
A BILL FOR AN ACT

RELATING TO TAXATION.

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

1 SECTION 1. The legislature finds that the majority of
2 income received from real estate investment trusts by corporate
3 entities doing business in Hawaii is not taxed at the state
4 level. They enjoy a preference that exempts them from paying
5 taxes on dividends paid on revenues generated in Hawaii.
6 According to the department of taxation, the estimated amount of
7 income tax revenues that will be foregone in the 2026 taxable
8 year may be as much as \$26,800,000.

9 The legislature also finds that, in September 2016, the
10 department of business, economic development, and tourism,
11 through its research and economic analysis division,
12 commissioned a report to evaluate the recovery of income tax
13 revenues from real estate investment trusts within the State.
14 The findings revealed that Hawaii received only \$954,842 from
15 in-state residents paying taxes on dividend income associated
16 with Hawaii real estate investment trusts. In contrast, the
17 majority of the real estate investment trust income taxes were



1 paid to other states by out-of-state shareholders receiving
2 dividends, meaning that Hawaii did not benefit from the bulk of
3 the income generated by real estate investment trusts operating
4 within its borders. The legislature further finds that real
5 estate investment trust income generated through the use of
6 state resources should be taxed in Hawaii to benefit the State.

7 Accordingly, the purpose of this Act is to disallow the
8 dividends paid deduction for most real estate investment trusts.

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

11 "(b) The following Internal Revenue Code subchapters,
12 parts of subchapters, sections, subsections, and parts of
13 subsections shall not be operative for the purposes of this
14 chapter, unless otherwise provided:

15 (1) Subchapter A (sections 1 to 59A) (with respect to
16 determination of tax liability), except section
17 1(h)(2) (relating to net capital gain reduced by the
18 amount taken into account as investment income),
19 except sections 2(a), 2(b), and 2(c) (with respect to
20 the definition of "surviving spouse" and "head of
21 household"), except section 41 (with respect to the



- 1 credit for increasing research activities), except
2 section 42 (with respect to low-income housing
3 credit), except sections 47 and 48, as amended, as of
4 December 31, 1984 (with respect to certain depreciable
5 tangible personal property), and except section
6 48(d)(3), as amended, as of February 17, 2009 (with
7 respect to the treatment of United States Department
8 of Treasury grants made under section 1603 of the
9 American Recovery and Reinvestment Tax Act of 2009).
10 For treatment, see sections 235-110.91, 235-110.7, and
11 235-110.8;
- 12 (2) Section 78 (with respect to dividends received from
13 certain foreign corporations by domestic corporations
14 choosing foreign tax credit);
- 15 (3) Section 86 (with respect to social security and tier 1
16 railroad retirement benefits);
- 17 (4) Section 91 (with respect to certain foreign branch
18 losses transferred to specified 10-percent owned
19 foreign corporations);
- 20 (5) Section 103 (with respect to interest on state and
21 local bonds). For treatment, see section 235-7(b);



- 1 (6) Section 114 (with respect to extraterritorial income).
2 For treatment, any transaction as specified in the
3 transitional rule for 2005 and 2006 as specified in
4 the American Jobs Creation Act of 2004 section 101(d)
5 and any transaction that has occurred pursuant to a
6 binding contract as specified in the American Jobs
7 Creation Act of 2004 section 101(f) are inoperative;
- 8 (7) Section 120 (with respect to amounts received under
9 qualified group legal services plans). For treatment,
10 see section 235-7(a)(9) to (11);
- 11 (8) Section 122 (with respect to certain reduced uniformed
12 services retirement pay). For treatment, see section
13 235-7(a)(3);
- 14 (9) Section 135 (with respect to income from United States
15 savings bonds used to pay higher education tuition and
16 fees). For treatment, see section 235-7(a)(1);
- 17 (10) Section 139C (with respect to COBRA premium
18 assistance);
- 19 (11) Subchapter B (sections 141 to 150) (with respect to
20 tax exemption requirements for state and local bonds);



- 1 (12) Section 151 (with respect to allowance of deductions
2 for personal exemptions). For treatment, see section
3 235-54;
- 4 (13) Section 179B (with respect to expensing of capital
5 costs incurred in complying with Environmental
6 Protection Agency sulphur regulations);
- 7 (14) Section 181 (with respect to special rules for certain
8 film and television productions);
- 9 (15) Section 196 (with respect to deduction for certain
10 unused investment credits);
- 11 (16) Section 199 (with respect to the U.S. production
12 activities deduction);
- 13 (17) Section 199A (with respect to qualified business
14 income);
- 15 (18) Section 222 (with respect to qualified tuition and
16 related expenses);
- 17 (19) Sections 241 to 247 (with respect to special
18 deductions for corporations). For treatment, see
19 section 235-7(c);



- 1 (20) Section 250 (with respect to foreign-derived
- 2 intangible income and global intangible low-taxed
- 3 income);
- 4 (21) Section 267A (with respect to certain related party
- 5 amounts paid or accrued in hybrid transactions or with
- 6 hybrid entities);
- 7 (22) Section 280C (with respect to certain expenses for
- 8 which credits are allowable). For treatment, see
- 9 section 235-110.91;
- 10 (23) Section 291 (with respect to special rules relating to
- 11 corporate preference items);
- 12 (24) Section 367 (with respect to foreign corporations);
- 13 (25) Section 501(c)(12), (15), (16) (with respect to exempt
- 14 organizations); except that section 501(c)(12) shall
- 15 be operative for companies that provide potable water
- 16 to residential communities that lack any access to
- 17 public utility water services;
- 18 (26) Section 515 (with respect to taxes of foreign
- 19 countries and possessions of the United States);



- 1 (27) Subchapter G (sections 531 to 565) (with respect to
2 corporations used to avoid income tax on
3 shareholders);
- 4 (28) Subchapter H (sections 581 to 597) (with respect to
5 banking institutions), except section 584 (with
6 respect to common trust funds). For treatment, see
7 chapter 241;
- 8 (29) Section 642(a) and (b) (with respect to special rules
9 for credits and deductions applicable to trusts). For
10 treatment, see sections 235-54(b) and 235-55;
- 11 (30) Section 646 (with respect to tax treatment of electing
12 Alaska Native settlement trusts);
- 13 (31) Section 668 (with respect to interest charge on
14 accumulation distributions from foreign trusts);
- 15 (32) Subchapter L (sections 801 to 848) (with respect to
16 insurance companies). For treatment, see sections
17 431:7-202 and 431:7-204;
- 18 (33) Section 853 (with respect to foreign tax credit
19 allowed to shareholders). For treatment, see section
20 235-55;



1 (34) Section 853A (with respect to credits from tax credit
2 bonds allowed to shareholders);

3 (35) Section 857(b)(2)(B) (with respect to the dividends
4 paid deduction for real estate investment trusts);
5 provided that any real estate investment trust that
6 has investments or is a community development
7 financial institution shall be exempt from this
8 paragraph. For purposes of this paragraph, "community
9 development financial institution" shall have the same
10 meaning as in section 103 of the Community Development
11 Banking and Financial Institutions Act of 1994 (12
12 U.S.C. §4702);

13 [~~+35+~~] (36) Subchapter N (sections 861 to 999) (with respect
14 to tax based on income from sources within or without
15 the United States), except sections 985 to 989 (with
16 respect to foreign currency transactions). For
17 treatment, see sections 235-4, 235-5, and 235-7(b),
18 and 235-55;

19 [~~+36+~~] (37) Section 1042(g) (with respect to sales of stock
20 in agricultural refiners and processors to eligible
21 farm cooperatives);



1 beginning before January 1, 2026, the deduction for dividends
2 paid is limited to [~~such~~] the amount of dividends as is
3 attributable to income taxable under this chapter[~~],~~ and, for
4 taxable years beginning after December 31, 2025, no deductions
5 for dividends paid shall be allowed), a tax consisting in the
6 sum of the following: 4.4 per cent if the taxable income is not
7 over \$25,000, 5.4 per cent if over \$25,000 but not over
8 \$100,000, and on all over \$100,000, 6.4 per cent. In addition
9 to any other penalty provided by law any real estate investment
10 trust whose tax liability for any taxable year is deemed to be
11 increased pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after
12 December 31, 1978, (relating to interest and additions to tax
13 determined with respect to the amount of the deduction for
14 deficiency dividends allowed) of the Internal Revenue Code shall
15 pay a penalty in an amount equal to the amount of interest for
16 which the trust is liable that is attributable solely to the
17 increase. The penalty payable under this subsection with
18 respect to any determination shall not exceed one-half of the
19 amount of the deduction allowed by section 859(a), or 860(a)
20 after December 31, 1978, of the Internal Revenue Code for the
21 taxable year.



1 Notwithstanding the foregoing, beginning January 1, 2022,
2 the department shall require a real estate investment trust
3 subject to this chapter to:

4 (1) Notify the department, in the manner prescribed by the
5 department, of its operation as a real estate
6 investment trust in the State no later than fifteen
7 days from the first day of operation in the State;
8 provided that, for real estate investment trusts
9 operating in the State as of July 1, 2021, the
10 department shall be notified no later than January 15,
11 2022;

12 (2) Properly designate on its tax return that it is a real
13 estate investment trust, as required by the
14 department;

15 (3) Complete its tax return in the specific manner
16 required by the department, including following
17 line-by-line instructions; and

18 (4) Submit a copy of the real estate investment trust's
19 federal tax return covering the same period with each
20 state tax return that the real estate investment trust
21 files with the department under this chapter.



1 Any real estate investment trust that fails to comply with these
2 requirements shall be assessed a penalty of \$50 per day."

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

5 SECTION 5. This Act, upon its approval, shall apply to
6 taxable years beginning after December 31, 2025.



Report Title:

Income Tax; REIT; Dividends Paid Deduction

Description:

Disallows the dividends paid deduction for real estate investment trusts, except those having investments or that are community development financial institutions. (SD1 PROPOSED)

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

