

ACT 78

H.B. NO. 286

A Bill for an Act Relating to Real Estate Investment Trusts.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that real estate investment trusts play a significant role in Hawaii's economy, and that the State would benefit from the accurate collection of data about their economic activities.

The legislature recognizes that the assets of and revenues generated by real estate investment trusts may not have been reported to and accurately recorded by the State. The legislature notes that there are no state tax forms specifically for real estate investment trusts, nor are there any clear methods for real estate investment trusts to annually report their financial status and declare profits, losses, deductions, and credits to the State. As Hawaii faces major budget shortfalls this year and for several years to come, it is imperative that all business entities provide accurate reporting of their assets and generated revenues.

The legislature further finds that a real estate investment trust should be required to notify the department of taxation of its presence in the State and to annually report the same tax information they provide to the Internal Revenue Service.

Accordingly, the purpose of this Act is to authorize the department of taxation to require real estate investment trusts operating in the State to notify

the State of the real estate investment trusts' existence and annually report information required by the department, including a copy of the real estate investment trusts' federal tax return, with the real estate investment trusts' state tax return.

SECTION 2. Section 235-71, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) In the case of a real estate investment trust there is imposed on the taxable income, computed as provided in sections 857 and 858 of the Internal Revenue Code but with the changes and adjustments made by this chapter (without prejudice to the generality of the foregoing, the deduction for dividends paid is limited to such amount of dividends as is attributable to income taxable under this chapter), a tax consisting in the sum of the following: 4.4 per cent if the taxable income is not over \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and on all over \$100,000, 6.4 per cent. In addition to any other penalty provided by law any real estate investment trust whose tax liability for any taxable year is deemed to be increased pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after December 31, 1978, (relating to interest and additions to tax determined with respect to the amount of the deduction for deficiency dividends allowed) of the Internal Revenue Code shall pay a penalty in an amount equal to the amount of interest for which ~~such~~ the trust is liable that is attributable solely to ~~such~~ the increase. The penalty payable under this subsection with respect to any determination shall not exceed one-half of the amount of the deduction allowed by section 859(a), or 860(a) after December 31, 1978, of the Internal Revenue Code for ~~such~~ the taxable year.

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

- (1) Notify the department, in the manner prescribed by the department, of its operation as a real estate investment trust in the State no later than fifteen days from the first day of operation in the State; provided that, for real estate investment trusts operating in the State as of July 1, 2021, the department shall be notified no later than January 15, 2022;
- (2) Properly designate on its tax return that it is a real estate investment trust, as required by the department;
- (3) Complete its tax return in the specific manner required by the department, including following line-by-line instructions; and
- (4) Submit a copy of the real estate investment trust's federal tax return covering the same period with each state tax return that the real estate investment trust files with the department under this chapter.

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

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

SECTION 4. This Act, upon its approval, shall apply to taxable years beginning after December 31, 2021.

(Approved June 24, 2021.)