment  
10                    zones, enterprise communities, and rural development  
11                    investment areas). For treatment, see chapter 209E;
- 12        [~~39~~] (40) Subchapter W (sections 1400 to 1400C) (with  
13                    respect to District of Columbia enterprise zone);
- 14        [~~40~~] (41) Section 14000 (with respect to education tax  
15                    benefits);
- 16        [~~41~~] (42) Section 1400P (with respect to housing tax  
17                    benefits);
- 18        [~~42~~] (43) Section 1400R (with respect to employment  
19                    relief);



1       ~~[(43)]~~ (44) Section 1400T (with respect to special rules for  
2                   mortgage revenue bonds);

3       ~~[(44)]~~ (45) Section 1400U-1 (with respect to allocation of  
4                   recovery zone bonds);

5       ~~[(45)]~~ (46) Section 1400U-2 (with respect to recovery zone  
6                   economic development bonds); and

7       ~~[(46)]~~ (47) Section 1400U-3 (with respect to recovery zone  
8                   facility bonds)."

9           SECTION 3. Section 235-71, Hawaii Revised Statutes, is  
10   amended by amending subsection (d) to read as follows:

11           "(d) In the case of a real estate investment trust there  
12   is imposed on the taxable income, computed as provided in  
13   sections 857 and 858 of the Internal Revenue Code but with the  
14   changes and adjustments made by this chapter (without prejudice  
15   to the generality of the foregoing, for taxable years beginning  
16   before January 1, 2018, the deduction for dividends paid is  
17   limited to ~~[such]~~ the amount of dividends as is attributable to  
18   income taxable under this chapter~~[+]~~, and for taxable years  
19   beginning after December 31, 2017, no deduction for dividends  
20   paid shall be allowed), a tax consisting in the sum of the  
21   following: 4.4 per cent if the taxable income is not over



1 \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and  
2 on all over \$100,000, 6.4 per cent. In addition to any other  
3 penalty provided by law any real estate investment trust whose  
4 tax liability for any taxable year is deemed to be increased  
5 pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after December  
6 31, 1978, (relating to interest and additions to tax determined  
7 with respect to the amount of the deduction for deficiency  
8 dividends allowed) of the Internal Revenue Code shall pay a  
9 penalty in an amount equal to the amount of interest for which  
10 ~~such~~ the trust is liable that is attributable solely to ~~such~~  
11 the increase. The penalty payable under this subsection with  
12 respect to any determination shall not exceed one-half of the  
13 amount of the deduction allowed by section 859(a), or 860(a)  
14 after December 31, 1978, of the Internal Revenue Code for ~~such~~  
15 that taxable year."

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.

18 SECTION 5. This Act shall take effect upon a date to be  
19 determined and shall apply to taxable years beginning after  
20 December 31, 2017; provided that on December 31, 2032, this Act  
21 shall be repealed and sections 235-2.3(b) and 235-71(d), Hawaii



- 1 Revised Statutes, shall be reenacted in the form in which they
- 2 read on the day prior to the effective date of this Act.



**Report Title:**

Real Estate Investment Trusts; Deduction for Dividends Paid;  
Disallowed; Income Tax

**Description:**

Temporarily disallows the deduction for dividends paid by real estate investment trusts for a period of 15 years, but with an exception for dividends generated from trust-owned housing that is affordable to households with incomes at or below 140% of the median family income. (HB1012 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

