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To: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Senate Committee on Ways and Means

Date: Wednesday, February 6, 2019
Time: 10:00 A.M.
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director
Department of Taxation

Re: S.B. 675, Relating to Taxation

The Department of Taxation (Department) has concerns regarding S.B. 675 and provides the following comments regarding S.B. 675 for your consideration.

S.B. 675 requires real estate investment trusts (REITs) to file returns reporting their shareholders' pro rata shares of net income and net income attributable to this State and requires the withholding on all payments to shareholders. The measure is effective upon approval and applies to taxable years beginning after December 31, 2019.

First, the Department notes the general rule as to the situs of invisible and intangible personal property (notes, bonds, etc.) is that it follows the domicile of the owner, and it is held to be taxable at such domicile. See *Frick v. Pennsylvania*, 268 U.S. 473 (1925). As noted in *Farmer Loan and Trust Co. v. Minnesota*, 280 U.S. 204 (1930): Taxation is an intensely practical matter, and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. We have determined that, in general, intangibles may be properly taxed at the domicile, and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles. The difference between the two, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota

Second, the Department notes that it always prefers conformity with the Internal Revenue Code (IRC) where possible, as it provides clear guidance to both the Department and to taxpayers; the Internal Revenue Service has issued substantial guidance in the form of rules and regulations, and there are many court decisions regarding the various sections of the IRC. Conformity greatly minimizes the burden on the Department and taxpayers, thereby assisting compliance with Hawaii's tax law.

Finally, the Department notes that this measure represents the least efficient method of imposing income tax on REITs because it essentially makes every REIT shareholder a separate Hawaii income taxpayer. If the Legislature wishes to impose income tax on REITs, the method proposed in S.B. 301 is much simpler and more efficient.

Thank you for the opportunity to provide comments.

LEGISLATIVE TAX BILL SERVICE

TAX FOUNDATION OF HAWAII

126 Queen Street, Suite 304 Honolulu, Hawaii 96813 Tel. 536-4587

SUBJECT: INCOME, Withhold Tax on REIT Dividends

BILL NUMBER: SB 675

INTRODUCED BY: IHARA

EXECUTIVE SUMMARY: Requires that real estate investment trusts (REITs) file returns reporting their shareholders' pro rata shares of net income and net income attributable to this State. Provides for composite returns and requires withholding for those shareholders who do not agree to file returns or pay tax on their pro rata share of net income attributable to this State.

SYNOPSIS: Adds a new section to chapter 235, HRS, that establishes a withholding regime for REITs like that already in place for S corporations under section 235-122, HRS.

Requires each REIT shareholder receiving a dividend from the REIT to recognize a pro rata share of income attributable to the State and the pro rata share of income not attributable to the State, to the extent modified under Hawaii income tax law, under rules similar to those in section 235-122(c), HRS.

Requires any REIT to file information returns reporting shareholder level data.

Requires any REIT to withhold and pay to this State, on behalf of any shareholder, an amount equal to 5% multiplied by the amount of the shareholder's pro rata share of the income attributable to the State, as reflected on the real estate investment trust's return for the taxable period. A real estate investment trust shall be entitled to recover a payment made pursuant to this subsection from the shareholder on whose behalf the payment was made. The amount withheld shall be the minimum tax due to Hawaii by each real estate investment trust shareholder on their Hawaii source income. A shareholder that is not otherwise required to file Hawaii tax returns need not file a Hawaii return to report the income received and tax paid. Any shareholder that is tax exempt under federal income tax law shall not be liable for the minimum tax on their REIT income and may file a claim for refund for the amount withheld.

Provides that any amount withheld and paid by the REIT to the State shall be considered to be a payment by the shareholder on account of the income tax imposed on the shareholder for the taxable period.

Provides that any officer of any REIT who wilfully fails to provide any information, file any return or agreement, or make any payment as required shall be guilty of a misdemeanor.

EFFECTIVE DATE: Taxable years beginning after December 31, 2019.

STAFF COMMENTS: Currently under federal and state income tax law, a 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. This is similar to the one level of tax

imposed on owners of S corporations in lieu of taxing the S corporation at the corporate level. Thus, this bill enacts a withholding regime similar to that under the Model S Corporation Income Tax Act (MoSCITA), specifically section 235-122, HRS.

All state income tax systems in the United States, including ours, have a set of rules that are used to figure out which state has the primary right to tax income. For example, most tax systems say that rent from real property is sourced at 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.

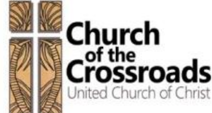
Sourcing rules, however, can yield strange results. Here, there is a Hawaii Supreme Court case saying that when real property is sold on the installment basis under an "agreement of sale," where the seller remains on title until the price is paid (although the buyer can live in the house), then the interest on the deferred payments is Hawaii source income and is subject to our net income tax and our GET. There is also a Hawaii Tax Appeal Court case holding that when the seller instead finances the deal by taking a purchase money mortgage on the property, and does not remain on title, then the mortgage interest is sourced to the residence of the seller, who in that case did not live in Hawaii. In the second case the court applied the rule for income from intangibles such as interest, royalties, and dividends, which says that income is sourced to the residence of the recipient unless you can connect it with some active business that the recipient is conducting somewhere else.

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. Source shifting is an issue specific to state taxation.

Apparently, the evil sought to be addressed by the bill is that REITs do substantial business in Hawaii, but do not get taxed because of the deduction allowed for dividends paid, while many REIT owners who receive the dividend income are either outside of Hawaii and don't get taxed either because they are outside of Hawaii, or are exempt organizations that normally are not taxed on their dividend income. 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.

Digested 2/3/2019



Testimony of Church of the Crossroads
Supporting SB 675 with an amendment
Senate Committee on Ways and Means
February 6, 2019 at 10:00 a.m. in Conference Room 211

The Church of the Crossroads was founded in 1922 and is Hawaii's first intentionally multicultural church.

Thank you for this opportunity to testify in support of the bill, with an amendment. Real Estate Investment Trusts (REITs) are corporations that use a loophole to avoid the Hawaii corporate tax. That loophole should be closed, and the new tax revenue that is generated should be dedicated to increase the supply of affordable housing.

REITs own income-producing property in Hawaii such as Ala Moana Center, the Hilton Hawaiian Village Resort, as well as office buildings and many other shopping centers and hotels. Together, they own property with an estimated total value of $18 billion that earns an estimated $1 billion in profits annually. If Hawaii's corporate tax were applied to REITs, it is estimated that somewhere in the neighborhood of $60 million in tax revenue would be generated.

Hawaii faces an enormous shortage of housing that is affordable to low- and middle-income individuals and families. New housing is being built, but most of it is priced for the high-income strata. Some efforts are being made to build affordable housing for low- and middle-income levels, but much greater efforts must be made because the need is so great and the cost of housing is so high.

Various ideas to finance affordable housing are contained in a study entitled, "Housing Action Plan Final Report to the State Legislature," which was funded by the Legislature and issued in 2017. Those ideas include dedicating new tax revenue for affordable/workforce housing or infrastructure, with the funds kept separate from the general fund. The bill can easily be amended to separate the REIT tax revenue from the general fund and direct it to the creation of affordable housing in Hawaii.

With this amendment, the Church of the Crossroads supports the bill and urges the committee to pass it.

SB-675
Submitted on: 2/4/2019 10:32:21 AM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Catherine Susan Graham	Testifying for Faith Action/Housing Now Coalition	Support	Yes

Comments:

Feb 4, 2019

Testifying in favor of SB 675

Aloha Chair Dela Cruz and Committee Members,

I am the co-chair of the Housing Now! Coalition of Fatih Action for Community Equity. Our name says it all, we are a group of 18 Faith Institutions and several other community groups who work for Community Equity. Fairness. The social good of all the residents of Hawaii, especially those who do not have a voice.

We whole-heartedly support SB 301 and SB 675, bills that would require REITS to pay income tax to the state of Hawaii. Given that a huge portion of our state real estate is owned by REITS and 99.5% of their shareholders live out of state (or even out of the country), Hawaii is not receiving any income tax based on the current law. We estimate that the State is losing up to $60 million a year in revenue due to this tax loophole.

I am a low-income 40 year resident of this state. I have seen Hawaii be developed with beautiful shopping centers, hotels and condos. It was just recently that I learned that we, as a state, are getting ripped off because the owners of these properties do not pay income tax to our state.

Loopholes do not benefit the hard working residents of our state. With housing shortages and tons of homeless people living on the streets, I can foresee a very good use of the potential income that this bill would help provide.

I understand that REIT owners, (mostly large developers and resort owners) are against this bill. Of course, they are. They are naturally not in favor of any measures that will negatively effect their bottom line. But it is time for the legislators of our state, who are elected by the residents of our state, to stand up to big money and really consider the welfare of our island home. These investors and REIT owners don't live here, they just make their profits here. We are being stolen once again.

It is time to protect our island assets and residents.

Please pass this bill.

Mahalo,

Catherine Graham, co-chair

Housing Now Coalition of Faith Action for Community Equity

Catgraham48@gmai.com

February 5, 2019

Hearing Date: February 6, 2019
Time: 10:00 A.M.
Place: Conference Room 211

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

Re: Testimony ***Opposing*** SB 675 Imposing Tax on REIT Shareholders, and Reporting and Withholding Requirements on REITs

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee on Ways and Means:

My name is Lily Yan Hughes and I am the Senior Vice President, Chief Legal Officer and Corporate Secretary of Public Storage. We are ***strongly opposed*** to SB 675. The bill would seek to impose Hawaii income taxes on the shareholders of real estate investment trusts (REITs), and to impose related withholding and reporting requirements on the REITs. ***As is explained below, (1) key aspects of the required information CANNOT be obtained or provided by publicly traded REITs like Public Storage, (2) the bill will result in multiple taxation and (3) the bill is of questionable constitutionality***.

The bill offers no explanation or justification for the proposed change in law. It may be motivated by a misguided effort to raise added tax revenue. Even if the law is enacted and survives legal challenge, such an anti-business tax would strongly incentivize REITs to reduce or avoid future investment in, and possibly redirect investments away from, the state. This could be expected to have adverse long term effects on the Hawaii economy and the state's tax collections.

Public Storage and Hawaii. Public Storage is a real estate investment trust that is the largest owner and operator of self-storage facilities in the United States, with almost 162 million rentable square feet of real estate in 38 states. In the United States we have approximately 2,425 facilities and 1.4 million tenants. We own 11 facilities in Hawaii. In 2018, those Hawaii properties generated more than $30 million of gross revenue and we paid the state about $1.4 million of general excise tax. For the 2018/2019 fiscal year, we will pay almost $2.25 million of real estate taxes in Hawaii.

Because we are taxed as a REIT, Public Storage is effectively required to distribute all of its taxable income to our shareholders. The shareholders then report and pay state and federal tax on those dividends. Our shareholders in Hawaii are taxable by the state on the full amount of our dividends (not just the very limited portion of those dividends attributable to the 11 properties we have in the state, compared to about 2,425 properties across the nation), so the state benefits from the REIT regime because Hawaii shareholders are taxed on all of the distributed income. The same basic treatment applies across the U.S. No other state imposes tax, withholding or reporting requirements like those proposed in SB 675.

PUBLIC STORAGE
Trusted nationwide since 1972™
701 Western Avenue, Glendale, CA 91201
Tel: 818-244-8080
publicstorage.com

SB 675 Deficiencies. The following briefly notes some key problems with the bill.

Publicly Traded REITs Do NOT Know Who Their Underlying Shareholders Are and So CANNOT Comply. SB 675 appears to be patterned on a similar Hawaii law that applies to Subchapter S corporations. An S corporation cannot have more than 100 shareholders, so it is practical for S corporations to identify and provide Hawaii with specific information about their shareholders. By contrast, publicly traded REITs can have hundreds of thousands of beneficial shareholders, with the shareholders changing constantly, and the REITs do NOT know who those shareholders are.

Public Storage's common stock is traded on the New York Stock Exchange under the symbol PSA. As with most publicly traded companies, the great bulk of PSA stock is held by a depositary (Cede & Co.) in street name. Public Storage currently has about 174 million outstanding common shares, and likely has tens of thousands (if not hundreds of thousands) of beneficial shareholders at any time. Of course, that underlying ownership changes constantly as trades take place through the stock exchange; during 2017 and 2018 reported daily trading volume ranged up to 3.8 million shares. But, Public Storage does not know how many shareholders beneficially hold PSA common stock at any time, or who those shareholders are, and would not be able provide detailed and specific information about all shareholders (names, addresses, TINs, shares owned, imputed allocations of Hawaii and other income, etc.) at all times during a year.

Exceeds Constitutional Authority. Putting aside the practical impossibility of applying the bill to report information about specific beneficial shareholders, it is doubtful that any state has the constitutional authority to tax nonresident shareholders of public companies on an imputed share of income earned by the company in that state, when the only connection of the shareholders to the state is the passive ownership of shares through a public stock exchange in a company that has some operations in that state. The dubious legality is compounded by the fact that the bill will impose multiple taxation on the shareholders.

Multiple Taxation. The bill effectively imputes to the shareholders a proportionate interest in a REIT's Hawaii income and would force the REIT to pay a withholding tax "on behalf of [the] shareholder[s]" on that imputed income. The bill does not appear to affect the fact that shareholders (in Hawaii and elsewhere) will receive (and be taxable on) the dividends that the REIT pays (those dividends likely derived from the income earned by the REIT in Hawaii and elsewhere). While the backers of the bill may believe that the shareholders would be able to credit the Hawaii withholding tax against their Hawaii and other state taxes (including taxes payable on the REIT dividends), that almost certainly would not be the case. First, how would shareholders claim, or Hawaii's or other states' tax administrators allow, credits or refunds for taxes anonymously paid on the shareholders' behalf, given that a publicly traded REIT cannot identify the great majority of its shareholders, much less track them on a daily basis? Moreover, even if the taxes paid on the shareholders' behalf could be properly matched to particular anonymous beneficial shareholders, it is doubtful that the shareholders' states of residence would allow credits because the shareholders' dividend income typically will be treated as derived from the shareholders' states of residence.

So, the practical effect of the bill would be to impose multiple taxation on publicly traded REITs' earnings in Hawaii, as shareholders would be taxable in Hawaii on the imputed income

and also taxable in their states of residence on dividends received, with no credits likely to be allowed.

The practical concerns and prospects for multiple taxation seem even more daunting when one considers that very significant portions of the shares of REITs are held by investment advisors holding shares for underlying customers, as well as pass-through entities, such as mutual funds, partnerships or S corporations. REITs have no ability to trace through those levels to identify the underlying beneficial owners and the bill provides no useful guidance as to how those shareholders would or should be affected.

Summary: As outlined above SB 675:

1. would be ***very unfair*** to REIT shareholders and REITs;
2. cannot be applied to publicly traded REITs, because the REITs do not (and cannot) know who most of their beneficial public shareholders are;
3. exceed the state's authority, given the limited contact of public shareholders with the state, and because the bill would impose multiple taxation on shareholders of publicly traded REITs (credits would NOT be available to shareholders for taxes imposed by the bill);
4. would impose taxes, withholding and reporting requirements in a way that no other state has pursued; and
5. would push REITs away from Hawaii, likely harming the state by decreasing overall tax collections and economic activity in the state.

Conclusion: SB 675 Should NOT Move. We believe Public Storage and other REITs have been, and can continue to be, positive forces in the Hawaii economy. For the reasons outlined above, Hawaii should not pursue unfair, impossible legislation that will dissuade REITs from investing in the state. We respectfully request that you do ***not*** move forward SB 675.

Sincerely,

Lily Yan Hughes
Senior Vice President, Chief Legal Officer
& Corporate Secretary of Public Storage
lhughes@publicstorage.com
818.244.8080, extension 1537

cc: Department of Taxation
Department of Business, Economic Development & Tourism

1401 H Street, NW, Washington, DC 20005-2148, USA
202/326-5800 www.ici.org

February 4, 2019

The Honorable Donovan M. Dela Cruz
Chair, Hawaii Senate Committee on Ways and Means
415 S Beretania St.
Honolulu, HI 96813

RE: *Fund Industry Opposes S.B. No. 675*

Dear Chairman Dela Cruz and Members of the Senate Committee on Ways and Means:

The Investment Company Institute[1] continues to oppose legislation that would require real estate investment trusts (REITs) to withhold and pay on behalf of their shareholders a five-percent tax on income attributable to Hawaii. The numerous issues that we identified in our opposition letter to S.B. No 3067, dated February 14, 2018, [2] are not addressed in S.B. No. 675.

The ICI opposes S.B. No. 675 because of its negative impact on shareholders in mutual funds that invest in REITs. The ICI's members, structured to provide average investors with a pooled vehicle for securities investing, own approximately 44 percent of listed REIT shares. The funds' investors are not wealthy. The typical mutual fund shareholder is a middle-class American with a median household income of $100,000 and modest holdings. [3]

The proposal, as explained below, is not administrable and would lead to over-withholding and potential double taxation on mutual fund shareholders. Specifically:

- **REITs cannot report accurate information regarding their individual investors**
- **Over-withholding would occur**

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[1] The Investment Company Institute (ICI) is the leading association representing regulated funds globally, including mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and similar funds offered to investors in jurisdictions worldwide. ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. ICI's members manage total assets of US$20.7 trillion in the United States, serving more than 100 million US shareholders, and US$7.0 trillion in assets in other jurisdictions. ICI carries out its international work through ICI Global, with offices in London, Hong Kong, and Washington, DC.

[2] *See* Investment Company Institute "*Fund Industry Opposes S.B. No. 3067*" letter to The Honorable Donovan M. Dela Cruz, dated February 14, 2018.

[3] The most recent ICI data show median mutual fund assets of $120,000 per household in four accounts. https://www.ici.org/pdf/2018_factbook.pdf, Figure 7.2.

- **Fund investors would be harmed even IF over-withholding did not occur**
- **IRS Form 1099-DIV is not available to report withholding taxes imposed on the mutual fund**

Why would these effects occur?

- Because REITs do not have access to the shareholder information needed to comply with the proposal's report requirement, withholding on distributions to shareholders would be required.
- Because REITs cannot calculate precisely—at the time each distribution is made—the portion attributable to income, gain, or return of capital, REITs can be expected to withhold on the entire amount of their distributions.
- Because mutual funds are not permitted by the Internal Revenue Code to "pass through" to their shareholders any state taxes paid by the funds, fund shareholders would not be able to claim a credit against their own state tax liability for any taxes paid by the funds to Hawaii.

REITs Cannot Report Information Regarding Their Individual Investors

REIT investor information typically is known only to the financial intermediary (*e.g.*, broker) through which shares of REITs that are publicly traded on stock exchanges are acquired.[4] These shares are registered in the name of the broker holding the shares for its customers in a "street name" or "nominee" account. Brokers historically established street name accounts to prevent the firms managing REITs, as potential competitors, from receiving highly sensitive and proprietary information regarding the identities of the broker's clients.

Because complete customer-identity information typically is known only to the brokers, REITs could not possibly identify all shareholders who have held their stock at any time during the year. Even if brokers were to provide this information to REITs, the difficulties of tracking and reporting the number of shares held by each investor on each day of the year would be extraordinary. Mutual funds investing in REITs, for example, may purchase and sell REIT shares every day to reflect the purchases and redemptions of their investors' fund shares.

Consequently, REITs would not be able to comply with the proposal's reporting requirements. Instead, they would be required by the proposal to withhold on distributions to their shareholders (including the brokers holding REIT shares for their customers in street name accounts).

[4] The broker through which shares are purchased must comply with the applicable know-your-customer/anti-money-laundering requirements (including securing IRS Form W-9s from US persons); the broker also is responsible for all applicable US tax reporting and withholding requirements.

Over-Withholding Would Occur

Although the proposal envisions withholding only on the portion of a REIT's distribution equal to the income attributable to Hawaiian properties, over-withholding would occur. First, a REIT cannot determine until after the end of a calendar year the portion of its distributions that are taxable as income or as capital gain or instead are non-taxable returns of capital. Second, even if a REIT could determine with each distribution that portion that is taxable income—which it cannot—it would know the portion attributable to Hawaii only if the REIT invested *only* in Hawaii. To avoid the difficulties, including potential penalties, arising for under-withholding, REITs can be expected to withhold on the full amount of each distribution.

The mutual funds investing in REITs that over-withhold apparently would be required to file a Hawaiian tax return to recoup excess withholding tax. This filing could not be made, however, until the REIT determined the precise amount of over-withholding—on a per-share basis—for each distribution. The mutual fund then would need to determine and report the number of shares it held on each such date. Exactly how the fund would satisfy the State that it, in fact, held the number of REIT shares it claimed would be a bit unclear—as brokers are not required to report the holdings of their customers to every State. This legislation presumably would result in a significant burden to the State Department of Taxation as a result of having to process many tax refund claims.

Fund Investors Would Be Harmed Even IF Over-Withholding Did Not Occur

Hawaiian shareholders in mutual funds investing in REITs effectively would pay tax to Hawaii twice on the same income (even if all over-withheld tax is recovered). Specifically, these Hawaiian shareholders first would bear the economic cost of the tax when withholding is imposed on the distribution by the REIT to the mutual fund. They would pay Hawaiian income tax again when the mutual fund distributes its income to its shareholders (as it must do annually to comply with US federal income tax requirements).

Fund investors who do not reside in Hawaii also would be taxed twice—in both Hawaii and in their own residence State—on the same income. Specifically, any Hawaiian tax incurred by the fund would be deducted by the fund as a business expense rather than credited by either the fund or its shareholders against their residence State tax liability.[5] The fund-level deduction would result in only a slight reduction in the residence-State tax liability as a deduction is far less valuable than a dollar-for-dollar tax credit.

[5] The Federal income tax regime applicable to funds, taxable as regulated investment companies (RICs), is described in greater detail in the enclosed appendix.

Finally, fund investors saving for retirement often invest in mutual funds through tax-deferred or after-tax retirement accounts.[6] These investors would bear the economic cost of the tax under this proposal even though their accounts otherwise are exempt from federal and state tax.

* * *

Because this legislative proposal would result in over-withholding by REITs and in double taxation on both Hawaiian and non-Hawaiian investors in mutual funds that invest in REITs subject to this tax, we urge you to reject it.

Please feel free to contact the undersigned at katie.sunderland@ici.org or 202-326-5826 if we can provide you with any additional information regarding our concerns with S.B. No. 675.

Kind regards,

Katie Sunderland

Katie Sunderland
Counsel - Tax

Enclosure

[6] The most recent ICI data show 53% of mutual fund assets were held in employer-sponsored defined contribution plans (such as 401(k) plans) and individual retirement accounts (IRAs). https://www.ici.org/pdf/2018_factbook.pdf, Figure 8.24

Appendix: Federal Income Taxation of Funds and Their Shareholders

Subchapter M of the Internal Revenue Code provides the tax regime for mutual funds, and other investment pools, that qualify for regulated investment company (RIC) treatment. All RICs are corporations for Federal income tax purposes. They are treated as such—except to the extent otherwise provided by Subchapter M.

Unlike most corporations, RICs are not subject to taxation on their income or capital gains at the entity level, if they meet certain gross income and asset requirements and distribute their income annually. Instead, RIC shareholders are subject to tax at the federal and state levels based on their residence.

RICs normally do not pay state income taxes since states typically base taxable income on federal income, which takes into account the dividends paid deduction. In the unusual instance that a RIC pays state taxes, it would deduct such amounts under section 164 of the Internal Revenue Code, which reduces its investment company taxable income and the amount it must distribute. While this deduction provides some economic relief to shareholders, it is not as beneficial as a tax credit which reduces a taxpayer's tax liability dollar-for-dollar.

There is, however, no statutory mechanism to allow for the flow through of credits for state taxes paid by a RIC to its shareholders. We note that Form 1099-Div, Box 14 "State Tax Withheld" is used to report any state backup withholding that a mutual fund or intermediary is required to withhold. This box is not available to report withholding taxes imposed on the mutual fund; rather it pertains to withholding taxes that the mutual fund (or, in most instances, the broker) imposes on the shareholder.

In contrast, there is a statutory mechanism in Section 853 of the Internal Revenue Code that permits RICs to pass through foreign taxes credits to their shareholders. Unless there were a similar statutory mechanism available at the state level that was adopted by all states, there would be no way for a RIC to provide a similar pass-through of state tax credits to its shareholders.

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Senate Committee on Ways and Means

Hawai`i Alliance for Progressive Action Supports SB 675

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and members of the committee,

On behalf of Hawai`i Alliance for Progressive Action (HAPA) we submit this testimony in strong support of SB 675 relating to taxation. HAPA is a statewide environmental, social and economic justice organization and engages over 10,000 local residents annually through our work.

The hundreds of millions of dollars in profits that REIT shareholders earn from Hawaii real estate each year should be taxed, so the revenue can be used for Hawaii's needs, such as affordable housing.

For the following reasons HAPA strongly supports SB 675:

REITs pay out almost all of their profits to their shareholders in the form of dividends, but over 99% of Hawaii REITs shareholders are from out of state.

REITs shareholders pay income tax only in the state where they actually reside -- so only the small minority of REIT shareholders who live here pay income tax from REITs to the state of Hawaii.

REITs own approximately $17 billion worth of Hawaii real estate and earn about $1 billion in profits every year.

Less than 1% of Hawaii REITs shareholders pay taxes on their dividends to Hawaii, where the profits were made.

Furthermore, the massive profits earned on Hawaii REIT-owned properties are distributed out of Hawaii and into the states and countries where their shareholders reside. REIT shareholders pay individual income tax on REIT dividends, but most shareholders of REITs operating in Hawaii are not Hawaii residents and do not pay

Hawaiʻi state income taxes. Many REITs shareholders are not even U.S. residents, so they may not pay income tax anywhere in the country.

Existing tax systems should be revised to be fair and equitable before we look to inflict additional taxes on local families.

Thank you for your consideration! We strongly urge you to support SB 675.

Respectfully,

Anne Frederick,
Executive Director

The Hawaiʻi Alliance for Progressive Action (HAPA) is a public non-profit organization under Section 501(c)(3) of the Internal Revenue Code. HAPA's mission is to catalyze community empowerment and systemic change towards valuing ʻaina (environment) and people ahead of corporate profit.

SIERRA CLUB OF HAWAIʻI
MĀLAMA I KA HONUA. *Cherish the Earth.*

SENATE COMMITTEE ON WAYS AND MEANS

February 6, 2019 10:00 AM Room 211

In SUPPORT of SB 675: Relating to Taxation

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee,

On behalf of our 20,000 members and supporters, the Sierra Club of Hawaiʻi, a member of the Common Good Coalition, supports passage of SB 675- which seeks to establish a fairer tax system in the state of Hawaiʻi by establishing requirements and processes to collect taxes from Real Estate Investment Trusts.

Since 1968, the Sierra Club of Hawaiʻi has worked to help people explore, enjoy, and protect the unique natural environment of the Hawaiian Islands. We believe that the health of our environment will benefit from a fairer tax system, such as the taxation of Real Estate Investment Trusts, and therefore support this bill.

Real Estate Investment Trusts are corporations that own income-producing real estate, like retail and hospitality-related establishments. Examples of REIT property include Ala Moana Shopping Center, Pearlridge Shopping Center, Hilton Hawaiian Village, the International Marketplace, and many others. There are 42 REITs operating in Hawaiʻi, with only 1 REIT having its main office in Hawaiʻi- meaning that almost all of these properties are owned by mainland-based corporations and shareholders.[1]

As the law is currently written, all dividends paid out to REIT shareholders (at least 90% of REIT income) can be deducted from REIT income taxes. As a result, the state of Hawaiʻi is missing out on potential tax revenues of $30-50 million annually from these corporations[2]- funds that could be used to protect our natural resources, build much needed affordable housing, fund our schools and social services, and repair public infrastructure in the face of climate change.

The Sierra Club recognizes that there is a nexus between the environment and economic justice issues. This bill will require REITs and their shareholders to pay their fair share of taxes, creating a more equitable system to the benefit of all of Hawaiʻi. Our tax system reinforces our income inequality; forcing more and more families to live paycheck-to-paycheck and make

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[1] http://files.hawaii.gov/dbedt/economic/data_reports/REIT_Final_9.19.16.pdf
[2] http://hiappleseed.org/wp-content/uploads/2016/12/RevenueGeneratingMeasuresOverview.pdf

short-term decisions about their lives that usually impose a greater burden on the natural environment. We support tax fairness because we know that with a more balanced tax system, Hawaiʻi's residents, our communities, and our environment as a whole will prosper.

Thank you very much for this opportunity to provide testimony in **support of SB 675.**

Mahalo,

Jodi Malinoski

Jodi Malinoski, Policy Advocate

February 5, 2019

The Honorable Donovan M. Dela Cruz
Chair, Hawaii Senate Committee on Ways and Means
Hawaii State Capitol, Room 208
Honolulu, HI 96813

RE: SIFMA Letter in Opposition to S.B. 675, on Real Estate Investment Trusts (REITs)

Dear Chair Dela Cruz and Members of the Senate Committee on Ways and Means:

The Securities Industry and Financial Markets Association ('SIFMA")[1] is a national trade association which represents hundreds of large, medium and small broker-dealers, banks and assets managers many of whom have a presence in Hawaii. We appreciate the opportunity to comment on S.B. 675, which was recently sent to your committee for consideration.

S.B. 675 would require real estate investment trusts (REITs) to:

1. Prepare annual tax returns which include detailed personal information on each shareholder, the number of shares each shareholder owns, and a shareholder by shareholder breakdown of what REIT income is attributable to the State; and

2. Withhold and pay to the state an amount equal to five percent of the shareholder's pro rata share of the income attributable to the State as reflected on the REIT's return.

We are writing to respectfully express our opposition to the legislation. While broker-dealers are not referenced, both they and their clients would be adversely affected by the bill. Specifically, we urge you to consider the following:

- Requiring Broker-Dealers and REITs to Compile and Disclose Information on Individual Investors Would Be Unduly Burdensome.

  For both proprietary and confidentiality reasons, REIT shares are typically registered in the name of the financial intermediary (e.g., broker) holding the shares for its customers in a

[1] SIFMA is the leading trade association for broker-dealers, investment banks and asset managers operating in the U.S. and global capital markets. On behalf of our industry's nearly 1 million employees, we advocate on legislation, regulation and business policy, affecting retail and institutional investors, equity and fixed income markets and related products and services. We serve as an industry coordinating body to promote fair and orderly markets, informed regulatory compliance, and efficient market operations and resiliency. We also provide a forum for industry policy and professional development. SIFMA, with offices in New York and Washington, D.C., is the U.S. regional member of the Global Financial Markets Association (GFMA). For more information, visit http://www.sifma.org.

"street name" or nominee account. REITs therefore often do not have the information requested by the bill and would be forced to go to broker-dealers to obtain it.

This, of course, undercuts the premise behind registering the shares in a street name or nominee account. It also would be a tremendous amount of work both for brokers to provide this information and for REITs to take it and process it.

In 2017, more than 48 billion REITs transactions were made through the New York Stock Exchange. The daily volume often exceeds 200 million transactions and can reach 400 million. It would be extremely costly and time consuming for our members to sort, track and report securely to REITs sensitive personally identifiable information on all the investors who might own REIT shares at some point during the year. REITs would then have the additional burden of calculating the pro rata share of income attributable to the state multiplied by 5%, withholding that amount, and making the payment.

- Additional Requirements Could Make Investments in Hawaii Real Estate Less Attractive.

  Imposing novel tax reporting, withholding, and investor tax return filing requirements on REITs with Hawaii investments inevitably will make REITs with a Hawaii presence less attractive to investors, and this could reduce the level of investment in Hawaii real property. U.S. equity market participants have other investment options that do not require them to commit to accept a state tax withholding requirement or to share sensitive PII with multiple intermediaries.

- Disclosing Personal Identifying Information Could Place Clients at Risk.

  S.B. 675 requires detailed information on each individual investor, including name, address, and social security number, as well as additional filings with the Department of Taxation. Broker-dealers implement and maintain strict security procedures and practices to protect the client's personally identifiable information (PII). These measures are generally appropriate to the nature of the personal information owned or licensed and the nature and size of the entity or operation.[2] Limiting the collection and disclosure of sensitive data to that which is directly relevant and necessary to accomplish a specified purpose is one of the best practices to protect client information.[3] Requiring broker-dealers to disclose PII to REITs runs counter to protecting the client's private information. This is true even if similar information is already reported elsewhere. We would urge the Committee to eliminate the requirement to disclose shareholder PII which does not appear necessary if withholding is done by the Hawaii REIT and the shareholder is not otherwise required to file a Hawaii return.

- Over-Withholding Would Further Reduce the Appeal of Hawaii REIT Investments

  S.B. 675 would require REITs to withhold 5% on distributions to their shareholders with income attributable to Hawaiian properties. However, many REIT shareholders are tax

[2] H.R. 4028, the "Promoting Responsible Oversight of Transactions and Examinations of Credit Technology Act of 2017"
[3] NIST Cybersecurity Framework, p. 16

exempt under federal tax law. Requiring tax exempt shareholders to file a refund claim for tax withheld by the REIT is an unprecedented and burdensome process. It is inevitable that this will lead to significant over-withholding. Over-withholding is not in the investors' best-interest even if there is a process for recovering the over-withholding down the road. Such over-withholding would further reduce the appeal of Hawaii-based REITs for equity investors.

- Resident and Non-Resident Hawaii REIT Shareholders Would be Subject to Double Taxation.

  Whether or not over-withholding occurs, both resident and non-resident shareholders would be subject to double taxation. Non-Hawaiian shareholders would be taxed first in Hawaii and then in their own country or state of residence with respect to the same REIT dividend. It is unlikely that any other state or foreign jurisdiction would allow a credit for tax imposed by Hawaii and paid by a REIT under the proposed legislation.

  In the absence of a Hawaii credit for tax paid by REITSs on behalf of shareholders, which the legislation does not seem to provide, shareholders otherwise required to file a Hawaii return also appear to be subject to a double-tax when REITs pay dividends to such shareholders.

In short, for a variety of reasons we believe that S.B. 675 is not good for brokers, investors or the State of Hawaii, and we urge you to oppose the legislation. We appreciate the opportunity to provide feedback. If you have any questions, or if there is any further information we can provide, please contact me at 202-962-7411.

Sincerely,

Kim Chamberlain

Kim Chamberlain
Managing Director & Associate General Counsel
SIFMA

Park Hotels & Resorts Inc.
Scott Winer, SVP Tax
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WRITTEN TESTIMONY OF

SCOTT D. WINER

SENIOR VICE PRESIDENT, TAX

PARK HOTELS & RESORTS INC.

IN OPPOSITION TO S.B. 675

BEFORE THE HAWAII SENATE

COMMITTEE ON WAYS AND MEANS

Senator Donovan M. Dela Cruz, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

HEARING ON S.B. 675

FEBRUARY 6, 2019

On behalf of Park Hotels & Resorts Inc. ("PARK"), thank you for this opportunity to provide our testimony on S.B. 675. PARK submits this testimony in **opposition** to S.B. 675 as it would be impossible to administer and consequently would result in an income tax on PARK.

PARK is a publicly traded lodging real estate investment trust ("REIT") (NYSE:PK) with approximately 200.6 million shares outstanding (as of December 31, 2018), of which approximately 200.6 million shares are held in street name, and with approximately two million shares trading daily it has an immense number of shareholders annually. In fact, on an average trading day, over 1.7 million shares of PARK change ownership. So, PARK's shareholders at the beginning of each day are not the same shareholders at the end of the day. And that turnover happens every trading day over the course of the year. Simply stated, PARK does not know the identity of its ultimate shareholders, let alone shareholders on a daily basis.

As a REIT, PARK is already subject to stringent, costly and complex administrative and operating requirements, including paying significant dividends to its shareholders to maintain REIT status. PARK pays its dividends throughout the year and we rely on brokers to provide information to our shareholders related to our dividends (which are reported on IRS Form 1099-DIV). PARK would have no way of computing the pro-rata share of income attributable to Hawaii at each dividend payment date or knowing from whom we should withhold Hawaii non-resident shareholder tax at each dividend payment date. Nor would we have a mechanism to recover any payment made to Hawaii on behalf of any non-resident shareholder that is not withheld from a dividend payment. There is no manner which PARK could obtain the required shareholder information on a daily basis or compute the pro-rata share of Hawaii income on such basis. As such, S.B. 675 would impose an impossible compliance burden on PARK (and public REITs in general) and would result in an income tax on PARK.

As a REIT, PARK is subject to a passive income generation requirement under the federal tax rules that is not applicable to non-REITs. Federal tax law dictates that a REIT must earn most of its income from "rents", and income from operating a hotel is not "rents". Thus, federal law requires that a lodging REIT lease its hotels to a third party or one or more fully taxable subsidiaries. If leased to a taxable subsidiary (which is the structure used by public REITs), the taxable subsidiary is required to hire an independent operator, like Hilton, to manage the hotel. The rents paid by the taxable subsidiary to the REIT hotel owner and the management fees paid to the independent operator are both subject to Hawaii GET. The over-whelming majority (approx..85%) of the additional GET is a direct result of federal law governing hotel REITs and would not be paid by a typical non-REIT hotel owner. As described below, Park's acquisition of the two Hawaii hotels from Hilton resulted in approximately $9.5 million in additional GET being paid to the State of Hawaii annually.

S.B. 675 proposes impossible administrative burdens and consequently an income tax for all REITs operating in Hawaii that is inconsistent with federal and the vast majority of states treatment of REITs. Because S.B 675 will result in a tax on PARK's net income attributable to Hawaii it could have significant detrimental financial consequences to PARK that would cause us to review our investments in Hawaii and our form of operation, potentially jeopardizing the current additional GET revenue paid to the State.

We believe that our investment and the investments by other REITs in Hawaii are beneficial to the State and that imposing impossible compliance and reporting burdens on REITs, with misdemeanor criminal consequences, and consequently an income tax on REITs as proposed by S.B. 675 would have the undesirable effect of discouraging future investment by REITs in Hawaii.

PARK's portfolio of Hawaiian hotels is (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's two landmark, oceanfront resorts cater to residents from Hawaii and the mainland, and international travelers. PARK's Hawaiian resorts provide significant economic benefit to the State of Hawaii. We have made extensive renovations in excess of ~$228 million at Hilton Hawaiian Village and Hilton Waikoloa Village, over the last 5 years.

PARK's economic footprint benefits the State of Hawaii in many ways, including:

JOBS: PARK's hotels directly employ more than 2,728 employees. The payroll and associated benefits for these direct employees is in excess of $188,843,121 million annually.

CAPITAL MAINTENANCE: Over the next five years, PARK will likely spend almost $200 million at Hilton Hawaiian Village and Waikoloa Village on capital maintenance projects.

CAPITAL IMPROVEMENTS. Given the long-term nature of our investment, PARK is currently analyzing meaningful capital investment at both resorts. These investments are sizeable and at various stages of feasibility / underwriting.

TAXES GENERATED BY PARK in HAWAII:

- Payroll Taxes. Payroll taxes on employee wages totaled $10,069,127 in 2018.
- General Excise and Use Tax - Operations. The tax revenues generated from our operations totaled $25,238,236 in 2018.
- General Excise Tax – Rent / Management Agreement. As described above as a REIT, unlike other real estate owners, PARK must use a lease structure. As a result, we are required to pay General Excise Tax on the rent paid between our related companies. Effectively a double taxation of the same revenue. This additional GET was $8,068,335 in 2018 and the additional GET paid on the management fees paid to our independent operator was $1,400,294 in 2018.
- Property taxes. Property taxes at PARK's two resorts totaled $18,378,954 in 2018.

CHARITABLE ENDEAVORS BY PARK and ITS ASSOCIATES in HAWAII:

- PARK associates spend thousands of hours annually volunteering for local events and charities.
- PARK and its associates provide cash and in-kind charitable contributions in excess of $600,000.

We believe that PARK's hotels benefit the State of Hawaii and its residents tremendously in a variety of economic and charitable ways. We strongly urge that Hawaii not impose impossible compliance burdens on REITs. If adopted, this controversial legislation would (i) put Hawaii at a competitive disadvantage for REIT investment, (ii) penalize Hawaii citizens who invest in REITs by reducing their returns, (iii) discourage REITs from investing in Hawaii, and (iv) require PARK to reassess the level of its investment or reinvestment, and form of operation, in Hawaii. Further, this legislation would have a chilling effect on the motivation of Park to improve its Hawaii assets and grow their positive economic and charitable impact through additional capital investment.

We thank you again for this opportunity to provide testimony against S.B. 675 and sincerely hope you consider our **strong opposition** to this proposed legislation.

Respectfully submitted,

Scott Winer
Senior Vice President, Tax

February 5, 2019

Hearing Date: February 6, 2019
Time: 10:00 a.m.
Place: Hawaii State Capitol, Conference Room 211

Sen. Donovan M. Dela Cruz, Chair
Sen. Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means
415 South Beretania Street
Honolulu, Hawaii 96813

Re: Testimony in Opposition to Senate Bill 675

Dear Chairman Dela Cruz, Vice-Chairman Keith-Agaran and Committee Members:

Thank you for the opportunity to provide written testimony on Senate Bill 675. The intent of SB 675 is to subject non-resident shareholders of REITs to taxation on their dividends through a withholding tax mechanism. As we have previously testified in prior legislative sessions, we are not in support of this type of measure and believe this is not the appropriate legislative path. We are Francis Cofran, the Senior General Manager of Ala Moana Center, the largest retail center in the state of Hawaii, and Jared Chupaila, EVP, Chief Operating Officer of Brookfield Properties, an owner of Ala Moana Center.

GGP has now become Brookfield Property REIT and is an affiliate of Brookfield Asset Management. Brookfield Properties' retail group, which encompasses the former GGP portfolio as well as other retail properties within the Brookfield group, has an extensive portfolio of mall properties encompassing 161 locations across 42 U.S. states. Brookfield Properties assures premier quality and optimal outcomes for our tenants, business partners and the communities in which we do business. Brookfield Properties continues GGP's legacy of being a part of the economic fabric of Hawaii for more than 30 years (since 1987) -- managing, owning and reinvesting in its Hawaii real estate assets as part of a long-term commitment that provides economic stability, growth, and jobs through all economic cycles.

Brookfield Properties operates three major retail shopping centers in Hawaii – the Prince Kuhio Plaza in Hilo, Whalers Village in Lahaina, and the Ala Moana Center in Honolulu. The latter two are iconic visitor attractions that help sustain Hawaii's important tourism industry. In addition to their important role in tourism, all three centers directly benefit the state and local economy through the Hawaii general excise tax.

ALA MOANA CENTER
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These centers are also key gathering places for our local communities. Efficient REIT capital allows us to constantly reinvest in and enhance the customer experience. For example, we are very supportive and proud of the activities that take place at the new Center Stage at Ala Moana Center, our sponsorship of the Fourth of July firework celebration, our enhancements at Whaler's Village, and our ability to introduce to Hawaii residents, retailers and retail concepts which are on the cutting edge and brand new to the State of Hawaii. Efficient REIT capital also allows us to make infrastructure and other improvements which bear fruit in projects like Foodland Farms at Ala Moana Center and the new Lanai food court, which opened last year.

House Bill No. 675 proposes an unworkable system with respect to the withholding on shareholder distributions. A publicly traded REIT is not limited to 100 shareholders like an S corporation but instead most shares are held in "street name" by Cede & Co. (an affiliate of The Depository Trust Corporation) on behalf of the ultimate beneficial owners which can be several layers removed through mutual funds and brokerage firms. Brookfield Property REIT continues to be a publicly traded REIT and approximately 95% of its Class A shares are held by Cede & Co. It would be impossible to provide the name, address and federal identifier required under House Bill No. 675. The likely outcome of such a withholding tax is an over withholding by a REIT and an increased administrative burden for the Department of Revenue with possibly millions of shareholders filing returns and seeking refunds. If proponents argue that this would not happen because shareholders would not seek to claim small refunds, that would be an admission that the imposition is an improper exaction. There are also possible federal constitutional issues regarding jurisdiction and true double taxation in shareholders' residence states that could cause inter-state conflicts that could take years to sort out.

During this hearing and in prior year legislative sessions, we have testified in opposition to attempts to eliminate the deduction for dividends paid by REITs. The withholding tax mechanism of this bill is merely a different way of trying to achieve the same taxability of REIT income. This testimony has focused on the following points:

- If Hawaii enacts this legislation, it will be out of step with all other states which do not impose withholding tax on nonresident shareholders of publicly traded corporations.
- REITs produce substantial economic benefits to the State of Hawaii in the form of jobs, general excise tax, income tax from persons working or engaging in business at REIT properties, and real property taxes. The three properties annually pay more than $32 million in real property and general excise taxes – metrics that clearly demonstrate that REITs are investing in the economic well-being of the state and its residents.
- During 2012-2016, Brookfield Property REIT invested almost $1 billion in capital to construct additional retail square footage and residential condominiums based on the existing Hawaiian tax regime. During the construction period, we estimated economic activity of 11,600 full- and part-time jobs and over $146 million of state revenue including indirect community benefits. Post-construction, the additional retail will produce an incremental $33 million of state revenue and 3,000 jobs annually.
- Future expansion plans could be reconsidered if the attractiveness of investing in Hawaii relative to the rest of the United States is diminished through the enactment of this bill.

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In September 2016, the Department of Business, Economic Development & Tourism ("DBEDT") released its final study on REITs in Hawaii. The report specifically notes that the estimates do not take into account changes in behavior, including the likelihood of reduced future REIT investment, if there are additional impediments to REIT or shareholder returns such as this withholding tax. Similarly, the report does not address the revenue loss to the State resulting from future reduced REIT investment.

Please do not allow the perception of a revenue increase override the long-term economic benefits that REIT investment under the existing tax regime brings to the state of Hawaii and its residents. For the foregoing reasons, we respectfully oppose House Bill No. 675 and urge you to not let it move forward. Thank you for your consideration.

Sincerely,

Francis Cofran
Senior General Manager

Jared Chupaila
EVP, Chief Operating Officer

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WRITTEN TESTIMONY OF

JEFFREY S. CLARK
SVP-TAX & JV ACCOUNTING
HOST HOTELS & RESORTS, INC.
IN OPPOSITION TO S.B. 675

BEFORE THE HAWAII SENATE
COMMITTEE ON WAYS & MEANS

THE HONORABLE DONOVAN DELA CRUZ, CHAIR
THE HONORABLE GILBERT S.C. KEITH-AGARAN, VICE CHAIR

HEARING ON S.B. 675

FEB. 5, 2019

Thank you for the opportunity to submit this testimony in opposition to S.B. 675 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 New York Stock Exchange. Host owns approximately 90 hotels throughout the US, Canada and Brazil, including three in Hawaii. Host strongly opposes, and asks you to hold, S.B. 675.

Host agrees with the discussion points included in Nareit's testimony in opposition to S.B. 675 regarding how the legislation would lose revenue on a net basis, how the bill would cause REITs to invest more in other states since they do not have such anti-REIT provisions, and how the bill would not be administrable because REITs (like other listed companies) do not know the state of residence or other details of the vast majority of their shareholder base because the shares are held in "street name".

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

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

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

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

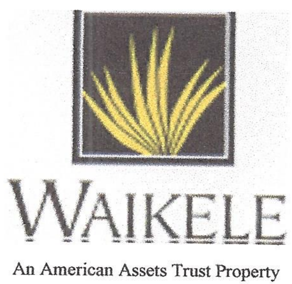
Hawaii imposes GET on not only the room charges and other hotel operating income earned by the hotel, but also on the rent received from the taxable subsidiary and on the management fee paid to the operator. Again, this additional GET is not imposed on a non-REIT hotel owner. As a result, GET is imposed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

For example, Host leases its three Hawai‘i hotels, the Fairmont Kea Lani on Maui, the Hyatt Regency Maui Resort & Spa, and the Hyatt Place Waikiki Beach to a fully taxable subsidiary, and the taxable subsidiary hired independent operators (Fairmont and Hyatt) to operate its hotels. Both the subsidiary rents and the operator fees have resulted in an **additional annual GET of approximately $5-$6 million** to Hawaii for each of 2017 and 2018 that would not have been assessed if the same entity was the owner and the operator. Because the GET is a gross receipts, rather than a net income, tax, it is a much more reliable source of revenues for the State. It also is a much greater source of revenues to the State than the corporate income tax. S.B. 675's enactment immediately would risk elimination of this extremely valuable source of GET revenues to the State.

Because of these unique requirements applicable to hotel REITs, the State received more than $16 million of GET in 2018 alone from hotel REITs in Hawai‘i that non-REIT hotel owners do not incur. Yet the proponents of S.B. 675 claim that we operate tax-free in Hawaii!

Why operate this way if it results in more aggregate tax than a non-REIT hotel owner-operator? Because owning and operating the hotels require different expertise, and separating the hotel ownership from the hotel operations creates more value both for the investors in the REIT and the investors in the hotel operator. As an additional

benefit, it also creates million of dollars of revenues to, and many jobs, in, this State. It's a win-win situation, all of which immediately could be jeopardized by the enactment of S.B. 675. Accordingly, Host respectfully asks the Committee to hold S.B. 675.



An American Assets Trust Property

February 6, 2019

Honorable Donavan M. Dela Cruz, Chair
Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Hawaii Senate Committee on Ways & Means
State Capitol
415 South Beretania Street Room 211
Honolulu, Hawaii 96813

Re: Written Testimony to Senate Bill No. 675, Requires that Real Estate Investment Trusts file returns reporting their shareholders' pro rata shares of net income and net income attributable to this State. Requires withholding on all dividend payments to shareholders.

Dear Chair Dela Cruz, Vice-Chair Keith-Agaran, and Committee Members:

My name is Pamela Wilson, and I am the General Manager of Hawaii Real Estate for American Assets Trust (AAT). American Assets Trust is a New York Stock Exchange-listed Real Estate Investment Trust (REIT) engaged in acquiring, improving, developing and managing premier retail, office and residential properties primarily in Hawaii, Southern California, Northern California, Oregon, Texas and Washington State. Currently, AAT owns four properties in Hawaii: Waikele Center; The Shops at 2150 Kalakaua; Waikiki Beach Walk and the Embassy Suites-Waikiki Beach Walk. I have been an AAT employee in Hawaii for over 14 years. Like all REITs, AAT is a long-term investor, and is committed to the community. We have owned these properties for over 15 years. In addition, we have contributed millions of dollars in improving these properties, generating hundreds of jobs and millions of dollars of revenue for the State.

S.B. 675 would require REITs file returns reporting their shareholders identifications, distribution details and each shareholders share of total net income and net income attributable to the State of Hawaii. Further it requires withholding on all dividend payments to shareholders.

American Assets Trust opposes this legislation. First, compliance would be virtually impossible. Senate Bill 675 proposes an unworkable system. Unlike an S corporation, a publicly traded REIT is not limited to 100 shareholders who can be easily identified. In fact, like many REITs, AAT has millions of shares outstanding, with approximately 99 percent held in "street name" by a central securities depository on behalf of the ultimate owners. It is and would be impossible for a given REIT to provide the name, address and federal identifying information required under Senate Bill 675 with respect to all of these shares. And the way in which capital markets operate, with thousands of shareholders entering and leaving the market in a single day or an hour, compounds an already impossible challenge.

Furthermore, as with all REITs, and unlike other non-REIT property owners, we must satisfy many strict and expensive requirements in order to maintain our REIT status. As an example, most of our income must be from rent and other real estate related income. Unlike a non-REIT, we can't own and operate the Embassy Suites because guest room fees and service charges aren't "rent." As a result, we need to lease the hotel – either to a third party operator or to a fully taxable subsidiary. If we lease to a taxable subsidiary, federal law demands that the subsidiary hire an independent operator to operate the hotel. Hawaii imposes a GET not only on the hotel guest room charges and service income, but also on the rent from the taxable subsidiary and the management fee to the operator. In essence, a hotel REIT is taxed on two additional levels of income as compared with a non-REIT hotel owner-operator. Our understanding is that the additional GET paid by hotel REITs in Hawaii in 2018 was more than $16 million than would be applicable to non-REIT property owners. And as a tax on gross receipts that makes up the majority of the State's revenue, the GET is a much more stable source of State revenues than corporate income tax. SB 675's enactment would immediately threaten this extremely valuable source of GET revenues to the State.

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Finally, S.B 675's enactments risk future jobs and tax revenue that would not be here without capital deployed by REITs. As a publicly traded company, AAT has access to the public capital markets and can access capital for times when it is sorely needed, like during a recession.

I ask that you consider how burdensome this new legislation as proposed would be, risking jobs and resulting in a potential loss of GET revenue, over withholding and double taxation on both Hawaii-based and non-Hawaii investors that invest in REITs. Compliance would be virtually impossible. For these reasons, please hold Bill 675. Thank you for the opportunity to submit this testimony.

Sincerely,

Pamela R. Wilson
General Manager, Hawaii Real Estate
American Assets Trust

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SB 675, RELATING TO TAXATION

FEBRUARY 6, 2019 · SENATE WAYS AND MEANS COMMITTEE · CHAIR SEN. DONOVAN M. DELA CRUZ

POSITION: Support.

RATIONALE: IMUAlliance supports SB 675, relating to taxation, which requires that real estate investment trusts file returns reporting their shareholders' pro rata shares of net income and net income attributable to this State and requires withholding on all payments to shareholders, applicable to taxable years beginning after 12/31/2019.

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. Thus, income generated by Hawai'i property is getting taxed elsewhere, sending sorely needed tax dollars for local schools, infrastructure, climate change mitigation, human and social services, and affordable housing outside of our shores.

Eliminating REIT dividend deductions will uplift Hawai'i's people. Over 30 REITs operate in Hawai'i, the most prominent of which is Alexander and Baldwin. Collectively, Hawai'i REITs own roughly $17 billion worth of real estate and produce almost $1 billion in dividend income exempt from the corporate income tax, amounting to over $50 million in lost tax revenue–a number that will only increase over time, as real estate values continue to soar.

February 5, 2019

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Members of the Senate Committee on Ways and Means

RE: **SB 675 – RELATING TO TAXATION**
Hearing date – February 6, 2019 at 10:00 am

Aloha Chairs Dela Cruz, Vice Chair Keith-Agaran and members of the committee,

Thank you for allowing NAIOP Hawaii to submit testimony in **OPPOSITION** to SB 675 – 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. NAIOP Hawaii members also include many of the most active affordable housing developers throughout the state.

SB 675 would require all real estate investment trusts (REITs) to report shareholders' pro rata shares of net income and net income attributable to properties in Hawaii at the end of each year beginning in 2019. The bill also requires withholding of Hawaii state taxes due on all payments to shareholders at a minimum of 5%. These requirements are virtually impossible to comply with because publicly traded REIT stock is held in "street name" and REITs do not know the identities of their shareholders.

Over the past few years, REIT investment has resulted in several billion dollars of construction activity, which created thousands of local jobs, both construction and permanent, and helped our community recover from the severe economic downtown that occurred during the mid-2000s.

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.

Simply put, the bill will not provide the tax benefit assumed, but would create additional barriers to do business in our state, which would then impact the level of interest in future investment in Hawaii and put jobs and revenues at risk.

For these reasons, NAIOP Hawaii respectfully urges the committee to defer SB 675.

Mahalo for your consideration,

Scott Settle, Director
NAIOP Hawaii

SB 675
RELATING TO TAXATION

PAUL T. OSHIRO
DIRECTOR – GOVERNMENT AFFAIRS
ALEXANDER & BALDWIN, INC.

FEBRUARY 6, 2019

Chair Dela Cruz and Members of the Senate Committee on Ways & Means:

I am Paul Oshiro, testifying on behalf of Alexander & Baldwin (A&B) on SB 675, "A BILL FOR AN ACT RELATING TO TAXATION." We respectfully oppose this bill.

While A&B has always been a Hawaii-based company, in 2012, A&B made a strategic decision to migrate its mainland investments back to Hawaii. Since then, A&B has sold all of its mainland properties and has reinvested the proceeds back in Hawaii—acquiring properties including the Kailua Town commercial center, Manoa Marketplace, Waianae Mall, Laulani Village (Ewa Beach), Puunene Shopping Center (Maui), and Hokulei Village (Kauai). In 2017, A&B then made the decision to convert to a real estate investment trust (REIT) to better support our Hawaii-focused strategy and increase our ability to invest in Hawaii, in an increasingly competitive environment. A REIT structure enables A&B to attract new investors to its stock, giving us capital to invest in our Hawaii-focused strategy, and puts us in a better position to compete with large, out-of-state investors, with greater sources of capital, for the acquisition of Hawaii properties, thus keeping them in locally-owned hands. Furthermore, REITs are structured to be long-term

holders of real estate, thus complementary 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 enable all sizes of investors to invest in real estate. REITs generally own, operate, and 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 includes a requirement under Federal Law to distribute at least 90% of its taxable income to its shareholders as dividends. 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, as the individual shareholders will pay the tax on these dividends in their home state of residence.

The purpose of SB 675 is to impose a Hawaii tax on non-Hawaii resident shareholders for dividends received from REITs with properties in Hawaii. At present, REIT shareholders are required to pay tax in their home state on all dividend income received from REITs, irrespective of where the REIT properties are located. If this bill is passed, Hawaii will become the only state in the nation to impose a tax on non-residents who derive dividend income from property in its state.

A&B has significant concerns with this bill. First, it will be extremely difficult to fully implement. The majority of shares in REITs are presently held in "street name" by stockbrokers, and the U.S. Securities and Exchange Commission does not require stockbrokers to disclose the names and addresses of shareholders of stock held in street name. Thus, REITs will not be able to ascertain the identities and addresses of all of the

individual non-resident shareholders who hold their stock, in order to comply with the administrative requirements of this bill. In addition, with shares of REIT stock freely traded on stock exchanges with many REITs having thousands of shareholders, and shareholders often going in and out of the stock during the course of the year, recordkeeping on who owned how many shares of REIT stock on specific dates for varying durations of time and then allocating Hawaii taxable income to the amount of dividend earned off of Hawaii properties by each individual investor is envisioned to be a significant administrative challenge.

More importantly, this bill will deter individuals from acquiring shares of REITs that have Hawaii holdings because of the administrative burden that will be imposed on the individual shareholder as well. It is our understanding that this bill is premised on the assumption that the home state of the non-resident shareholder will grant tax credits to the taxpayer for the amount of tax that is paid to the State of Hawaii, and relinquish the tax that previously would have been paid to their state. This, however, is not a given. Should states not provide this corresponding tax credit and instead decide to retain the tax on REIT properties that they have been collecting over the years from residents of their state, this will result in a double taxation of dividend income for REIT properties situated in Hawaii. Thus, taxpayers are likely to invest in a REIT without Hawaii holdings, rather than face this financial uncertainty.

In addition, in that the bill requires REITs to withhold and pay this tax to the State on behalf of the shareholder, parties who are exempt from income tax such as pension funds, labor unions, and 401ks, as well as residents who reside in states that do not impose an income tax, may face significant challenges trying to recover taxes withheld in Hawaii.

In light of the above, we believe that this bill may discourage both REITs from investing in Hawaii and individual investors/entities from investing in Hawaii REITs. For REITs, these new administrative requirements may compel them to either relocate their investments elsewhere or to lessen their business activity in Hawaii. Yet, REITs are a significant source of much-needed outside capital for Hawaii. When combined with the direct reduction in general excise and income taxes from diminished REIT related construction, fewer jobs, and the reduction in business and individual income taxes because of the direct and indirect impacts of lower REIT related activity, the impact that this bill will have on State tax revenues is very unclear as this bill will likely have a significant negative impact to the state's overall economy.

This bill will also have a disproportionately negative impact on a Hawaii-focused REIT such as A&B, who brands itself as a pure Hawaii play. If Hawaii becomes the first state in the nation to impose a tax on non-resident REIT shareholders, there is no company in the state that would have a quicker evaporation of investor interest and investment than A&B. This bill will also hurt those REITs that invest the most in Hawaii, and give a competitive edge to out-of-state entities with only a few holdings in Hawaii and the majority of their investment elsewhere, and who are interested in owning—rather than operating—the Hawaii properties, and more likely to flip the real estate. A&B will be at a significant disadvantage in attracting additional shareholders to support our continued investment in Hawaii.

Based on the aforementioned, we respectfully request that this bill be held in Committee. Thank you for the opportunity to testify.

SB-675
Submitted on: 2/3/2019 10:14:53 PM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Joseph Kohn MD	Testifying for We Are One, Inc. - www.WeAreOne.cc - WAO	Support	No

Comments:

Tax the rich and they will still be rich.

Dear Chairman Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

Please pass SB 675. REITs pay out almost all of their profits to their shareholders in the form of dividends, but over 99% of Hawaii REITs shareholders are from out of state.

REITs shareholders pay income tax only in the state where they actually reside -- so only the small minority of REIT shareholders who live here pay income tax from REITs to the state of Hawaii.

The hundreds of millions of dollars in profits that REIT shareholders earn from Hawaii real estate each year should be taxed, so the revenue can be used for Hawaii's needs, such as affordable housing.

Mahalo for the chance to submit testimony in support of SB 675.

www.WeAreOne.cc

February 1, 2019

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

Comments and Concerns in Strong Opposition to SB 675, Relating to Real Estate Investment Trusts (REITs) (Requires REITs file returns reporting shareholders' pro rata shares of net income and net income attributable to this State. Requires withholding on all payments to shareholders. Applies to taxable years beginning after 12/31/2019.).

Wednesday, February 6, 2019, 10:00 a.m., in Conference Room 211

The Land Use Research Foundation of Hawaii (LURF) is a private, non-profit research and trade association whose members include major Hawaii landowners, developers and a utility company. LURF's mission is to advocate for reasonable, rational and equitable land use planning, legislation and regulations that encourage well-planned economic growth and development, while safeguarding Hawaii's significant natural and cultural resources, and public health and safety.

SB 675. The purpose of this bill is to require REITs to file returns reporting their shareholders pro rata shares of net income and net income attributable to this State; and to require withholding and payment to the State on behalf of shareholders, an amount equal to five per cent multiplied by the amount of the shareholder's pro rata share of the income attributable to the State. Should SB 675 be adopted, non-resident REIT shareholders will be taxed on dividend income attributable to this State, despite paying income tax in their home state, resulting in a double tax for those shareholders.

LURF's Position. LURF acknowledges the intent of this and prior versions of anti-REIT measures given what may be perceived to be the potential for tax avoidance and abuse by foreign/mainland corporations and wealthy individuals through real estate ownership arrangements structured through REITs, however, reported justifications for this bill have not thus far been proven or supported by any credible facts or evidence.

LURF's Opposition to SB 675 is Premised on the Following Concerns and Issues:

1. **The Double Tax on Non-Residents Resulting from this Proposed Measure is Contrary to the Underlying Intent of REITs.**

REITs are corporations or business trusts which were created by Congress in 1960 to allow small investors, including average, every day citizens, to invest in income-producing real estate. Pursuant to federal tax law, REITs are required to be widely held and to distribute at least 90% of their taxable income to shareholders and must also comply with other requirements imposed to ensure their focus on real estate. In short, REITs must comply with asset, income, compliance and distribution requirements not imposed on other real estate companies. In exchange for such compliance, REIT dividends are allowed to be passed through to its shareholders, taxes on which are paid in the individual shareholders' home states regardless of where the REIT property is located or where REIT income is derived.

Should this measure be passed, non-resident shareholders will be made subject to double taxation on income derived from REIT property in this State, in direct contravention to the intent underlying the federal government's establishment of REITs. Such a consequence may reduce future construction and investment by REITs locally, thereby resulting in revenue loss and damage to the economy of the State. Furthermore, replacement investor groups may likely be tax-exempt institutions such as pension plans and foundations which would generate even less in taxes from their real estate investments.

2. **The Bill Raises Constitutionality Issues.**

LURF believes that by proposing to require REITs to withhold and pay tax on behalf of non-resident investors, SB 675, in effect inappropriately asserts jurisdiction over non-residents who otherwise lack any contact with Hawaii other than being purely passive investors in a publicly traded company. SB 675 thus arguably raises questions of constitutionality as to whether a sufficient connection exists between those non-resident investors and this State.

3. **SB 675 is Contrary to the Tax Treatment of REITs Pursuant to Current Federal Income Tax Rules and Laws of Other States with an Income-Based Tax System.**

SB 675 would enact policy change that would create disparity between current Hawaii, federal, and most other states' laws with respect to the taxation of REIT income.

The laws of every other state with an income-based tax system now allow REITs to pass through dividends to shareholders, and currently tax REIT income just once on the shareholder level (not on the entity level), based on the residence of the shareholder that receives the REIT dividends and not on the location of the REIT or its property/projects.

By now proposing to double tax non-resident shareholders of the REITs that do business in Hawaii, SB 675 would upset the uniformity of state taxation principles as applied between states. Passage of this measure would make Hawaii the only state to double tax non-resident shareholders of widely held REITs as described above.

4. Compliance with this Measure Would be Unfeasible, if Not Impossible Given the Inability of REITs to Ascertain the Information Required to be Reported by this Bill.

LURF understands that like all public companies, most REIT shares are held in street name by brokers, who are not obligated to report shareholder identifying information to the REIT. There is thus no feasible way for REITs to ascertain the identities of and other information relating to their non-resident shareholders in order to substantially comply with this measure.

5. Hawaii REITs Significantly Contribute to and Benefit the Local Economy.

LURF believes double taxation of non-resident shareholder income for Hawaii REITs would certainly mitigate, if not extinguish interest and incentive in investing in Hawaii-based REITs, which currently contribute significantly to Hawaii's economy.

Results from the 2016 State Department of Business, Economic Development & Tourism Research and Economic Analysis Division's Final Report on REITs[1] (the "Final Report") indicate that as of September 2016, approximately 42 REITs operating in Hawaii reportedly held assets in the amount of an estimated $7.8 billion at cost basis[2], which has resulted in substantial economic activity in local industries including construction, retail, resort, healthcare and personal services, as well as employment for many Hawaii residents, and considerable tax revenues for the state and city governments. Such tax revenues include State General Excise Tax (GET) on rents and retail sale of goods, business income tax on profits made by tenants, income tax from employment of Hawaii residents, and millions of dollars in property taxes.

Proponents of this bill should be mindful that significant economic growth experienced in this State over the past few years, and which is expected to continue in the future, is undoubtedly attributable in part to REIT investment in Hawaii. Outrigger Enterprises partnered with REIT American Assets Trust to successfully develop the Waikiki Beach Walk. General Growth' Properties' expansion and renovation of the Ala Moana Shopping Center, as well as its partnering with Honolulu-based, local companies (The MacNaughton Group, The Kobayashi Group and BlackSand Capital) to develop the Park Lane residential condominium project is another example. The capital invested in that project to construct additional retail space and luxury residences will reportedly exceed $1 billion, and the development will have created an estimated 11,600 full- and part-time jobs and over $146 million of state revenue. Taubman Centers, Inc., another REIT,

[1] Department of Business, Economic Development & Tourism Research and Economic Analysis Division. *Real Estate Investment Trusts in Hawaii: Analysis and Survey Results*. September 2016.

[2] *Final Report* at pages 3, 15-16.

also partnered with CoastWood Capital Group, LLC to revitalize Waikiki through the redevelopment of the International Market Place at a cost of approximately $400 million.

REIT projects have helped to support Hawaii's construction industry immensely[3] by providing thousands of jobs, and continue to significantly contribute to the local economy through development of more affordable housing (more than 2,000 rental housing units for Hawaii's families, such as the Moanalua Hillside expansion of more affordable housing rentals), student housing near the University of Hawaii, health care facilities, offices, shopping centers (Pearlridge Center renovations and Ka Makani Ali'i), and hotels.

Despite claims made by detractors, the multi-billion-dollar investments and contributions to Hawaii's economy made by REITs may not be so easily generated through other means or resources. Attracting and obtaining in-state capital for large projects is very difficult. The State should also be concerned with the types of entities willing and able to invest in Hawaii and should be wary of private investors looking only to make quick gains when the market is booming. Because federal regulations preclude REITs from "flipping" properties, REITs are by law, long-term investors which help to stabilize commercial real estate prices, and which are also likely to become a part of the local community.

6. The Tax Rule Changes Proposed by this Bill will Unfairly Affect REITs and the Small Investors Which Have Already Made Substantial Investments in Hawaii.

The Hawaii tax on non-resident REIT shareholders is expected to have a significant negative effect on future investment by REITs in Hawaii. Proponents of this bill attempt to minimize negative consequences by claiming that very few Hawaii taxpayers invest in REITs with property in Hawaii, however, LURF understands that in 2014 over 9,000 Hawaii investors had investments in over 70 public, non-listed REITs and received almost $30 million in distributions, and that tens of thousands more directly or indirectly own shares in stock exchange-listed REITs.

Supporters also ignore the fact that tax law changes proposed by SB 675 will unfairly impact those publicly traded REITs which have already made substantial investments in Hawaii and have contributed greatly to the State's economy in reliance on tax principles and tax treatment of its shareholders, which, as discussed above, is considered a fundamental principle of taxation applicable to REITs.

If passed, this measure may strongly discourage future investment by REITs in Hawaii, which would ultimately impact jobs, reduce tax revenue and result in significant consequences for the State's future economy.

[3] Since 2011, REIT-related construction activity alone is estimated to have generated billions in Hawaii GDP.

Conclusion. LURF's position is that proponents of this measure have failed to credibly present any material facts or circumstances to prove that this proposed legislation is in fact necessary, or that the State's economy will significantly improve because of taking the action proposed. The intent and application of SB 675 thus arguably remain unreasonable, unwarranted, and exceedingly anti-business.

Moreover, given the potential unconstitutionality of this measure; the practical impossibility of REITs to comply with the reporting requirements of this bill; and that an unjustifiable change of a universal tax rule in place since 1960 could significantly reduce the availability of capital in this State, as well as result in other negative economic repercussions, LURF must **strongly oppose SB 675**, and respectfully requests that this bill be held in this Committee.

Evelyn Hao
President

Rev. Won-Seok Yuh
Vice President-Clergy

William Bekemeier
Vice President-Laity

Jon Davidann
Treasurer

Deanna Espinas
Secretary

Christy MacPherson
Executive Director

Soo San Schake
Organizing Assistant

Support for SB675 RELATING TO TAXATION OF REAL ESTATE INVESTMENT TRUSTS

Good morning, Rep. DelaCruz, Vice-Chair Vice-Chair Keith-Agaran, and committee members..

I am Evelyn Aczon Hao, President of Faith Action for Community Equity.

Faith Action for Community Equity (formerly FACE) is a 23-year-old grassroots, interfaith organization that includes 18 congregations and temples, a union, housing association, Wahiawa Health and 3 advocacy organizations on Oahu. Faith Action is driven by a deep spiritual commitment to improve the quality of life for our members and all people of Hawaii. We strive to address issues of social justice at all levels of government.

We whole-heartedly support Senate Bill 675.

We see this bill as a step in the right direction toward economic justice and thus social justice. Every working citizen, every Mom and Pop store, every company in Hawaii must pay taxes which support our economy. But REITS are exempt from this responsibility. The 40+ REITs corporations in Hawaii have real estate properties valued at an estimated $18 billion. The income from those properties earn profits totaling an estimated
$1 billion.

This we know: REITs *must* pay their fair share, pure and simple. Our members and others in the community are first shocked upon learning about REITs and then agitated enough to spread the word to friends and relatives and pass out petitions. We definitely have a groundswell building.

For over 20 years, Faith Action has been diligent in making affordable housing a reality for all Hawaii's residents. Making this happen is more than complicated; it requires creativity, persistence, and money.

Faith Action's legislative initiative aims to get more resources/money for truly affordable housing in Hawaii. REITs is one obvious source.

Making housing affordable so that all Hawaii residents can begin to create a home for themselves and their children is a moral responsibility for all who have the power to help make it so.

Faith Action for Community Equity, P.O. Box 235950, Honolulu, HI 96823
www.faithactionhawaii.org
(808) 554-3833

It is a moral responsibility because affordability leads to stability. Stabiliity leads to community. Community leads to a place that can truly be called “home” where all who live there can hope, contribute, and thrive.

We ask you to pass SB675. Thank you for this opportunity.

Evelyn Aczon Hao
President
Faith Action for Community Equity

SB-675
Submitted on: 2/4/2019 3:37:59 PM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Richard Tillotson	Individual	Support	No

Comments:

Aloha,

While generally in support of this measure, I believe it should be amended.

Real Estate Investment Trusts (REITs) are corporations that use a loophole to avoid the Hawaii corporate tax. That loophole should be closed, and the new tax revenue that is generated should be dedicated to increase the supply of affordable housing.

REITs own income-producing property in Hawaii such as Ala Moana Center, the Hilton Hawaiian Village Resort, as well as office buildings and many other shopping centers and hotels. Together, they own property with an estimated total value of $18 billion that earns an estimated $1 billion in profits annually. If Hawaii’s corporate tax were applied to REITs, it is estimated that somewhere in the neighborhood of $60 million in tax revenue would be generated.

Hawaii faces an enormous shortage of housing that is affordable to low- and middle-income individuals and families. New housing is being built, but most of it is priced for the high-income strata. Some efforts are being made to build affordable housing for low- and middle-income levels, but much greater efforts must be made because the need is so great and the cost of housing is so high.

1. ideas to finance affordable housing are contained in a study entitled, “Housing Action Plan Final Report to the State Legislature,” which was funded by the Legislature and issued in 2017. Those ideas include dedicating new tax revenue for affordable/workforce housing or infrastructure, with the funds kept separate from the general fund.

The bill should be amended to separate the REIT tax revenue from the general fund and direct it to the creation of affordable housing in Hawaii.

Mahalo for considering my testimony.

SB-675
Submitted on: 2/4/2019 10:13:57 AM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Concetta DiLeo	Individual	Support	No

Comments:

Real Estate Investment Trusts (REITs) are corporations that use a loophole to avoid the Hawaii corporate tax. That loophole should be closed, and the new tax revenue that is generated should be dedicated to increase the supply of affordable housing.
REITs own income-producing property in Hawaii such as Ala Moana Center, the Hilton Hawaiian Village Resort, as well as office buildings and many other shopping centers and hotels. Together, they own property with an estimated total value of $18 billion that earns an estimated $1 billion in profits annually. If Hawaii's corporate tax were applied to REITs, it is estimated that somewhere in the neighborhood of $60 million in tax revenue would be generated.

Hawaii faces an enormous shortage of housing that is affordable to low- and middle-income individuals and families. New housing is being built, but most of it is priced for the high-income strata. Some efforts are being made to build affordable housing for low- and middle-income levels, but much greater efforts must be made because the need is so great and the cost of housing is so high.

Various ideas to finance affordable housing are contained in a study entitled, "Housing Action Plan Final Report to the State Legislature," which was funded by the Legislature and issued in 2017. Those ideas include dedicating new tax revenue for affordable/workforce housing or infrastructure, with the funds kept separate from the general fund.

The bill should be amended to separate the REIT tax revenue from the general fund and direct it to the creation of affordable housing in Hawaii.

Real Estate Investment Trusts (REITs) are corporations that use a loophole to avoid the Hawaii corporate tax. That loophole should be closed, and the new tax revenue that is generated should be dedicated to increase the supply of affordable housing.

REITs own income-producing property in Hawaii such as Ala Moana Center, the Hilton Hawaiian Village Resort, as well as office buildings and many other shopping centers and hotels. Together, they own property with an estimated total value of $18 billion that earns an estimated $1 billion in profits annually. If Hawaii's corporate tax were applied to REITs, it is estimated that somewhere in the neighborhood of $60 million in tax revenue would be generated. I support this bill to make REITs pay full state corporate tax on this income.

However, the increased tax proceeds should not just go into the General Fund. Hawaii faces an enormous shortage of housing that is affordable to low- and middle-income individuals and families. New housing is being built, but most of it is priced for the high-income strata. Some efforts are being made to build affordable housing for low- and middle-income levels, but much greater efforts must be made because the need is so great and the cost of housing is so high. Just hoping that private developers will ever generate the required/middle income housing is unrealistic, public housing is necessary. I lived in Singapore for a number of years and their public housing approach is an excellent model.

The bill should be amended to separate the REIT tax revenue from the general fund and direct it to the creation of affordable housing in Hawaii.

Bruce Anderson
941 B Prospect Street
Honolulu,HI 96822

SB-675
Submitted on: 2/3/2019 1:13:33 PM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Greg and Pat Farstrup	Individual	Support	No

Comments:

SB-675
Submitted on: 2/4/2019 9:27:57 AM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret ANN Renick	Individual	Support	No

Comments:

Please PASS THIS BILL and close the REIT loophole

AMEND the bill to separate REIT tax revenue fro the general fund and direct it to creation of affordable housing for HAWAII

Mahalo,

Ann Renick

SB-675
Submitted on: 2/4/2019 5:22:05 PM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Claire Gearen	Individual	Support	Yes

Comments:

Dear Chair Donovan M. Dela Cruz and Vice-Chair Gilbert S.C. Keith-Agaran,

My name is Claire Gearen, and I write in strong support of Senate Bill 675. I am a member of Faith Action for Community Equity and speak also as a concerned private citizen.

As a career public teacher, I have a clear stake in legislators' work to maintain an adequate revenue stream while operating within the state biennial budget. Not only is my salary directly tied to the legislators' appropriations, my students educational experience is affected by the amount available in the weighted student formula. I still teach students who experienced Furlough Fridays and am just recovering financially from those pay cuts. My conditions in the classroom have improved in recent years as I acquire the resources I need to teach.

Yet, putting my own interests and those of my students aside, the public more widely has an interest in closing the Real Estate Investment Trust (REIT) tax loophole. With approximately $17 billion in REIT entities in the islands, this bill could generate between $60 and $70 million per year in additional revenue. That amounts to about $50 per resident. A lost $50 a year in revenue per person is a sizable loss in government services that we shouldn't allow. Put in a positive way, an additional $50 government services per person could measurably improve citizens' lives.

We could find good uses for an additional $120 million in the biennium budget. Legislators are considering creating a housing voucher for teachers to retain educators in the state. Appleseed supports a working family income tax credit to help ALICE households. Millions could go to the rental revolving fund to support affordable housing. Legislators will know how best to appropriate the additional monies; the imperative is to close this tax loophole now in 2019. Senate Bill 675 is well designed as it mirrors federal policy and is easy to implement. I urge you to vote aye on this measure!

Sincerely,
Claire Gearen

Testimony in Strong Support of SB 675: Relating to Taxation

TO: Senate Committee on Ways and Means
FROM: Roger H. Epstein, Esq.
HEARING: Tuesday, February 6, 2018 at 10:00 a.m., Conference Room 221

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee on Ways and Means:

I am writing to express my strong support for SB 675 to ensure that REITs pay their fair share of Hawaiʻi income taxes.

Until I retired in 2016 I was a corporate tax lawyer with one of the largest law firms in Hawaii for 45 years and before that for 5 years with the IRS in Washington, DC. I am not being paid by anyone to work on this issue, but I have invested a significant amount of time into researching this festering problem of REITs paying no income tax in Hawaii. It is deeply troubling that REITs have avoided this tax for 50 years and are still fighting to keep from paying.

SB675 creates a workable and appropriate solution for collecting the approximately $50-60M of revenues Hawaii has been losing annually, because REITs are not paying any income tax on their $1B of Hawaii income. (I have attached a chart to my testimony showing that Hawaii is losing more from the current state of REIT income taxation than any other state in the country.)

SB675 retains the consistency with Federal law in taxing REITs shareholders, instead of the REITs and their shareholders (i.e. double tax), while now adding the accompanying Federal provision for withholding the tax due from nonresident (‘’foreigners” in Federal parlance) shareholders, that Hawaii has not yet adopted.

In line with comments made by the AG, the DOTAX and the REIT industry last year, this bill has been amended to completely comply with all constitutional requirements and to insure that state tax credits will be available where the shareholders reside. (I have attached to my testimony a research paper analyzing all the issues raised by the REIT industry in 2018, and concluding they are non-issues under well settled constitutional and Hawaii law.)

To insure there will not be difficulties in administration, the bill provides for a minimum tax to be withheld and paid by all shareholders, whether resident or not in Hawaii. This allows a REIT to merely add a column to the Hawaii tax returns they already file, listing their shareholders and enclosing a single check for 5% of the entire income paid out. What could be simpler? REIT shareholders not residing in Hawaii will not have to file any Hawaii returns or otherwise connect with the State, unless they owe tax on other Hawaii income. They will then report their Hawaii REIT earnings as income on their state of residence returns claiming a credit for the tax paid in Hawaii. Should any REIT shareholders be tax exempt organizations, they may file a Hawaii tax and claim a refund for the tax withheld.

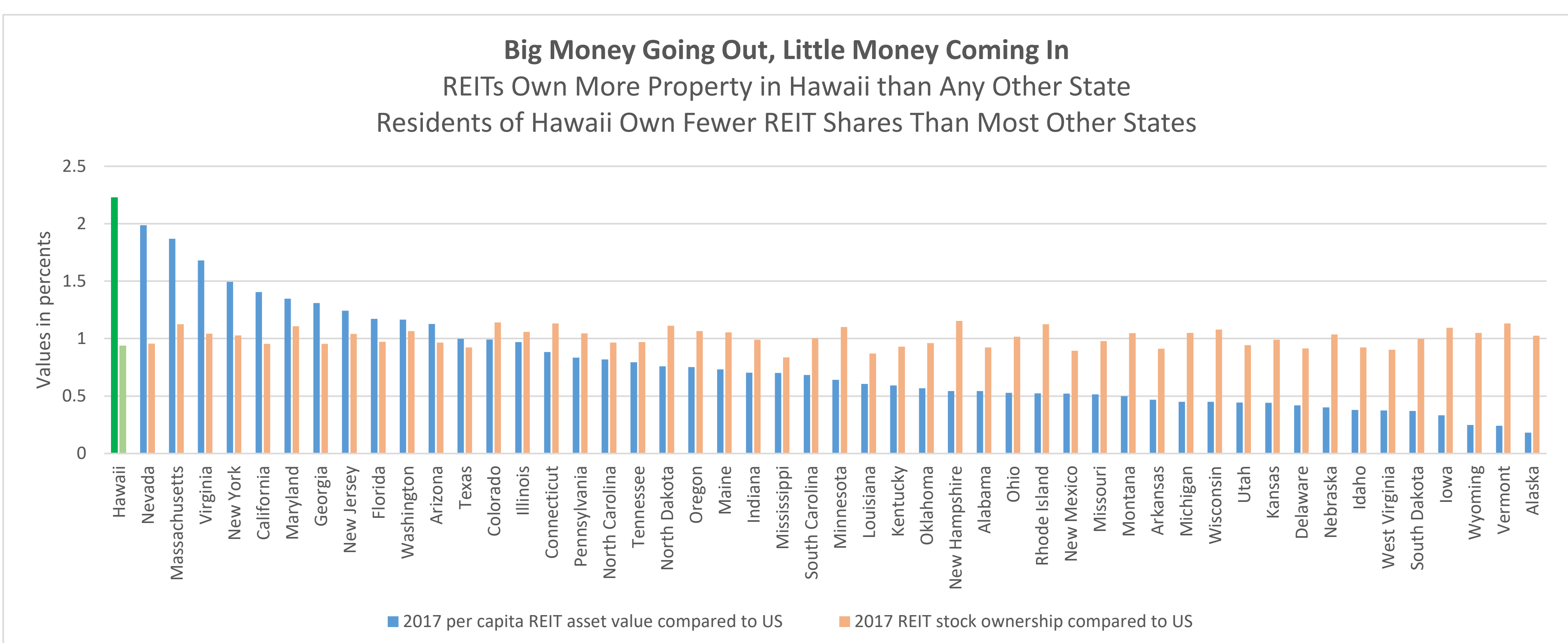
So for the REITs, one extra schedule to add to their return, one check to write for withholding, and one extra line item on their State Shareholder Form 1099s. No extra returns for DOTAX.

They may need to keep a list of REIT shareholders who paid tax, but they will not receive returns from them, nor will the shareholders have to contact or be contacted by the DOTAX. The REIT shareholders will merely have to include a single item on their own State tax returns for the tax withheld, in a manner similar to what they report for State tax withheld on their paychecks.

DOTAX will have to add language to some informational material to explain the revised REIT law. However, this is required anytime and every time the Hawaii tax law changes. And a limited number of forms may need to be revised to add reference to the tax and withholding.

Thus, a withholding law is legal, constitutional, consistent with federal law, and does not create a substantial administrative burden on any of the parties involved. As a practical matter, by fighting withholding, REITs are saying to Hawaii, you allowed us to eliminate our corporate level income tax in exchange for our shareholders paying tax on that income. And we understand that most of our shareholders are out of state so you can't actually collect from them. But it's really too much trouble to collect from them through withholding, so why don't you just forget the whole $50-60M a year.

Thank you for your consideration of this important issue.


Big Money Going Out, Little Money Coming In
REITs Own More Property in Hawaii than Any Other State
Residents of Hawaii Own Fewer REIT Shares Than Most Other States
Values in percents
2.5
2
1.5
1
0.5
0
Hawaii
Nevada
Massachusetts
Virginia
New York
California
Maryland
Georgia
New Jersey
Florida
Washington
Arizona
Texas
Colorado
Illinois
Connecticut
Pennsylvania
North Carolina
Tennessee
North Dakota
Oregon
Maine
Indiana
Mississippi
South Carolina
Minnesota
Louisiana
Kentucky
Oklahoma
New Hampshire
Alabama
Ohio
Rhode Island
New Mexico
Missouri
Montana
Arkansas
Michigan
Wisconsin
Utah
Kansas
Delaware
Nebraska
Idaho
West Virginia
South Dakota
Iowa
Wyoming
Vermont
Alaska
2017 per capita REIT asset value compared to US
2017 REIT stock ownership compared to US

Hawaii REIT Withholding Bill Legal Analysis

Roger H. Epstein, Esq.[1]

Questions Presented:

1. Is Hawaii's proposed legislation requiring Real Estate Investment Trusts (REITs) to withhold taxes from their shareholder's distributions constitutional?
2. Are there other tax examples demonstrating the legality of withholding?
3. Will shareholders resident in states that have an income tax get a credit for the Hawaii withholding?
4. Does the Withholding Bill create significant additional administrative burdens for REITs, the DOTAX, or REIT shareholders?

Short Answers:

1. Is withholding of tax on REIT distributions constitutional?

Yes, the proposed legislation is constitutional. Similar withholding taxes for non-residents have been approved by the US Supreme Court.

The two primary state tax hurdles to constitutionality are the Due Process Clause and the Commerce Clause.

Due process is concerned with fairness to the taxpayer, and is satisfied in this case by the REITs' property holdings in Hawaii. REIT shareholders are advised by prospectus that they will be paying income tax on the REIT's income; that the REIT may do business in multiple states including Hawaii, and that they should consult their own tax advisors to determine whether the Federal taxation scheme or some other(s) will be applied by state(s) to their REIT income distributions.

The Commerce Clause is concerned with the practical effect of the tax on interstate commerce, and takes the form of a four-part test that considers whether the tax: "(1) is applied to an activity with a substantial nexus with the taxing State, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State."[2] In this case, substantial nexus is satisfied by the REITs' physical presence; the legislation provides for apportionment by only taxing the REITs' income attributable to sources in Hawaii; the tax does not, by intent or effect, target or discriminate against interstate businesses; and the tax is assessed in proportion to the REIT's contacts with Hawaii, which provides services that benefit the REIT.

Having clearly met these two tests, there can be no question that a Hawaii withholding tax on the Hawaii portion of REIT distributions to shareholders is constitutional.

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1 Research assistance provided by Robert Hansen, Harvard Law School student intern.

2 Complete Auto Transit, Inc. v. Brady, 430 U.S. 274, 279 (1977).

Hawaii Law on Point:

Hawaii currently taxes the distributed income to non-resident beneficiaries from Trusts that are resident in Hawaii. This taxation is precisely the same as the proposal here to tax REIT shareholders who receive distributions, although there is no withholding.

Hawaii also taxes S Corporation shareholders, who pay tax on the Corporation's income, whether distributed or not. This S Corporation law requires a withholding at a stated rate on shareholders allocated income.

Thus, there is nothing new about this provision. In fact, when reviewed clearly, this is merely a properly continued adoption of an additional part of the Federal law which taxes foreign REIT shareholders through withholding. One might say Hawaii is merely now adopting an additional relevant part of the Federal law.

The Hawaii Withholding Tax Will Receive a Tax Credit From Other States That Have an Income Tax.

Because it is a constitutional income and withholding tax, the Commerce Clause will require all other states that have a similar income tax (virtually all states are sufficiently similar) to give REIT shareholders a credit for the Hawaii tax paid. Failure to give such a credit impermissibly discriminates against out of state earned income. For example, California recently issued Legal Ruling 2017-01 explaining how their income tax credits work for taxes paid by various entities on behalf of their owners. If a state has no income tax, than a REIT shareholder resident there merely pays the proper Hawaii tax. (i.e. there's no double tax.)

Not a Significant Additional Administrative Burden**.**

Neither the REIT, the DOTAX, nor the shareholders will be subject to additional administrative burdens, beyond that which large companies and individual shareholders should expect.

The REITs already file Hawaii tax returns and will merely be required to identify Hawaii income (if they're not already doing this) and add a schedule listing their shareholders and the tax withheld. Multi-state companies do this all the time, and also file listings of their employees and the tax withheld for them. It's merely another item to enter onto the 1099's they already provide for their shareholders.

The DOTAX gets an annual tax return from each REIT doing business in Hawaii. They will merely have to process the additional schedule and enter the name of each new taxpayer on their records. Hardly an unreasonable burden to enter the name of each new taxpayer from whom they receive money. Their may be some additional information to provide on forms and other material concerning this correction in the law. However, Hawaii tax information is updated every year for numerous state and regulatory changes. And again, it hardly seems an unreasonable additional burden to provide an information update to collect $50-60 million of additional annual revenue.

Non-resident shareholders won't have to file anything in Hawaii. They will have to claim a credit for this income which they've already been reporting in their home state, but that

is a nominal addition to their annual state tax filing. Pension plans and other exempt shareholders will file for a refund of the taxes withheld. Again a small administrative burden, compared to the Hawaii tax lost.

Background

A REIT is a corporation (or a business trust) that invests in income-generating real property, which elects to reduce it's Federal and Hawaii income taxes for distributions to its shareholders (the "DPD"), in exchange for its shareholders paying tax on the distributions (and must meet rigorous income and distribution requirements).[3]

The REIT shareholders agree to pay tax on their share of REIT distributions as if they had earned that REIT income directly.[4] In practice, most REITs distribute 100 percent of their income each year.[5]

Currently, with the exception of New Hampshire, states with income taxes have generally adopted the DPD. A natural consequence of the DPD and the resulting single layer of taxation on REIT shareholders is a potential conflict between the states where REITs earn their income and the states where their shareholders reside and pay their primary state taxes. This, of course, raises the question of which state should get the tax. (Similar "source" of income questions often arise in the state tax law context; such as New Jersey residents compensation from working in NYC, and beneficiaries residing in one state receiving distributions from a Trust operated in another state. This is similar to the Federal tax issue regarding foreigners.)

States, including Hawaii, have been grappling with this issue for years. Hawaii is particularly affected because it has a high proportion of REIT investment,[6] and a very low proportion of REIT investors.[7] It is estimated that this causes Hawaii to lose income tax revenues of roughly $50-60 million a year.

Hawaii's legislature proposed a novel solution in 2018 in the form of HB 2702 and SB 3067 (the "Withholding Bill"). Whereas prior proposed legislation would have eliminated the DPD for all REITs,[8] the Withholding Bill would charge a 5% minimum tax on a REIT shareholder's distribution attributable to Hawaii properties and require REITs to withhold that 5% from each shareholder's distribution.[9] This procedure would essentially mirror the Federal REIT provisions with respect to foreign REIT shareholders. And the minimum tax would both assure that Hawaii would collect an appropriate tax (Hawaii corporations pay at a 4.4-6.4% rate on ordinary income and 4% on capital gains), that the tax would be paid by whomever was the ultimate beneficial recipient of the REIT distribution, and that no shareholder who's tax rate in Hawaii is 5% or less would need to file a Hawaii tax return. (A tax exempt ultimate recipient can file a claim for refund.)

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[3] *See* 26 U.S.C.S. §§ 856, 857(a).
[4] 26 U.S.C.S. § 857(b).
[5] Because REITs pay taxes on undistributed income, investors regard REITs that distribute less than 100 percent of their income as "value destroying" and avoid them. *See* Walter I. Boudry, "An Examination of REIT Dividend Payout Policy," *Cornell School of Hotel Administration Collection* (2011), pg. 10.
[6] Hawaii's REIT property value per capita is $11,344.54, second in the country behind only D.C. *See* NAREIT, "REITs Across America," (accessed on June 15, 2018, at http://www.reitsacrossamerica.com/#/map/HI).
[7] US Census Bureau; www.reitsacrossamerica.com; NAREIT Research, "80 Million Americans Own REITs," Feb. 2015.
[8] 2017 HI H.B. 1012; 2018 HI H.B. 2702.
[9] 2018 HI S.B. 3067 S.D. 1.

This legislation did not pass in 2018, as several potential legal and administrative issues were raised, and there was insufficient time to properly research and address each of them. The purpose of this memo is to address each of those issues. The conclusion here, after completing the following Analysis is that there are no constitutional or other legal issues that would prohibit the adoption of the Withholding Bill; all states which have an income tax will be required to give their residents a tax credit for this Hawaii tax; and the Bill does not create any significant additional administrative burdens on the REITs, their shareholders, or the Hawaii Department of Taxation.

Analysis

States generally have broad discretion to impose taxes on their citizens.[10] This power is limited with regard to nonresidents, however.[11] The Due Process Clause and the Commerce Clause limit states' jurisdiction and authority to tax nonresidents.[12] The two standards significantly overlap, and courts sometimes conflate them; however, they are distinct in both motivation and application.[13] Due process is concerned with fairness to the taxpayer, while the Commerce Clause ensures that states do not disrupt interstate commerce.[14] The former looks at the state's jurisdiction, the latter at its authority.[15]

The two clauses present three questions. First, as a preliminary matter, who is the state seeking to tax? Second, does the state have jurisdiction over that specific taxpayer consistent with the Due Process Clause? And third, does the Commerce Clause prevent the imposition of the tax? This memo imagines a challenge brought by a taxpayer against the proposed legislation. It concludes that, in the almost certain event that a court interprets Hawaii's proposed withholding scheme as a tax on REIT income, the court will likely conclude that the legislation satisfies both the requirements of Due Process and the Commerce Clause.

I. What is being taxed?

The US Supreme Court has long held that the power to tax a corporation's earnings includes the power to postpone the tax until the distribution of those earnings and to measure it by the amounts distributed to its shareholders.[16] Moreover, a state may tax such part of the income of a non-resident as is fairly attributable … to property located in the state … and are entitled to the numerous benefits which it confers.[17]

To answer this question, the courts assess the practical operation of the tax, with little regard for how the state or the parties characterize it.[18] For example, in *International Harvester Co. v. Wisconsin Department of Taxation*,[19] the Court held that Wisconsin had the power to

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[10] *Shaffer v. Carter*, 252 U.S. 37, 50-51 (1920).
[11] *Id.*, 252 U.S. at 52.
[12] *Nat'l Bellas Hess v. Dep't of Revenue*, 386 U.S. 753, 757 (1967).
[13] *Quill Corp. v. North Dakota*, 504 U.S. 298, 312 (1992).
[14] *Ibid*.
[15] *Id.*, 504 U.S. at 313.
[16] Curry v. McCanless, 307 U.S.357,370.
[17] *Shaffer v. Carter*, 252 U.S. 37, 55 (1920) (stating "the decision must depend not upon any mere question of form, construction, or definition, but upon the practical operation and effect of the tax imposed").
[18] . Shaffer v. Carter, supra
[19] 322 U.S. 435 (1944).

impose a challenged withholding tax because it operated as a tax on the corporation's income.[20] The Court stated: "That power is not diminished or altered by the fact that the state courts . . . denominate the levy a tax on the privilege of declaring and receiving dividends, or that they decline to call it an income tax."[21] Using language from an earlier case dealing with the same Wisconsin tax, the Court stated that withholding on dividends is "a tax on corporate income that is paid out."[22]

Here, a court must reach a similar conclusion. The Withholding Bill only taxes the REIT income, and even stronger than in International Harvester, each REIT **elected** to have its income taxed to its shareholders. The legislation creates a nonresident withholding concept,[23] and such concepts have often been approved as a tax on the corporate income generated (as in *International Harvester*).[24] Though this legislation practically reduces the amount of money each shareholder receives from the REIT, it does so by reducing the amount of money the REIT has to distribute. The taxable event is the earning of Hawaii realty income and the distribution of dividends by the REITs, not the receipt of dividends by shareholders. This is similar to the withholding tax on S-Corporation dividends that is already provided for in Hawaii income tax law.[25]

Thus, the Withholding Bill is consistent with the long standing general rules set out by the Supreme Court for acceptable withholding and the fact that the REIT and its shareholders specifically requested to have the REIT income taxed to their shareholders seems to eliminate any reasonable argument that it is not the REITs income being taxed.

2. Constitutionality Analysis.

i. Due Process

The Due Process Clause requires that there be "some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax," and that the "income attributed to the State for tax purposes must be rationally related to 'values connected with the taxing State.'"[26] The Supreme Court has treated these requirements as equivalent to those of personal jurisdiction.[27] Personal jurisdiction can be general, covering any suit involving a party, or specific, covering only over suits relating to a party's connections with the state.[28] General personal jurisdiction requires domicile or continuous and systematic contacts with the state.[29] Specific personal jurisdiction can arise from minimum contacts that are (1) purposeful and (2) related to the suit or tax, if the exercise of jurisdiction is also (3) reasonable.[30] To determine whether jurisdiction is reasonable, courts ask whether the taxpayer received fair

[20] *Id.*, 322 at 445.
[21] *Id.*, 322 at 441.
[22] *Id.*, 322 at 438 (quoting *Wisconsin v. J. C. Penney Co.*, 311 U.S. 435, 442 (1940)).
[23] 2018 HI S.B. 3067 S.D.1 (e).
[24] D. French Slaughter III, "State income tax examinations of S corporations, partnerships, and their owners," William & Mary Annual Tax Conference, paper 139 (2006), pg. 3-4. *See also, e.g.*, *Int'l Harvester*, 322 U.S. 435.
[25] HRS 235-128(c).
[26] *Quill Corp. v. North Dakota*, 504 U.S. 298, 306 (1992).
[27] *Id.*, 504 U.S. at 307. *See also Shaffer v. Carter*, 252 U.S. 37, 49 (1920).
[28] *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923-24 (2011).
[29] *Id.*, 564 U.S. at 924-25.
[30] *In re Doe*, 83 Haw. 367, 374 (1996). *See also* Richard D. Pomp, "Are the standards for tax jurisdiction and personal jurisdiction identical?", 2 *State Tax Notes* 86, *4 (1992).

warning that they would be subject to the state's jurisdiction such that imposition of that jurisdiction does not offend "traditional notions of fair play and substantial justice."[31]

The cornerstone of contemporary state tax due process litigation is *Quill Corp. v. North Dakota*.[32] In that case, North Dakota imposed a use tax on property purchased for storage, use, or consumption in the state.[33] It required retailers to collect the tax from customers, and defined "retailer" to include companies that annually solicit three or more advertisements in the state. A nonresident mail order company, Quill, challenged the tax under the Due Process and Commerce clauses. The Supreme Court struck the tax as violating the Commerce Clause, but not before holding it to be consistent with the Due Process Clause. It found (1) that Quill had purposefully directed activities at the state; (2) that its activities were of sufficient magnitude; and (3) that the tax was related to the benefits Quill received from North Dakota.[34]

A court must reach a similar conclusion here. Property ownership is not enough to establish general personal jurisdiction – the REIT would have to either be incorporated in Hawaii or have its principal place of business here[35] – but it is sufficient to establish specific personal jurisdiction. REITs purposefully acquire properties, and they engage in regular contact with managers, tenants, and lessees to maintain upkeep and profitability.[36] Indeed, many proudly advertise their active management and long-term development of their properties to potential investors.[37] They should expect to be subject to Hawaii's jurisdiction. Additionally, like the sales tax in *Quill*, the proposed tax is related to the REITs' contacts with Hawaii. It is the REITs' income that is practically being taxed, and that income was generated in Hawaii from properties that Hawaii affords benefits. Sound infrastructure, fire and police protection, and legal rights for property owners all increase the REITs profitability, and Hawaii can fairly seek compensation for those services.

ii. Commerce Clause

The Commerce Clause grants Congress the authority to regulate interstate commerce.[38] The Supreme Court has interpreted the clause to also carry an implied negative command that prohibits states from enacting laws that disrupt interstate commerce without Congressional approval.[39] This "dormant" Commerce Clause is concerned with the structural effects a law will have on interstate commerce.[40] In the context of state tax jurisdiction, the clause takes the form of the four-part *Complete Auto*[41] test. A tax survives a Commerce Clause challenge so long as it "(1) is applied to an activity with a substantial nexus with the taxing State, (2) is fairly

[31] *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945).
[32] 504 U.S. 298 (1992).
[33] *Id.*, 504 U.S. at 302.
[34] *Id.*, 504 at 308.
[35] *Daimler AG v. Bauman*, 571 U.S. 117, 137 (2014) (stating the question is "whether that corporation's "affiliations with the State are so 'continuous and systematic' as to render [it] essentially at home in the forum State").
[36] There could be REITs that own only a single Hawaii property and contract out management; such REITs would have insufficient contacts unless they and their managers are a unitary business. *See Allied-Signal, Inc. v. Dir., Div. of Taxation*, 504 U.S. 768, 778-83 (1992). Most Hawaii REITs appear to be quite involved, however.
[37] *See, e.g.,* Douglass Emmett, Inc., "Our Story," (detailing a REITs active involvement in its properties) (accessed online on June 14, 2018, at https://www.douglasemmett.com/our-story)
[38] Art. I, § 8, cl. 3.
[39] *Comptroller of the Treasury v. Wynne*, 135 S. Ct. 1787, 1794 (2015).
[40] *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).
[41] 430 U.S. 274 (1977).

apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to the services provided by the State."[42]

First, affected taxpayers must have substantial nexus with the state. A court would find that REITs do. Substantial nexus is a higher bar than the minimum contacts necessary to satisfy due process.[43] It is a threshold determination that the state has authority over the taxpayer,[44] and thus requires physical presence.[45] For REITs, it is a small hurdle to clear because property management necessitates some physical presence.[46]

The second prong requires that a tax must be fairly apportioned. Fair apportionment is required to "ensure that each State taxes only its fair share of an interstate transaction."[47] The Court has recognized that apportionment formulas will never be perfect, so states have some degree of latitude; a tax is fairly apportioned so long as it is internally and externally consistent.[48] The internal consistency test imagines a world where every state employed the challenged tax. If no multiple taxation occurs in such a world, courts can conclude that problems arise from the tax's interaction with other taxes and not the tax itself.[49] A tax is externally consistent when it affects "only that portion of the revenues from the interstate activity which reasonably reflects the in-state component of the activity being taxed."[50]

A court would most likely conclude that the legislation provides for fair apportionment. The legislation taxes only the share of income attributable to Hawaii.[51] Nonresident shareholders will not be subject to double taxation under the legislation,[52] as it declares the amount withheld from a shareholder's dividends to be taxes paid to Hawaii, which other states can credit when calculating their own taxes. The legislation is externally consistent.[53] Further, this would hold true if every state adopted similar legislation. REITs and their shareholders would only pay a tax to each state based on what they earned from their business in that state. Thus, the legislation is internally consistent as well.

The third prong prohibits discrimination against interstate commerce. Multiple taxation is the most visible and frequently asserted form of interstate discrimination,[54] so this prong overlaps significantly with fair apportionment.[55] Courts have at times used the internal

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[42] *Id.*, 430 U.S. at 279.
[43] *Quill Corp. v. North Dakota*, 504 U.S. 298, 313 (1992).
[44] *Ibid.*
[45] *Ibid.* The Court has suggested in dicta that Congress can do away with the physical presence requirement via legislation, however. *See* Brannon P Denning, "Due process and personal jurisdiction implications for state taxes," *Tax Analysts Special Report* (2012), pg. 2.
[46]
[47] *Goldberg v. Sweet*, 488 U.S. 252, 261 (1989).
[48] *Ibid.*
[49] *Comptroller of the Treasury v. Wynne*, 135 S. Ct. 1787, 1803 (2015).
[50] *Goldberg v. Sweet*, 488 U.S. 252, 262 (1989). *See also Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159 (1983) (discussing external consistency in greater detail).
[51] 2018 HI S.B. 3067 S.D. 1 (repeatedly stating "income attributable to the state"). Hawaii's general apportionment formula (weighing property, payroll, and sales equally) is codified in Haw. Rev. Stat. Ann. § 235-29.
[52] Resident shareholders will not be subject to double taxation, because they will get a credit for the withholding tax paid. Nonresident shareholders in states that have an income tax will get a credit for the Hawaii tax. S*ee Comptroller of the Treasury v. Wynne*, 135 S. Ct. 1787, 1798 (2015).
[53] The legislation intends taxpayers to use Hawaii's general income apportionment formula (Haw. Rev. Stat. Ann. § 235-29). The legislation doesn't provide an independent apportionment formula.
[54] *Comptroller of the Treasury v. Wynne*, 135 S. Ct. 1787, 1794 (2015).
[55] *Container Corp. of Am. v. Franchise Tax Bd.*, 463 U.S. 159, 171 (1983).

consistency test for both prongs.[56] Here, there is no discrimination; nothing suggests any preference for REITs that only operate in Hawaii, and nothing burdens taxpayers engaged in interstate business more than taxpayers engaged in equivalent intrastate business. The minimum tax treats all shareholders equally whether in or out of Hawaii, and a higher tax would only be paid by those shareholders who live in Hawaii or have substantial income from Hawaii sources.

Finally, the tax must be fairly related to the services provided by the state. A court would find that it is. The Supreme Court has clarified that this prong requires that "the *measure* of the tax must be reasonably related to the extent of the contact," beyond the first prong's threshold determination that sufficient contact exists.[57] For example, in *Commonwealth Edison Co. v. Montana*,[58] the Court held that a tax on the severance or removal of coal satisfied the fourth prong because it was measured as a percentage of the value of the coal taken.[59] Here, because the tax is measured as a percentage of the REITs' Hawaii income (as calculated by apportionment and distributed via shareholder dividends), it is likewise clearly proportional to the REITs' contacts with Hawaii.

B. Hawaii Law

HRS 235-4(b) provides the statutory basis for taxing the Hawaii income of a nonresident, as follows: "In the case of a nonresident, the tax applies to income received or **derived** property owned… or business carried on, or every other source in the State." Clearly, the income here to be taxed to the nonresident is **derived** from the property the REIT owns and the business it carries on in the State.

In **The Matter of McCormac** [60] the Hawaii Supreme Court, relying on two Hawaii cases affirmed by the Ninth Circuit Court of Appeals,[61] concluded that a non-resident trust beneficiary is Hawaii taxable on his distribution of income earned by the trust from its investment activities in Hawaii. The court reviewed the applicable Hawaii statutes, rules and case law, and stated that "the ability of the State to tax nonresidents turns upon the situs of the property generating the income".[62] While these cases deal with trusts, the principles they state make it clear that a nonresident is not required to know anything about the source of it's Hawaii income it receives from a related entity. Further, HRS 235-4(b) and the Hawaii administrative rules thereunder, on which the cases rely, apply to all entities, not merely trusts and beneficiaries. Finally, we note that the Supreme Court in International Harvester[63]stated clearly that the form a state takes to tax income properly sourced to the state is irrelevant.[64]

REITs and their shareholders elected on their Hawaii tax returns to have their shareholders pay tax on their Hawaii source income, under the REIT election provisions. And both should be precluded from now asserting that it is improper to have those shareholders pay the Hawaii tax. Hawaii has already adopted withholding taxes for nonresidents on the income of

[56] *Compare id.*, 135 S. Ct. at 1801-03 (using internal consistency test for non-discrimination) *with Goldberg*, 488 U.S. at 161-62 (using internal consistency for fair apportionment).
[57] *Commonwealth Edison Co. v. Montana*, 453 U.S. 609, 626 (1981) (emphasis in original).
[58] 453 U.S. 609 (1981).
[59] *Id.*, 453 at 626.
[60] McCormac, Matter of, *640 P.2d, 64 Haw.258 (Hawaii, 1982).*
[61] Ewa Plantation v. Wilder, 26 Hawaii 299 (1922), aff'd 289 F. 664 (9th Cir. 1923); Carter v. Hill, 31 Haw. 264 (1930), aff'd. 47 F.2d869 (9th cir. 1931), cert. denied, 284 U.S. 625 (1931).
[62] McCormac, supra at 284.
[63] *Internation Harvester, supra at 441, 445.*
[64] Id. at 445.

an entity that is to be taxed to its owners, in the case of Subchapter S corporations. [65] No issues have ever been raised with respect to the constitutionality or legality of this withholding on nonresidents. Yet, like REIT owners, S Corporation shareholders may be mere passive investors who know little about the day to day business of the corporation or the states where they do business. Moreover, public REIT prospectuses advise their shareholders that State taxes may be payable in states where the REIT does business and to seek professional advice. (See eg. Inland Residential Properties Trust Prospectus, January, 2018, p. 27.)

C. Tax Credit in Other States

The U.S. Supreme Court recently held that each State with an income tax must give full credit for income taxes paid by a nonresident on income earned in another state. by reason. Because it is a constitutional income and withholding tax, the Commerce Clause will require other states all other states that have a similar income tax (virtually all states are similar) to give REIT shareholders a credit for the Hawaii tax paid.[66] Failure to give such a credit impermissibly discriminates against out of state earned income.[67] And California recently issued Legal Ruling 2017-01 explaining how their income tax credits work for taxes paid by various entities on behalf of their owners. Clearly California will allow a tax credit for Hawaii withholding of REIT income. Finally, we note that if a state has no income tax, then their resident REIT shareholders merely pay the proper Hawaii tax (i.e. there's no double tax.)

D. Administrative issues

The Withholding Bill provides that each REIT will have to determine its net Hawaii source income, allocate that income proportionally to its shareholders, and withhold 5% of the Hawaii allocated portion of each distribution. The REIT would then attach a schedule to its annual Hawaii tax return listing its shareholders, the Hawaii income allocated to each shareholder, and the amount of withholding.

The State Department of Taxation would receive the tax return for each company and record the tax paid on behalf of each shareholder.[68]

Nonresident REIT shareholders who have no other Hawaii income would not have to file a Hawaii tax return, unless their REIT income was so substantial that their tax rate exceeded 5%. Hawaii residents would file their regular tax return, report their REIT and other income and denote that they had already paid the 5% tax through withholding. Non taxable REIT shareholders like pension plans could file a claim for refund.

We submit that these requirements are not unreasonable administrative burdens for any of these parties.

1. The REITs already file a Hawaii tax return and report all their Hawaii source income and then take the DPD. They also file 1099s for the dividends paid to their shareholders. All nationwide companies calculate their taxable income from each

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[65] *HRS 235-128(c).*

[66] Comptroller v. Wynne, supra.

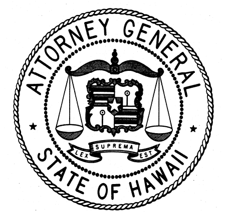
[67] Id. at 1804-05.

[68] *Quill Corp. v. North Dakota*, 504 U.S. 298, 313 (1992).

state and file state tax returns. Calculating a 5% minimum tax on the dividends paid and noting the taxes paid to Hawaii on their 1099s (there is a space for state taxes withheld, or an addendum could be added) would not be a significant additional administrative burden. Withholding is not a major issue, as it's done for every employee, as well as for S Corporations and many kinds of distributions to foreigners.

2. The DOTAX will still only have one tax return for each REIT to process. And the will merely have to add the names of the taxpayers to their roles, in order to collect this additional $50-60 million of revenue. They will not have to process REIT shareholder returns, except for those who owe additional tax to Hawaii and possibly make refunds for tax exempt pension plans REIT shareholders. Additional information may be necessary in tax information forms, but these are updated every year anyway. It can't be too administratively burdensome for the DOTAX to make changes that allow for the receipt of taxes that are owed to the State.

3. The shareholders who ultimately receive the dividends will not have to file returns in Hawaii, because the total amount of minimum tax has already been paid. And it doesn't matter whether the REIT knows who its ultimate shareholders are or not (as in the case of a Mutual Fund or partnership REIT shareholder) because any REIT shareholder that passes its income on to be taxed by its owners, will also pass on the 5% withholding tax credit. It is only Hawaii residents or those taxpayers who have so much Hawaii source income that they owe more than the minimum REIT dividend tax or are exempt entities who will file. And this Hawaii tax will be treated as a credit in the nonresident's state, of his resident states income tax, if any. (See eg., California Franchise Tax Board Legal Ruling 2017-01 holding that a state income tax that is properly attributable to income earned in that state, even if paid by an entity owned by a California taxpayer, rather than paid directly by the taxpayer, will be credited against California's income tax.) So their will actually be no additional tax paid by most REIT shareholders from this withholding, its only that the tax will be paid to the right state, i.e. Hawaii.



TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2019

ON THE FOLLOWING MEASURE:
S. B. No.675, RELATING TO TAXATION.

BEFORE THE:
SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, February 6, 2019 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): Clare E. Connors, Attorney General, or
Nathan S.C. Chee, Deputy Attorney General

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General appreciates the intent of this bill and provides the following comments.

S.B. No. 675, among other things:

(1) Requires shareholders of a REIT, regardless of where they reside, to pay Hawaii net income taxes on their pro-rata share of dividends attributable to income generated in the State;

(2) Requires REIT to file a return each year stating its income, identifying information of each shareholder and how much income is attributable to each shareholder;

(3) Requires REIT to provide a copy of its return to each shareholder;

(4) Requires REIT to withhold and pay to the State five percent of the shareholder's pro-rata share of income attributable to the State; and

(5) Makes it a misdemeanor if any officer of a REIT fails to provide information, file any return, or make any payment required by this proposed law.

S.B. No. 675 may be subject to constitutional challenge to the extent it seeks to impose State taxes on a nonresident who owns shares in a REIT that owns real property located in the State. The general rule as to the situs of invisible and intangible property (stocks, bonds, notes, etc.) is that it follows the domicile of the owner, and it is taxable at such domicile and not elsewhere. Curry v. McCanless, 307 U.S. 357, 367, 59

S. Ct. 900, 906 (1939). The U.S. Supreme Court, opining on the constitutionality of a state taxing <u>its own residents'</u> intangible property noted:

> As a matter of fact, there is more reason for the domiciliary state of the owner of the intangibles than for any other taxing jurisdiction to collect a property tax on the intangibles. Since the intangibles themselves have no real situs, the domicile of the owner is the nearest approximation, although other taxing jurisdictions may also have power to tax the same intangibles. Normally the intangibles are subject to the immediate control of the owner. This close relationship between the intangibles and the owner furnishes an adequate basis for the tax on the owner by the state of his residence as against any attack for violation of the Fourteenth Amendment.

<u>Greenough v. Tax Assessors of City of Newport</u>, 331 U.S. 486, 493, 67 S. Ct. 1400, 1403–04, (1947). While not expressly stated, the clear implication is that an attempt by a state to tax income from intangible property held by a nonresident may be subject to attack under the Fourteenth Amendment of the U.S. Constitution. The Hawaii Supreme Court has also held that income accruing to intangible property is sourced to the domicile of its owner unless control of the intangible occurs entirely in a different state. <u>See</u>. <u>Matter of McCormac</u>, 64 Haw. 258, 263, 640 P.2d 282, 286 (1982). As current law allows states to tax intangibles where the owner is domiciled, the passage of this bill may create a situation where the intangible is subject to tax twice; once in the nonresident's state and again here. The U.S. Supreme Court has indicated this is impermissible in <u>Farmer Loan and Trust Co. v. Minnesota</u>, 280 U.S. 204 (1930):

> Taxation is an intensely practical matter, and laws in respect of it should be construed and applied with a view of avoiding, so far as possible, unjust and oppressive consequences. <u>We have determined that, in general, intangibles may be properly taxed at the domicile, and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles</u>. The difference between the two things, although obvious enough, seems insufficient to justify the harsh and oppressive discrimination against intangibles contended for on behalf of Minnesota. [Emphasis added.]

Based on the foregoing, the provisions in S.B. No. 675, may be challenged as unconstitutional to the extent the bill seeks to collect taxes on the income attributable to

intangibles held by a nonresident. Therefore we respectfully request that this bill be held.

Testimony of Ellen Godbey Carson
Supporting SB301 and SB675 with an amendment
February 6, 2019, Conference Room 211

I am writing in SUPPORT of SB301 and SB675, with request for one amendment noted below. Real Estate Investment Trusts (REITs)(or their shareholders) should pay taxes in Hawaii for their profits earned off Hawaii properties. The loophole in our laws that has failed to tax REITS in the past has led to a large erosion in our tax base, since REITs own major commercial properties in Hawaii that are essentially going untaxed here. That loophole should be closed. **These bills should be amended to to dedicate 100% of its tax revenues to the creation of affordable housing in Hawaii.** With that amendment, I would be in full support of this bill.

REITs own many large income-producing properties in Hawaii such as Ala Moana Center, the Hilton Hawaiian Village Resort, as well as office buildings and many other shopping centers and hotels. Together, they own property with an estimated total value of $18 billion that earns an estimated $1 billion in profits annually. If Hawaii's corporate tax were applied to REITs, an estimated $60 million in tax revenue would be generated. Those revenues are lost for every year we fail to tax REITs.

Meanwhile, profitable activities of REITs and other large landholders increase the price of property for everyone in Hawaii. Hawaii now faces an enormous shortage of housing that is affordable to low- and middle-income individuals and families. New housing is being built, but most of it is priced for the high-income strata. Some efforts are being made to build affordable housing for low- and middle-income levels, but much greater efforts must be made because the need is so great and the cost of housing is so high. Devoting 100% of the tax revenues from REITs would provide a sustainable source of major funding for Hawaii's critical needs for affordable housing

Thank you.

Ellen Godbey Carson
1080 S. Beretania Street
Honolulu, HI 96814

WRITTEN TESTIMONY OF

DARA F. BERNSTEIN
SENIOR VICE PRESIDENT & TAX COUNSEL
NAREIT
IN OPPOSITION TO S.B. 675

BEFORE THE HAWAII SENATE
COMMITTEE ON WAYS AND MEANS

THE HONORABLE DONOVAN M. DELA CRUZ, CHAIR
THE HONORABLE GILBERT S.C. KEITH-AGARAN, VICE CHAIR

HEARING ON S.B. 675

FEB. 6, 2019

Thank you for the opportunity to submit this testimony on behalf of the Hawaiʻi members of Nareit. Nareit is the 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. These REITs, which have substantial long-term investments in Hawaiʻi, strongly oppose, and ask you to hold, S.B. 675, for the reasons discussed below.

In summary, S.B. 675 would: 1) produce less net tax revenues (taking into account the GET as the predominant source of revenue in Hawai'i) than current law; 2) cause capital markets to invest less in the State, which in turn would create fewer jobs over the long-term; 3) not be administrable; and, 4) violate core comity principles in relationship to other states and their citizens. Further, if the legislature wanted to enact true tax conformity between REITs and partnerships/LLCs, S.B. 675 should be broadened to impose on partnerships/LLCs the same burdens that would apply to REITs, namely that partnerships/LLCs a) would be required to annually distribute all their earnings to investors, and there would be either a withholding tax on such distributions, or, b) an entity-level tax would be applied to those earnings even though the earnings would be required to be distributed to investors. Of course, both conformity solutions could be expected to be met with fierce opposition by the investment community.

S.B.675 Would Produce Less Revenue Than Current Law

Because of unique requirements applicable to REITs, the State received more than $16 million in annual General Excise Tax (GET) in 2018 alone just from hotel REITs in Hawaiʻi that non-REIT hotel owners wouldn't owe. Federal law requires that REITs must earn most of their income from "rent" and similar real estate income. For this purpose, hotel room charges and other operating/service-related income are not "rent". Unlike other owner-operators, REITs with operating properties like hotels, hospitals, parking garages, and theme parks must either lease those properties to a third party operator (like Marriott or Hilton) or with hotels and certain health care properties, to a fully taxable subsidiary in exchange for market-based rent. If leased to a taxable subsidiary, federal law requires the subsidiary to hire an independent operator. In Hawaiʻi, the operator/subsidiary lease results in one level of REIT-specific GET revenue to the State, and the management fee results in yet another level of REIT-specific GET revenue to the State.

For example, Park Hotels & Resorts, Inc. leases its Hawaii hotels to a taxable subsidiary, and, in Hawaiʻi, the taxable subsidiary hires Hilton to operate its hotels. Both the subsidiary rents and the operator fees have resulted in an **additional annual GET of approximately $9.5 million** to Hawaii for each of 2017 and 2018 that the prior owner, Hilton, as a non-REIT hotel owner-operator, wasn't paying before. When aggregated with other REIT hotel owners in Hawaii, this additional GET is estimated to **exceed $16 million in 2018**. And as a tax on gross receipts rather than a tax on net income, the GET makes up the majority of the State's revenue, constituting a much larger percentage of the State's budget (more than 50%) than the corporate income tax (around 3%) and a much more stable source of State revenues than corporate income tax, which goes up and down according to the economy. (For example, see data from Council on State Revenues for FY 2019 To FY 2025). **S.B. 675's enactment would seriously endanger this extremely valuable source of GET revenues to the State.** Not only that, enactment also would put at risk the revenues and jobs created by non-hotel REITs that invest in the State.

This additional GET does not even consider the tens of millions of dollars of GET revenues generated from construction, repairs, and tenant businesses, as well as personal income tax and transient accommodation taxes directly attributable the billions of dollars invested by REITs over the past few years in the State to build, among other investments, student housing at UH Manoa or affordable rental housing, including Moanalua Hillside Apartments in Aiea. REITs also provide office space for small businesses that employ thousands of local residents. Medical facilities made possible by REITs, like Hale Pawaʻa, also ensure Hawaiʻi physicians can deliver the highest quality care in state-of-the-art facilities.

Unlike non-REIT property investors, REITs can't keep their money. Instead, REITs must distribute their taxable income. In exchange for distributing all of their income – and for meeting other asset, income and operational tests, REITs can claim a deduction for dividends paid (DPD). REITs can retain up to 10% of taxable income (for example, during a recession) but must pay corporate tax on what they retain. While REITs are subject to requirements that other businesses are not, S.B. 675 would nevertheless impose a virtually unworkable system.

Unlike other real estate businesses, REITs cannot be in the business of "flipping" properties. – Any gain from a REIT's doing so is subject to a 100% tax. REITs are long-term neighbors in this community. The conflation of REITs with the activities in Kakaako suggests that the nature of REITs is not fully understood. REITs hold their investments for a very long time. These entities are not making a quick profit and leaving town; they are making long-term real investments back into the community and improving the State's retail, office, hotel, affordable rentals, and medical facilities.

In addition, several local investment firms which manage investments for their clients hold millions of dollars in REIT stocks. The chilling effect of this measure --which would result in Hawaiʻi's REIT investment's being taxed differently from REIT investment virtually anywhere else**--** would cause such local investors to avoid investment in REITs with Hawaiʻi interests if Hawaiʻi REIT investment is taxed differently from REIT investment virtually anywhere else, resulting in less revenue for the state.

S.B. 675's Enactment Would Lose Jobs for Hawai'i Residents

S.B. 675 risks significant job loss. Enactment of S.B. 675 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, and loss of revenue and the stability of hundreds of the jobs generated by REITs to the State. While it may be easy to argue that no jobs will be lost by the onerous burdens and double taxation proposed by S.B .675, 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 Hawaiʻi's discouragement of long-term capital investment in the State. REITs provide sorely needed investment capital to Hawaiʻi. 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, Hawaiʻi would be on the outside looking in.

Hawaiʻi's significant economic growth over the past several years is, and we hope into the future, will be, a direct result of REIT investment. The popular new 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.

Hawaiʻi residents have benefitted from REIT investment, which made possible dining at the Cheesecake Factory at Ka Makana Ali'i or taking their family to Wet'n'Wild or going shopping at Pearlridge, more eating choices and better Waikiki parking opportunities with the re-development of the International Market Place, not to mention the financial benefits to the Queens Health System, which is the landowner.

These jobs and tax revenue would not be here without REIT funding. REIT investment occurred during the recession we recently experienced. While regular investors shied away from re-development, 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.

While REITs in Hawaiʻi have been good for the local economy, they have also supported a wide variety of non-profit organizations providing much-needed services throughout the state. For example, Washington Prime Group's Pearlridge Center has partnered with the Honolulu Chapter of the American Institute of Architects to support the "Canstruction" project. Over the past 13 years, more than 377,042 pounds of food has been raised through this event to help feed the hungry in Hawaiʻi – providing more than 296,884 meals.

S.B. 675 Would Not Be Administrable

Compliance would be virtually impossible. S.B. 675 would require a REIT to attach shareholder identifying information to its Hawaiʻi's tax return. This simply is not possible. Virtually all of the millions of shares of publicly traded REITs – just like other publicly traded corporations - are held in "street name" on behalf of participants like mutual funds, exchange traded funds, banks, and broker-dealers whose clients are the ultimate REIT shareholders. REITs do not know their shareholders' identities, never mind their social security numbers, addresses or how many shares they own at any one point in time. Further, millions of shares change hands daily, making compliance impossible even if shareholder identities were known. Unlike an S corporation, a publicly traded REIT is not limited to 100 shareholders who can be easily identified. In fact, many such REITs have millions of shares outstanding, with virtually all held in "street name" by a central securities depository on behalf of the ultimate owners .

S.B. 675 Would Violate Core State Comity Principles

S.B. 675 would be contrary to federal income tax rules and the existing laws of virtually every other state with an income-based corporate tax system. No other state imposes withholding tax on REIT dividend payments.

Non-resident REIT shareholders would be double-taxed and not necessarily entitled to a tax credit in their state of residence. Many states with an individual income tax consider it their right to tax residents on dividends no matter the location of the income that generated the dividend (see for example, instructions from New York and Massachusetts). Even if Hawaiʻi' changes its rules to

consider such dividends as taxable in Hawai‘i, other states would not be compelled to change their sourcing rules. This would double or even triple tax the same source of income, which would be a cardinal violation of the comity tax rules the States have lived with since the formation of the United States.

S.B. 675 Would Not Create Parity Between Partnerships/LLCs and REITs

If the legislature wanted to enact true tax conformity between REITs and partnerships, S.B. 675 should be broadened to impose on partnerships the same burdens that would apply to REITs, namely that partnerships/LLCs would be required to annually distribute all their earnings to investors and there would be either a withholding tax or an entity-level tax applied to those earnings even though the earnings would have to be distributed to investors. Any such effort would be met with fierce resistance from the investment community.

Please Do Not Enact S.B. 675

Considering the many problems with the provisions of this measure and the likelihood for real economic harm that could result if it were to pass, the Hawai‘i members of Nareit respectfully ask that you hold this bill.

February 5, 2019

Re: S.B. 675

Senator Donovan Dela Cruz
Ways and Means Committee
The Senate
State of Hawaiʻi

Dear Senator Dela Cruz and Members of the Committee,

I am a retired United Church of Christ clergyperson who has lived in Hawaiʻi for over 40 years. I am writing in support of S.B. 675 relating to the taxation of REITs.

I have only two arguments to make in support of the bill:

1. Profits generated from Real Estate Investment Trusts on property held in Hawaiʻi should be taxed by the State of Hawaiʻi and the taxes generated should be directed to the State of Hawaiʻi.

2. Since it is real estate that is taxed, and given the desperate need for affordable housing in Hawaiʻi, the taxes generated should be designated for the Rental Income Housing Fund. This provision should be added as an amendment to the bill.

Please vote affirmatively for S. B. 675 or S.B. 301, whichever bill you choose, but the bottom line is that fairness dictates that profits from investment property in Hawaiʻi should by taxed by the State of Hawaiʻi to benefit the people of Hawaiʻi.

Yours truly,

The Rev. D. Neal MacPherson

SB301 and SB675_Testimony_02-05-2019_Ways and Means
RELATING TO TAXATION OF REAL ESTATE INVESTMENT TRUSTS

I support the intent of inter-related SB301 and SB675 which would address a loophole in Hawaii tax law which currently allows shareholders of Real Estate Investment Trusts (REITs) to deduct dividends paid from income produced by the company. The first bill would require progressive taxation of resident individual shareholder's income. The second bill would produce revenue from a 5% pro rata tax on all shareholders to be withheld by the REIT company. Would foreign investors be included in section 2(d)? How would a REIT company recoup tax payments it would be required to withhold on behalf of a non-resident shareholder? Or would this be in effect a corporate tax?

Instead of putting all the new money into the general fund, I ask that a specified percentage of the new tax revenue be designated to expanding the amount of badly needed affordable housing in our state. The percentage might be reviewed periodically by law to align with current needs.

As I understand it, the loophole was created when Hawaii, and most states, chose to follows federal income tax law with respect to Real Estate Investment Trusts (REITs}. I was surprised to learn that dividends from REITs are not taxed, unlike dividends from other types of stocks. Apparently, the tax loophole for REITS was intended by Congress almost 60 years ago to provide middle class people an opportunity to invest in large real estate properties by pooling their money. But over the years it has become a vehicle for a tax shelter for many high income Americans.

Hawaii-based REITs reportedly generate an estimated $1 billion in profits every year, and Hawaii currently does not collect an estimated $60 million in potential income tax revenue. Virtually no Hawaii income tax can be collected from individuals investors since over 99% of them live outside Hawaii, and, according to Pacific Business News, the REITs do not pay income tax, either.
operating in Hawaii via taxing REIT corporate income.

While Hawaii must compete with other states, and foreign countries, for investment in real estate and historically we have needed to bring in some outside capital to keep up with visitor industry competition since our resident population is relatively small. However, although currently most states do not yet tax REIT corporate income, according to Forbes magazine a number of states are looking into the REIT tax issue. This would reduce the risk of too much loss of our attraction for outside investment.

Janet Gillmar
3035 La-i Road
Honolulu, Hawaii

To: Senate Committee on Ways and Means
From: Mark Wilson
Email: mkw@hawaiiantel.net

Date of hearing: Wednesday, February 6, 2019
Location: Conference room 211

Subject: Support for SB 675 -- Relating to Taxation
Will be attending the hearing: Yes

Dear Chairman Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

My name is Mark Wilson. I'm a retired professor of English at the University of Hawaii and a member of Church of the Crossroads and Faith Action for Community Equity. I'm not quite clear as to how SB 301 and SB 675 differ, but both seem to be addressing a problem that concerns me. I firmly believe that the loophole that REITs use to avoid the Hawaii corporate tax needs to be closed to generate an estimated $60 million in tax revenue. I also believe that the bill(s) should be amended to separate the REIT tax revenue from the general fund and direct it to the creation of much needed affordable housing.

Mahalo for the chance to submit testimony in support of SB 675.

Name of Testifier

Eric Schrager
Will Caron
Soo San Schake
Ida Peric
Cameron Ahia
Ronald Fujiyoshi
Maren Anka
Mark Wilson
Chris Jansen

Subject: Support for SB 675 -- Relating to Taxation
Will be attending the hearing: No

Dear Chairman Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

Please pass SB 675. REITs pay out almost all of their profits to their shareholders in the form of dividends, but over 99% of Hawaii REITs shareholders are from out of state.

REITs shareholders pay income tax only in the state where they actually reside -- so only the small minority of REIT shareholders who live here pay income tax from REITs to the state of Hawaii.

The hundreds of millions of dollars in profits that REIT shareholders earn from Hawaii real estate each year should be taxed, so the revenue can be used for Hawaii's needs, such as affordable housing.

Mahalo for the chance to submit testimony in support of SB 675.

SB-675
Submitted on: 2/2/2019 5:33:36 PM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Valerie Wayne	Individual	Support	No

Comments:

Real Estate Investment Trusts (REITs) are corporations that use a loophole to avoid the Hawaii corporate tax. That loophole should be closed, and the new tax revenue that is generated should be dedicated to increase the supply of affordable housing.

REITs own income-producing property in Hawaii such as Ala Moana Center, the Hilton Hawaiian Village Resort, as well as office buildings and many other shopping centers and hotels. Together, they own property with an estimated total value of $18 billion that earns an estimated $1 billion in profits annually. If Hawaii's corporate tax were applied to REITs, it is estimated that somewhere in the neighborhood of $60 million in tax revenue would be generated.

Hawaii faces an enormous shortage of housing that is affordable to low- and middle-income individuals and families. New housing is being built, but most of it is priced for the high-income strata. Some efforts are being made to build affordable housing for low- and middle-income levels, but much greater efforts must be made because the need is so great and the cost of housing is so high.

1. ideas to finance affordable housing are contained in a study entitled, "Housing Action Plan Final Report to the State Legislature," which was funded by the Legislature and issued in 2017. Those ideas include dedicating new tax revenue for affordable/workforce housing or infrastructure, with the funds kept separate from the general fund.

The bill should be amended to separate the REIT tax revenue from the general fund and direct it to the creation of affordable housing in Hawaii.

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February 5, 2019

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Hawaii Senate Committee on Ways and Means
State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: S.B. No. 675

Dear Chairman Dela Cruz, Vice Chair Keith-Agaran and Members of the Senate Committee on Ways and Means:

I am Walter Hellerstein, the Francis Shackelford Professor of Taxation Emeritus and Distinguished Research Professor Emeritus at the University of Georgia School of Law. I have devoted most of my professional life to the study and practice of state taxation and, in particular, to federal constitutional restraints on state taxation.

Per the request of Nareit, I have set forth my views regarding the question of whether states that tax their resident shareholders on their income from real estate investment trusts (REITs) would be required by federal constitutional law to grant a credit against a Hawaii tax on the same income imposed on nonresidents of Hawaii under S.B. No. 675 to avoid double taxation. The short answer to this question is "no," because there is no constitutional bar against double taxation that arises from states' inconsistent sourcing rules, as explained below. The views expressed in this testimony are entirely my own based on my best professional judgment and do not necessarily represent those of Nareit or its members.

S.B. No. 675 would impose a tax on REIT shareholders' pro rata share of REIT "income attributable to" Hawaii as reflected in the REIT's tax return. S.B. 675 further identifies the shareholder's pro rata share of REIT income as "Hawaii source income." S.B. 675 requires the REIT to "withhold and pay" to Hawaii "on behalf of any shareholder" the tax due on the "shareholder's pro rata share of the income attributable" to Hawaii. In substance, then, S.B. 675 treats the source of REIT shareholders' income as attributable to the real estate activity underlying their intangible investment, namely, their shares in the REIT.

In contrast to the tax regime proposed by S.B. 675, however, under the tax regimes in force in the overwhelming majority of states REIT shareholders are treated as passive investors in intangible property (the REIT shares) rather than as participants in the economic activity underlying their investment. Consequently, unlike the Hawaii tax regime proposed by S.B. 675, other states' tax regimes do not impose a tax on nonresident investors in REITs that conduct real

estate activity in their state, because states generally consider the source of income that nonresidents earn from intangibles to be their residence unless the intangibles are associated with a trade or business carried on in the state. See 2 Jerome R. Hellerstein, Walter Hellerstein & John A Swain, *State Taxation* ¶ 20.05[6] (3rd ed. 2018 rev.) [hereafter Hellerstein, *State Taxation*].

> Arizona, for example, taxes nonresidents' income from intangible property only if the property has a business situs in the state or if the "nonresident buys or sells such property in this state or places orders with brokers within this state … so regularly, systematically and continuously as to constitute doing business in this state." Delaware taxes nonresidents' income from intangible property "only to the extent that such income is from property employed by the taxpayer in a business, trade, commerce, profession or vocation carried on in this State." Virginia taxes nonresidents' income from intangible property only "to the extent that such property is employed by the taxpayer in a business, trade, profession, or occupation carried on in Virginia."

Id. (footnotes omitted). Consequently, most states tax REIT shareholders' income from their REIT investments only at their state of residence.

Because most states consider a typical REIT shareholder's income to be taxable only by the shareholder's state of residence, S.B. 675, if enacted, will create a serious problem of double taxation. Although every state that imposes a tax on personal income grants its residents a credit for taxes paid to other states, Hellerstein, *State Taxation* ¶ 20.10, the states generally limit that credit to income derived from sources in other states. *Id.* ¶ 20.10[2]. Consequently, if a REIT investor from a state like New York invested in a REIT with property situated in Hawaii, under S.B. 675 Hawaii would tax the REIT shareholder's pro rata share of REIT "income attributable to" Hawaii, and New York would tax the same income as passive income that its residents earn from an intangible investment. Moreover, New York would not grant a credit for the Hawaii tax because, under New York law, which controls the question of the source of the income for purposes of the New York crediting provision, the source of the income would be in New York: "In general, it is the credit-granting state that determines the sourcing rules" for determining "whether the state that is purporting to tax on a source basis is taxing income that has its source" in that state. *Id.*

A New York case illustrates the point. New York provides a resident tax credit for "any income tax imposed … by another state … upon income both derived therefrom and subject to tax under this article." N.Y. Tax Law § 620(a) (Westlaw 2019). A New York resident sought a credit for taxes paid to Missouri from income earned from a trust administered in Missouri of which she was a beneficiary. The New York Tax Appeals Tribunal denied the credit, despite the resulting double taxation, because her income from the trust, though constitutionally taxable by Missouri, was not "derived" from Missouri within the meaning of the New York statute. *In re Mallinckrodt*, No. 807553, NY Tax App. Trib., Nov. 12, 1992, available at www.checkpoint.thomsonreuters.com. The tribunal relied on the New York regulation that denied a credit for taxes imposed by other jurisdictions on income from intangibles except when

such income is from property employed in a business, trade, or profession carried on in such jurisdiction.[1]

This brings me finally to the question on which on my views were requested: whether states that tax their resident shareholders on their income from REITs would be required by federal constitutional law to grant a credit against a Hawaii tax on such income under S.B. No. 675 if it were enacted into law. In my opinion, the answer to that question is "no" for the simple reason that the Constitution does not require that the states adopt the same income sourcing rules even if the states' adoption of inconsistent sourcing rules may lead to double taxation. The dispositive authority on this point is *Moorman Manufacturing Co. v. Bair*, 437 U.S. 267 (1978).

In *Moorman*, the U.S. Supreme Court sustained Iowa's single-factor sales formula for apportioning corporate income to the state, even though at that time 44 of the 45 states other than Iowa utilized a three-factor formula to apportion corporate income. Moorman was engaged in manufacturing animal feed in Illinois and other states. It had over 500 sales representatives in Iowa as well as six warehouses from which it made deliveries to local customers. Moorman made approximately 22 percent of its total sales to Iowa customers. As a consequence, 22 percent of its net income was apportioned to the state. If Iowa had used the then-prevailing three-factor formula of property, payroll, and receipts, its apportionment percentage would have been reduced to about 14 percent. Moorman contended that the application of Iowa's single-factor sales formula to its net income violated the Constitution by subjecting it to extraterritorial taxation and subjecting it to multiple taxation.

In response to the Moorman's argument that Iowa's single-factor sales formula, considered in conjunction with the three-factor formulas employed by most other states, exposed it to an unconstitutional risk of multiple taxation in violation of the Commerce Clause, the Court declared:

> The only conceivable constitutional basis for invalidating the Iowa statute would be that the Commerce Clause prohibits any overlap in the computation of taxable income by the States. If the Constitution were read to mandate such precision in interstate

[1] The New York regulations provide that the phrase "*income derived from sources within another state* ... is construed so as to accord with the definition of the term derived from or connected with New York State sources as set forth in section 631of the Tax Law in relation to the New York source income of a nonresident individual." N.Y. Comp. Codes R. & Regs. tit. 20, § 120.4(d) (Westlaw 2019) (emphasis in original). Section 631 provides that a nonresident individual's items of income derived from or connected with New York State sources include "items attributable to: (A) the ownership of any interest in real or tangible personal property in this state ... ." N.Y. Tax Law § 631(b) (Westlaw 2019) The resident credit regulation also provides:

> Thus, the resident credit against ordinary tax is allowable for income tax imposed by another jurisdiction upon compensation for personal services performed in the other jurisdiction, income from a business, profession, trade or occupation carried on in the other jurisdiction, and income from real or tangible personal property situated in the other jurisdiction. *Conversely, the resident credit is not allowed for tax imposed by another jurisdiction upon income from intangibles, except where such income is from property employed in a business, trade or profession carried on in the other jurisdiction.*

N.Y. Comp. Codes R. & Regs. tit. 20, § 120.4(d) (Westlaw 2019 (emphasis supplied).

> taxation, the consequences would extend far beyond this particular case. For some risk of duplicative taxation exists whenever the States in which a corporation does business do not follow identical rules for the division of income. Accepting appellant's view of the Constitution, therefore, would require extensive judicial law-making. Its logic is not limited to a prohibition on use of a single-factor apportionment formula. The asserted constitutional flaw in that formula is that it is different from that presently employed by a majority of States and that difference creates a risk of duplicative taxation. But a host of other division of income problems create precisely the same risk and would similarly rise to constitutional proportions.

Moorman, 437 U.S. at 278-279.

The Court illustrated the existing diversity in apportionment that tends to produce multiple taxation by referring to the varying state rules for attributing receipts from sales and by pointing out that some states allocate non-business income entirely to the taxpayer's state of incorporation or its commercial domicile, whereas other states apportion such income. Asserting that under these differing methods, the "potential for attribution of the same income to more than one State is plain," the Court concluded that it could not debar such "duplicative taxation" without prescribing "national uniform rules for the division of income," *Moorman*, 437 U.S. at 279, and declared:

> While the freedom of the States to formulate independent policy in this area may have to yield to an overriding national interest in uniformity, the content of any uniform rules to which they must subscribe should be determined only after due consideration is given to the interests of all affected States. It is clear that the legislative power granted to Congress by the Commerce Clause of the Constitution would amply justify the enactment of legislation requiring all States to adhere to uniform rules for the division of income. It is to that body, and not this Court, that the Constitution has committed such policy decisions.

Id. at 280.

The Court's holding and opinion in *Moorman* reflect its fundamental view that determining the appropriate source of income is a largely political judgment that lies beyond judicial competence. Accordingly, except in cases where the sourcing methodologies themselves are intrinsically flawed, or where the taxpayer has clearly demonstrated extraterritorial taxation, the Constitution does not compel the states to adopt uniform sourcing rules even though they may lead to double taxation. Because the rule adopted by the overwhelming majority of states for attributing the source of a REIT shareholder's income to the shareholder's residence cannot conceivably be characterized as being "intrinsically flawed" or "extraterritorial," the states' reliance on that sourcing rule in denying residents a credit for a tax paid to Hawaii under S.B. 675 would not raise a substantial constitutional issue even if it resulted in double taxation.[2]

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[2] It may be worth noting that in *Comptroller of the Treasury v. Wynne*, 135 S. Ct. 1787 (2015), the U.S. Supreme Court did invalidate a Maryland personal income tax for failure provide a credit for another state's tax on the same

Respectfully yours,

Walter Hellerstein

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income, but *only* because the Maryland taxing scheme was internally inconsistent, *not* because of states' adoption of different sourcing rules. Indeed, as I have explained elsewhere:

> Although the Court invalidated Maryland's tax on internal consistency grounds, *it explicitly rejected the argument that Maryland, as the state of the taxpayer's residence, had an obligation under the Commerce Clause to yield to a state that taxed its residents on the basis of source to avoid the risk of double taxation* ... . Thus, in response to a dissenting opinion's contention that the Court's decision in *Wynne* "requires a State taxing based on residence to 'recede' to a State taxing based on source," the Court declared: "We establish no such rule of priority." The Court later reaffirmed this point by noting that "Maryland's desire to tax based on residence need not 'recede' to another State's desire to tax based on source."

Hellerstein, *State Taxation* ¶ 20.10[2][b] (emphasis supplied, footnotes omitted). See also W. Hellerstein, "Deciphering the Supreme Court's opinion in *Wynne*," 123 J. Tax'n 4 (2109)

February 5, 2019

Donovan M. Dela Cruz, Chair
Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means
415 S Beretania St
Honolulu, HI 96813

Re: Testimony in Opposition to Senate Bill No. 675

Dear Senators:

Thank you for the opportunity to weigh in on a matter that is important to the investment and real estate markets and community of the State of Hawaii. Kobayashi Group, The MacNaughton Group, and BlackSand Capital are Hawaii-based organizations that are distinguished by their integrity, innovation, flexibility, and intimate knowledge of and connection to Hawaii. It is with this experience of where we live and work that we provide this testimony.

To subject non-resident shareholders of real estate investment trusts ("REITs") to taxation on their dividends through a withholding tax would result in an unworkable system, particularly in the publicly traded REIT space. REITs—particularly publicly traded REITs—simply do not have ready access to the names, addresses and federal identifiers required under Senate Bill 675. This could result in a meaningful administrative burden for the Department of Revenue and the individual shareholders themselves.

We are also concerned about the possibility of double taxation within the underlying beneficial owners' resident states, resulting in potential federal constitutional issues as well as other inter-state conflicts that could be challenging to resolve.

Finally, the investments held through REITs provide innumerable shopping, tourism, hospitality and job opportunities within our State and help support our community's economy and the livelihood of its residents. We believe the change proposed in Senate Bill No. 675 would cause a meaningful reduction in the amount of investment that REITs have made and may make in the future in our community, which could detrimentally impact the State and its residents.

For the foregoing reasons we urge you to oppose Senate Bill No. 675.

Sincerely,

Bert A. Kobayashi, Jr.
Co-Founder & Partner,
Kobayashi Group

Ian W. MacNaughton
Chief Executive Officer & Managing Partner,
The MacNaughton Group

Bert A. Kobayashi, Jr.
Co-Founder & Managing Partner,
BlackSand Capital

Ian W. MacNaughton
Co-Founder & Managing Partner,
BlackSand Capital

Testimony in supporting SB675 with an amendment
House Committee on Economic Development and Business
February 6, 2019 at 9:00 in Conference Room 211

My name is Rev.. David Turner, and I am the pastor of The Church of the Crossroads, Hawaii's first intentionally multi-cultural church, founded in 1923. We have 200 members residing all over Oahu and have, as a congregation, unanimously adopted a position of supporting taxation of REITs as a revenue source for affordable housing. Both our church and myself are also very involved in Faith Action an inter-faith organization advocating for justice and community equity here in Hawaii. Faith Action is also in support SB675

Thank you for this opportunity to testify in support of SB675. Real Estate Investment Trusts (REITs) are corporations that use a loophole to avoid the Hawaii corporate tax. That loophole should be closed, and the new tax revenue that is generated should be dedicated 100% to increase the supply of affordable housing.

REITs own income-producing property in Hawaii such as Ala Moana Center, the Hilton Hawaiian Village Resort, as well as office buildings and many other shopping centers and hotels. Together, they own property with an estimated total value of $18 billion that earns an estimated $1 billion in profits annually. If Hawaii's corporate tax were applied to REITs, an estimated $60 million in tax revenue would be generated.

Meanwhile, Hawaii faces an enormous shortage of housing that is affordable to low- and middle-income individuals and families. New housing is being built, but most of it is priced for the high-income strata. Some efforts are being made to build affordable housing for low- and middle-income levels, but much greater efforts must be made because the need is so great and the cost of housing is so high.

Various ideas to finance affordable housing are contained in an action plan for workforce/affordable housing that was funded by the Legislature and issued in 2017. Those ideas include dedicating new tax revenue for affordable/workforce housing or infrastructure, with the funds kept separate from the general fund. (Housing Action Plan Final Report to the State Legislature, 2017, p. xii)

This bill should be amended to separate the new tax revenue from the general fund and to dedicate 100% of it to the creation of affordable housing in Hawaii. With that amendment, the Church of the Crossroads supports this bill.

Mahalo for your time and dedication.

Aloha, Rev. David Turner
Church of the Crossroads – 1212 Univeristy Ave. / Honolulu, HI 96826

SB-675
Submitted on: 2/5/2019 10:55:13 AM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Korynn Grenert	Individual	Support	No

Comments:

Wall Street Concepts

February 5, 2019

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means
Hawaii State Capitol
415 South Beretania Street
Conference Room 211
Honolulu, HI

Chair Dela Cruz, Vice Chair Keith-Agaran and Committee members:

FIS Wall Street Concepts provides tax information reporting services to hundreds of financial institutions and, through our Wall Street Concepts Tax Community activities, we represent their interests before the Internal Revenue Service and other tax regulatory bodies. Our client base is comprised of self-clearing brokerage firms, hundreds of trust companies, some of the largest online brokers, international banking institutions, and firms in the asset management advisory business. Many of these firms do business in Hawaii and have offices there. I am Director of Product Development for FIS-Wall Street Concepts, and currently a member of the IRS Information Reporting Program Advisory Committee (IRPAC), which provides a forum for IRS officials and members of the public to address tax information reporting issues. This year, IRPAC is merging into the Internal Revenue Service Advisory Counsel (IRSAC), of which I am now a member with 35 other tax professionals.

We appreciate the opportunity to comment on SB 675. Among our many tax reporting services, FIS-Wall Street Concepts (WSC) provides tax information reporting for REITs and mutual funds, including the production of IRS Form 1099-DIV, on which REITs and mutual funds report their dividends.

I am specifically writing to express opposition to the implementation of SB675 given the manner in which the securities industry functions and tax reporting is accomplished. Under current practice and regulations, I believe that it would be virtually impossible for REITs to comply with the information reporting requirements of SB 675. Among other things, SB 675 would require a REIT to:

- include the following information on its Hawaii tax return: name, address, and social security or federal identification number of each person owning stock in the real estate investment trust at any time during the taxable year;

- provide the number of shares of stock owned by each shareholder at all times during the taxable year;
- track the income attributable to the State and income not attributable to the State with respect to each shareholder as determined under SB 675;
- track the amount of money and other property distributed by the real estate investment trust during the taxable year to each shareholder; and the date of each distribution; and
- withhold 5% of each REIT shareholder's pro rata share of REIT income attributable to Hawaii.

To understand the insurmountable challenges presented, it is important to note that 99% of the stock of publicly traded companies – including publicly traded REITs – is held in "street name." As such, REITs are not familiar with the identities of their beneficial owner shareholders. The use of "street name" is a fundamental practice that the securities industry cannot and will not change. The introduction of street name securities facilitated the buying and selling of securities. The character of Wall Street changed from "runners" delivering shares of stock between brokerage firms to book entry transfers which have enabled the dramatic expansion in securities business. The use of the book entry system and street name ownership does not conform with what SB675 contemplates – issuer knowledge of beneficial ownership transaction activities.

Tax reporting is at the end of a chain of events that begin with the issuance of shares of a REIT. An investment banking firm will lead an underwriting of shares for sale to the public. The REIT will 'deliver' the shares to the underwriter and the underwriter will allocate blocks of those shares to the underwriting selling group members. This delivery is accomplished using DTCC which takes the newly issued shares into its depository in the form of a global certificate in the name of Cede & Company. The receipt of the shares is offset by depositing the REIT shares into the individual broker accounts with DTCC. All of this occurs in bulk, nameless share tranches. The members of the underwriting selling group distribute the shares to the public. These selling group members are the only ones in this process that have actual knowledge of the end purchasers of the shares. At the time of issuance, and thereafter, the REIT has no knowledge of the beneficial owners.

Once distributed, the shares remain held in street name in the nominee's account at DTCC. When purchases and sales occur in the National Market System, DTCC will switch share ownership between the buying firm's and selling firm's accounts at DTCC. Again, the issuer has no knowledge of the beneficial owner of the shares or of these transactions. As shares continue to trade in the secondary market additional brokers beyond the selling group may buy as nominee for new beneficial owners. A REIT will have no knowledge of these transactions and the new owners as well.

Once public ownership is established after the underwriting, the upstream elements of the tax reporting process begin. Those upstream processes include the sale of a security, the payment of a dividend or interest, or the booking of a corporate action involving the shares. These transactions are done in nominee name as far as DTCC is concerned. So, when the REIT is paying a dividend it is paid to and through DTCC in a bulk amount. DTCC splits the dividend proceeds it receives from the REIT among the nominee holders of the security and deposits the proportionate share of dividends into each nominee account. It then becomes

the nominee's responsibility to apportion the dividend among its individual accounts. These accounts are the shareholders who receive the dividend. A tax reporting record will be created each time a dividend is paid.

Tax reporting is event based, not duration or position based. When dividends are paid to an account holder, the tax reporting system will capture it as a separate event – i.e. when 4 dividends were paid to an account (quarterly basis) the tax reporting engine only knows the 4 events. It does not know how long the shares were held, nor does it care in order to comply with federal tax reporting regulations. For example, an individual can buy a share of stock 2 weeks before the dividend payment and sell 2 weeks after. If this were done 4 times the account would have held the same security for about 16 weeks in the year. Another account could have held the security all year (52 weeks) and have the same 4 dividend events reported. The tax reporting system does not care nor does it communicate with a broker dealer's back office system to link a holding period to a specific dividend. The regulations under IRC §1.6042-2 do not require a paying agent to track this. As such, a REIT certainly has no ability to obtain this information from a nominee because it does not exist.

WSC (or another tax reporting engine) receives copies of the dividend payment transactions throughout the year and at year end totals them for processing on a Form 1099-DIV. However, before the form can be created, the REIT may elect to "reallocate" some of the dividend income payment to a return of capital payment. Immediately after year end, WSC contacts certain REITs and Nareit, which acts as a clearinghouse of information on behalf of some REITS, to learn if there is a reallocation to be applied. Since REITs must distribute at least 90% of their net income, and the payment of a taxable dividend must come from profits, circumstances often require a previously distributed dividend to be "reallocated" from income to return of capital. A return of capital is not a taxable event. These reallocations often result in over withholding. Without delving into the extreme complexities that would be caused by attempting to track beneficial ownership of REIT shares on a day-to-day basis throughout the year and match it with REIT ownership of Hawaii properties and then introduce the reallocation of income to capital, suffice it to say this is not a process the nominees are capable of handling and is absolutely not within the purview of a REIT to track.

So, in summation – The issuer never knows the ultimate beneficial owner and the nominee is not required to track the specific number of days or the specific dates on a calendar to accomplish its tax information reporting of dividends. Only the events are reported under tax law. What SB 675 is seeking is not done and would put demands upon an issuer which cannot be satisfied and would potentially conflict with the nominee book entry system used in the securities industry. Throughout our years in the tax information reporting field, WSC has witnessed changes to investor habits and issuer practices driven by tax regulations that were inconsistent with the purpose of investing to earn income. This is one of the purposes IRPAC / IRSAC have served. These committees enable the IRS to obtain feedback and input to avoid issuing regulations that cannot be fulfilled or that would have a chilling effect on financial or commercial activities.

For the above, reasons, we request the Committee hold SB 675.

Respectfully submitted,

Martin J. Bentsen, Esq.
Director of Product Development
FIS – Wall Street Concepts
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FIS | Empowering the Financial World

February 5, 2019

Senator Donovan M. Dela Cruz, Chair
Senator Gilbert S.C. Keith-Agaran, Vice Chair
Senate Committee on Ways and Means

RE: **SB 675 Relating to Taxation – In Opposition**
Wednesday, February 6, 2019; 10:00 AM; Conference Room 211

Aloha Chair Dela Cruz, Vice Chair Keith-Agaran and Members of the Committee:

On behalf of Douglas Emmett, Inc. ("*Douglas Emmett*"), thank you for the opportunity to present testimony expressing concerns on SB 675 which establishes requirements and procedures for a real estate investment trust to file tax returns and payments.

Douglas Emmett has been investing in Oahu for over fifteen years. We currently own approximately 1,800 workforce rental apartment units and have almost completed construction of 475 new workforce rental units at the Moanalua Hillside Apartments. We also own three large office properties in downtown Honolulu, including Bishop Square, Bishop Place and Harbor Court.

Implementation of SB 675 is Not Feasible. As a practical matter, SB 675 cannot be implemented because REITs simply do not know the identities of their shareholders. REIT shares are typically held in unidentified "street name" (meaning they are held in the name of a brokerage firm, not the individual or other account holder who owns the shares). For example, Douglas Emmett currently has almost 170,000,000 shares outstanding, many of which are held in brokerage accounts. Holdings by our largest shareholders as of September 30, 2018, include the following:

Holder (as of Sept. 30, 2018)	Common Stock Equivalent Held
Vanguard Group Inc.	23,659, 581
BlackRock Inc.	19,613,474
T. Rowe Price Group Inc.	9,144,778
State Street Global Advisors Inc.	6,926,399

We do not know the names of the individual investors who own these accounts, nor the number of shares in the individual accounts. In addition, investments in REITs are constantly shifting (e.g., approximately 800,000 shares of Douglas Emmett stock changes

hands every day) so the total shares held in the table above will change when the brokerage firms report their 4th quarter 2018 holdings. Given this churn and the fact that we do not know the identity of our shareholders, it would be impossible to ratably allocate taxes among Douglas Emmett's investors.

SB 675 is Contrary to the Congressional Intent of REITs and Penalizes Small Investors. Real estate has traditionally been purchased by large investors in single tax vehicles such as partnerships and LLCs. Because most individuals do not have access to these types of structures, Congress created REITs in 1960 to provide individuals with a single-tax, public investment vehicle, giving them better access to institutional real estate investments. As a result, today individuals can own a small portion of professionally managed, income-producing property, including office buildings such as Bishop Square and apartments such as the Moanalua Hillside Apartments.

SB 675 appears to be an attempt to measure an investor's income in Hawai'i and impose a tax in Hawai'i that can then be credited against taxes owing in that investor's resident state. However, SB 675 is unworkable and likely unconstitutional. It imposes a withholding tax on passive REIT investors who are unlikely to be given any credits for those taxes in their resident states. In addition, it imposes a tax on investors who are investing through individual IRA's, 401(k)'s and other tax-free accounts.

The practical result of SB 675 is a double tax on individuals seeking to access institutional real estate, undermining Congress' goals when it originally passed REIT legislation. Increased taxes will reduce returns to shareholders and discourage them from investing in REITs that have assets in Hawai'i. This, in turn, will discourage REITs from allocating capital to Hawai'i.

REITs - just like any other property owner in Hawai'i - are already required to pay taxes associated with their real estate holdings, including real property, occupancy, and general excise taxes. For example, Douglas Emmett is paying over $5 million of excise tax relating to the construction of our new workforce rental units at the Moanalua Hillside Apartments and has spent over $120 million building these apartment units, employing hundreds of union workers. In addition, when completed, the new units are projected to generate more than $500,000 of annual general excise tax. Without this development, the additional tax on both the construction costs and rental of the new units would not be generated and these jobs (generating related income taxes) would not be created.

Douglas Emmett has been working to bring the MHA workforce rental housing to Hawai'i for several years with the goal of building additional units in the future. We are aligned with all those in Hawai'i whose goal is to solve the problem of affordable housing. One of the biggest impediments to building workforce housing is that construction is expensive and returns to investors are low. Imposing additional taxes on investors trying to increase rental housing in Hawai'i makes achieving that goal even harder.

Douglas Emmett believes encouraging investment by REITs is good for Hawai'i's economy and ultimately for all its residents. Inasmuch as SB 675 cannot be practically implemented, discriminates against small investors, and discourages real estate investment in Hawai'i, we respectfully ask that you hold SB 675.

Sincerely,

Kevin A. Crummy
Chief Investment Officer
Douglas Emmett

Michele L. Aronson
Senior Vice President
Douglas Emmett

SB-675
Submitted on: 2/5/2019 2:49:45 PM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Mick	Individual	Support	No

Comments:

SB-675
Submitted on: 2/5/2019 9:52:03 PM
Testimony for WAM on 2/6/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Raelyn Reyno Yeomans	Individual	Support	No

Comments:

Support!

HAWAII APPLESEED
CENTER FOR LAW & ECONOMIC JUSTICE

LATE

Testimony of Hawaiʻi Appleseed Center for Law and Economic Justice
Supporting SB 675 – Relating to Taxation of Real Estate Investment Trusts
Senate Committee on Ways and Means
Scheduled for hearing on Wednesday, February 6, 2019, 10:00AM, in conference room 221

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

Thank you for the opportunity to testify in STRONG SUPPORT of **SB 675**, which ensure that Hawaiʻi gets its fair share of income taxes on REIT income by withholding income taxes on REIT shareholders. Right now, income produced on Hawaiʻi REIT property is escaping Hawaiʻi income tax.

A Real Estate Investment Trust or "REIT," is a corporation that owns income-producing real estate, like hotels and shopping malls. Like a mutual fund for real estate, people can purchase shares in a REIT to get a portion of the income it generates. REIT's have been granted a special tax status that exempts them from paying corporate income tax on the dividends paid to its shareholders.

REITs suggest that the exemption is appropriate because REIT shareholders pay income tax. The problem is, many shareholders are not paying income tax in Hawaiʻi, because they don't live here. While REITs own approximately $17 billion worth of real estate in Hawaiʻi—more than any other state on a per capita basis—we have relatively few residents who are REIT shareholders, ranking 40th in the nation for the number of REIT shareholders as a percentage of the population. That means that a lot of REIT money is going out of our state, and only a little is remaining in. An estimated $1 billion in profits are created in Hawaiʻi on Hawaiʻi REIT property, and a significant portion of it is escaping Hawaiʻi income tax.

SB 675 would solve this problem by withholding income tax for REIT shareholders. Income created by Hawaiʻi real estate would get taxed here to help support the communities in which the REITs operate.

Mahalo for your consideration of this testimony.

REIT Income Tax Petition

The undersigned have been informed about the facts and law resulting in neither Real Estate Investment Trusts ("REITs") nor their shareholders paying any income tax on the enormous amount of income they earn on their Hawaii real estate and want the Hawaii Legislature to revise our laws in the 2019 Session so that a withholding tax is imposed or the REIT dividends paid deduction is eliminated and REIT income is properly taxed in Hawaii where it is earned. It is not fair for these organizations to be utilizing so many Hawaii services and occupying prime Hawaii lands and paying no income taxes.

Name	Address
Winifred K.O. Sj	45-320 Kahiko St. Kaneohe
Dianne T. Stevens-Poai	
Carl M. Miyagi	47-533 Pulama Rd 96744
[illegible signature]	47-748 Huikelu St. #5 96744
Flora Obrzanski	P.O. Box 113 96744
Won-Sook Yuh	47-283 Waihee Rd., 96744
F. Lee Smith	53-549 Kamehameha Hwy 96717
Frances M. Wieleenga	47-510 Lulani St., Kaneohe, HI 96744
Walter W. Kilbourne Jr.	47-510 Lulani St., Kaneohe, HI 96744
Oris Sayegusa	P.O. Box 6146 Kaneohe, Hi. 96744
Ethel Sentenlow	47-538 Ahilama Rd Kaneohe HI 96744
Ruth H. Asato	47-708 Ahilama Rd. Kaneohe - 96744
Frances Goo	45-621 Apuapu St. Kaneohe
Patricia A. Po	46-109 Konohiki #3913 Kaneohe, HI 96744 / Hi 96744
Neepe - W.A.	244 Hanaholopio St Honolulu HI 96825
Malany Malakea	47-748 Hui Kelu St. #5, Kaneohe 96744

REIT Income Tax Petition

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Name	Address
Jan Yuen	1255 Nuuanu Ave. 3012 96817 apt.
[illegible]	1255 Nuuanu Ave 96817 apt 702
Chase Saii	1255 nuuanu ave 96817
[illegible] III	1255 Nuuanu Ave, 96817
Richard Buyer	47-101 Kamehameha 96744
[illegible]	555 Hahaione St., 9H 96825
Patricia Gee	4754 Farmers Rd. 96816
[illegible]	133 Bates St Hon. 96817
Chichiko Takata	133 Bates St Hon 96817
Julie Moon	3 Woodland Ln BH 04609
S. [illegible]	133 Bates St. 96817
Jean M [illegible]	1255 Nuuanu Ave #402E
[illegible]	2626 Lilihast. Hon, HI 96817
[illegible]	2626 Liliha St HI 96817
Beatrice T. Kong	1005 Nanaiwa Pl. Hon. Hi 96817
Colleen Lugo	414 Kekau Pl Hon 96817

REIT Income Tax Petition

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Name	Address
Barbara J. Service	472 Keonu St. #4 Honolulu 96816
Hannah Devin	3516 Galvan Lane, Wahiawa HI 96786
Jami Hitt	1234 Alexander St. Apt F1 Honolulu HI 96826
Judith Murashige JUDITH MURASHIGE 96821	887 Hind Iuka 96821
Ruth Yoshioka	4883 Poola St., Hon. HI 96821
Kathleen Otani	340 Awini Pl., Hon., HI 96825
Mary Calantoc	55 S Judd St #2107, Hon. HI 96817
Arlene Koegler	2333 Kapiolani #1612 Hon., HI 96826
M Carolyn Kuahulu	1646 Clark St. #202 Hon. 96822
Leni Reinke	928 Hoteleau St., Hon. 96815
ARNIE PHILLIPS	[illegible]
[illegible] Wallace	1170-1 Kaumailuna Place 96817
Mark D. Looper	45-536 Mahinui Rd., Kaneohe, HI 96744

Name	Address
Laurie Seu	1344 Mamalu Street Hon HI 96817
Nicholas Seu	" "
Lindsey Seu	" "
McKenna Seu	" "
Betty Wakatsuki	98-312 Ponokuwila Place 96701
Edna Jackson	1272 Alewa Drive " "
El Dora K. Robertson	
Evie Myers	336 N. Kuakini St. " "
Paul Reid	155 N Beretania " "
[illegible]	3363 Kaimuki Ave " "
[illegible]	PO Box [illegible] [illegible] HI 96744
Helen Mashino	15 Craigside Place, Apt 501 Hon 96817
Sylvia Hekekia	709 Kihapai St Kailua 96734
[illegible]	1561 Kanunu St. #1608 Hon. 96814
Emilia Collins	707 Hausten ST. Hon 96826
[illegible]	1471 Ihiloa Rd. Hon. 96821
[illegible] aki	1453 Kuikele St Hon 96819

REIT Income Tax Petition

The undersigned have been informed about the facts and law resulting in neither Real Estate Investment Trusts ("REITs") nor their shareholders paying any income tax on the enormous amount of income they earn on their Hawaii real estate and want the Hawaii Legislature to revise our laws in the 2019 Session so that a withholding tax is imposed or the REIT dividends paid deduction is eliminated and REIT income is properly taxed in Hawaii where it is earned. It is not fair for these organizations to be utilizing so many Hawaii services and occupying prime Hawaii lands and paying no income taxes.

NAME	ADDRESS
Calvin Foo Pham	721 W Belmont Ave Chicago, IL
Galen Fox	425 South St #1806 96813
Kathleen Triolo	1326 Center St, 96816
Bruce Anderson	941 B Prospect St. 96822
Kelly Garrett	1659 Hoohai St PC 96782
Scott Shafer	2067 Kilakila Dr. apt A Hon HI 96817

REIT Income Tax Petition

The undersigned have been informed about the facts and law resulting in neither Real Estate Investment Trusts ("REITs") nor their shareholders paying any income tax on the enormous amount of income they earn on their Hawaii real estate and want the Hawaii Legislature to revise our laws in the 2019 Session so that a withholding tax is imposed or the REIT dividends paid deduction is eliminated and REIT income is properly taxed in Hawaii where it is earned. It is not fair for these organizations to be utilizing so many Hawaii services and occupying prime Hawaii lands and paying no income taxes.

ELDON WEGNER

Mario Avalle

Whitney Rim

WILLIAM BEKEMEIER

Myrna C. Medina

Piula Alailima

John F. Heidel

REIT Income Tax Petition

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REIT Income Tax Petition

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Name	Address
[signature] Claire Gecaren	1212 Punahou St. #2601
Alana Busekrus [signature]	220 Ohana St. Kailua 96734
[signature] RONNY LYNN	2611 Ala Wai Blvd. #2106
Joli Tokusato	1612 Anapuni St apt B Hon. 96822
MARY TALON - [signature]	PO Box 861592 WAHIAWA, HI 96786
Dorothy L. Craven	4921 Waa St Hon. Hi 96821
William Caron	2054 9th Avenue, Hon, HI 96816
Jun Shin	1561 Kanunu St. 2106
[signature]	3796 Sierra Drive. 96816
[signature]	44-291E Kaneohe Bay Dr. Kaneohe 96744
[signature]	2333 KAPIOLANI BLVD #2308 96826
Gary S. Hoover	1415 Kinau St, Room 5, Ho, HI 96814

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Signature	Printed name and address
Ellen Godbey Carson	ELLEN GODBEY CARSON 1080 S. Beretania St, Apt GPH 2, Hon 96814
Wally Inglis	WALLY INGLIS 2349 C Palolo Av Hon. HI 96816

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Nicole R. [illegible]

Theodore M. Henderson

Noel H. Sutherland

[illegible]

[illegible] Austin

[illegible]

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Clara B. Burrows
Chuck Burrows
[illegible]
Karen Howell
Kirsten B. Turner
[illegible]
[illegible] Kimura
Markus Faigle [illegible]
[illegible]
Carol [illegible]
[illegible]
Daniel [illegible]
Mary [illegible] Reese

Mildred M. Miyashiro
[illegible]
Michael I. Yano
Ernest K. Harada
Donald L. [illegible]
[illegible]
Coral Prince Wilson
[illegible]
Linda Q Green [illegible]
Walter Lokepa [illegible]
Rosaline K Teixeira
Jean Coffman
Cheryl O. Ho

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Dominic Chow

Patricia Denello

ELIZABETH NELSON

CHARLES MARK RATAY

Margaret Ann Renizk

Stig Lindberg

Robin Hart

John Kawamoto

David Takagi

Kaye A. Kroehler

Sigrid B. Southworth

Thomas Moerten

Mark Wilson

Hitomi Devon

Lee E Takagi

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Name	Address
Lorraine Fay	1037B Ilima Dr. Honolulu, HI 96817
Nancy Kleber [illegible]	1706 Bertram St Honolulu HI 96816
Jane Raissle	310 Ilimano St. Kailua HI 96734
[illegible]	1942 Iwaho Pl. Hnl HI 96819
[illegible]	626 Ilikai St. 96734
[illegible]	2197 10th Ave 96816
Carla S Allison [illegible]	1062 Oilipuu Place Honolulu 96825
Hilkka R. Easterwood	626 Coral St. #2309 Hono, HI 96813
Lee Curran	7122 Hawaii Kai DR #8, 96825
Mike Young	3583-E Kalihi St. 96819
Catherine Graham	1639 O'o Lane 96817
Jill Rabinow	44-211E Kaneohe Bay Dr, Kaneohe, HI 96744
Allison Jacobs	3796 Sierra Drive 96816
William Carvie	54 White Sands Pl - 96734

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Name	Address
Laurel May Zeri	46-262 Kalaua Pl Kaneohe
Junko S. Davis	1350 Ala Moana Blvd, PH5 Honolulu 96814
Charlotte B. Morgan	94-291 Makapipipi Mililani 96789
Paul Davis	1617 Keoaumoku St, #1101, 96822
John M Compton	
J. Hendrie + Nick Jones	849 Hahaione St.
David Friedman	633 Ulumalu St. Kailua 96734
[illegible]	633 Ulumalu Kailua
Leanne MacIntire	47-644 MeleKula Rd #A Kaneohe HI 96744
Alan Rowland	1905 Pualu Nanea Pl. Honolulu HI, 96822
Molly Rowland	1905 Pualu Nanea Pl. Honolulu HI 96822

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Name	Address
David Friedman	633 Ulumalu St Kailua 96734
Joan Schumacher	" " " " "
Mary MacKay	1617 Keeaumoku St Apt 1001, Honolulu 96822
Sue Yamane-Carpenter	86 012 Pokai Bay St Waianae, HI 96792
Marie Anne	45-638 Halekou Pl. Kaneohe HI
Aimee Mayeda	600 Ala Moana Blvd #4208 Honolulu HI 96813
Laurel Mayzeri	46-262 Kalaua Pl Kaneohe
Martina Queenth	1435 9th AVE Honolulu
John McComyth	P.O. Box 1066, Kaneohe
Eileen Cain	720 Mahi'ai St., Apt. E, Honolulu 96826
Marilyn Bornhorst	1434 Punahou #723, 96822
Dennis Krauc	4050B Koanu St. #8 96816
CAROL AMOS	1634 MAKIKI ST #904 HONOLULU HI 96822
ALBERT FRIZZIOLD CKET	545 QUEEN #702 Honolulu, HI 96813

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Mildred M Chang 4384 Malia St Hon 96821
Aileen Fujitani 6020 Elelupe Pl. Hon 96821
Wilma Tom 634 Ainapo St, Hon. 96825
Winifred Kumura 3828 Claudine St, Hon 96816
[illegible] Thompson 5212 Makalena St Hon 96821
Mildred Yamamoto 895 Kalanipuu St. Hon. HI 96825
John Thompson 5212 Makalena St., Hon. 96821
Kara Mark 5661 Haleola St Hon 96821
[illegible] Mark " " " "
[illegible] Kakuni 11 Akialoa St Hon, Hi 96821
Carole Wakazuru 385 Haleloa Place Honolulu HI 96821
Jean McIntosh 250 Kawaihae St. Hon 96825
[illegible] 45-435 Lolii St Kaneohe 96744
[illegible] 280 Panio St Honolulu Hi 96821
Kristen Mark-Vega 5669 Haleola Street, Honolulu, HI 96821
[illegible] (Cory Vega) " " "
Jaeman Lim [illegible] 280 Panio St. Honolulu, HI 96821
Matthew Hayakawa 5252 Kilauea Ave. Honolulu, HI, 96816
Vickie Hayakawa 5252 Kilauea Avenue Hon 96816
[illegible] Nakamura 95-312 Alo Place Mililani HI 96789
Martha Kobayashi 7212 Kuahaka, Honolulu 96825
Leona Kato 916 Lunalilo Hm Rd Hon 96825
[illegible] Miyashita 6770 Hawaii Kai Dr #102
Stan Miyasato 7273 Nohili St., Hon. 96825
Elpidio R T Cordavona 1720 Huna St #317 Hon. Hi 96817-2466
[illegible] Ito 4389 Malia St #20 Hon 96821
Karen Thompson 1085 Kaluanui Rd. Honolulu, HI, 96825

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print name	Signature	Address
Robin Van Eps	[illegible]	717 Kihapai Pl. Apt. 7 Kailua, 96734
SUSIE JANNUZZI	[illegible]	85 Wilikoki Pl. Kailua 96734
ANi VAN Eps	[illegible]	10989 Kam. V Hwy, KAUNAKAKAI, Molokai, 96748
LARRY GRIMM	Larry Grimm	357 N. Vineyard #6-201, Hawaii 96817
Joy Lee Caudle	Joy Lee Caudle	1505 Ulupii St Kailua HI 96734
	[illegible]	533 Uluhaa St Kailua 96734
Charlene Hosenfeld	[illegible]	604 N. Kalaheo Ave " "
R.W. SCHEURENBRAND	[illegible]	604 N KALAHEO AVE "
MARY PIETTE	Mary Piette	45 090 Namoku #503 Kaneohe 96744
MELODY HEIDEL	[illegible]	1341 Manu Mele St Kailua 96734
John Heidel	John Heidel	1341 Manu Mele St., Kailua 96734
	Richard M. Smith	1222 MANU MELE St. " "
Courtney Nichols	Courtney Nichols	1015 Aoloa Pl. #361 Kailua HI 96734

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print name Signature	Address
[illegible]	PO Box 1915, Kailua 96734
[illegible]	1063 Koohoo Pl. Kailua
Laurie Baron [signature]	44-392 Olina st #1 Kaneohe HI 96744

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Name	Address
Keith Zeilinger [signature]	598 Uluhaku St, Kailua 96734
Clarence Lyman [signature]	1039 Kahili Pl. Kailua, 96734
Louise South	47-657 Hui Ulili Kaneohe 96744