

JAN 17 2020

A BILL FOR AN ACT

RELATING TO DOWN PAYMENTS.

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

1 PART I

2 SECTION 1. The legislature finds that the size of the
3 State's population is declining. In fiscal year 2016-2017, the
4 United States Census estimated that Hawaii had a net loss of
5 13,537 people. People who move away from Hawaii often cite
6 Hawaii's high cost of living as the deciding factor in moving.

7 The legislature further finds that the relocation of
8 individuals and families out of Hawaii causes economic, social,
9 and cultural burdens for the State. The lack of frequent
10 physical contact with family members can be traumatic,
11 disruptive, and fragmenting to ohana. This erosion of kinship
12 support networks among existing residents can even delay family-
13 making decisions for younger generations when considering their
14 ability to clothe, feed, and educate their future children.

15 The legislature further finds that many who move out of
16 Hawaii are often the most skilled and educated members of the
17 workforce since those individuals have the greatest opportunity



1 for career choices in the mainland United States. Failure to
2 stem this loss represents a danger to Hawaii's economic future.

3 The purpose of this part is to encourage former residents
4 to return to Hawaii by assisting them in making down payments
5 for the purchase of primary residences.

6 SECTION 2. Chapter 201H, Hawaii Revised Statutes, is
7 amended by adding two new sections to be appropriately
8 designated and to read as follows:

9 **"§201H-A Returning resident down payment program,**

10 **established.** (a) There is established the returning resident
11 down payment program to be administered by the corporation. The
12 program shall encourage former Hawaii residents to return to
13 Hawaii by awarding grants to assist with the down payment on the
14 purchase of a primary residence.

15 (b) Subject to available funds, the returning resident
16 down payment program shall award grants of up to one dollar for
17 each dollar of down payment made by a qualified applicant;
18 provided that the total award to an applicant shall not exceed
19 the lesser of ten per cent of the value of the single family
20 residence purchased or \$50,000.



- 1 (c) To be eligible for an award under the returning
2 resident down payment program, an applicant shall:
- 3 (1) Have earned a high school diploma from a high school
4 located in the State;
- 5 (2) Have ceased residency in the State for the purpose of
6 attending a four-year course of study leading to a
7 baccalaureate degree at a college or university
8 accredited by the United States Department of
9 Education or other entity recognized by the
10 corporation;
- 11 (3) Use the award to make a down payment for the purchase
12 of a single family residence as defined in section
13 521-8; and
- 14 (4) Use the single family residence purchased pursuant to
15 subparagraph (3) as a primary residence for not less
16 than two years from the date of purchase.
- 17 (d) Any applicant who has received an award and fails to
18 satisfy the requirements of subsection (c)(4) shall repay the
19 award plus interest at the rate of eight per cent.

20 **§201H-B Returning resident down payment special fund.** (a)
21 There is established in the state treasury the returning



1 resident down payment special fund into which shall be deposited
2 the following moneys:

3 (1) Appropriations made by the legislature to the special
4 fund;

5 (2) The revenue from taxes collected pursuant to section
6 235- ; and

7 (3) Repayments to the fund made pursuant to section
8 201H-A(d).

9 (b) Funds in the special fund shall be used for the
10 purposes of the returning resident down payment program."

11 SECTION 3. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$ or so much
13 thereof as may be necessary for fiscal year 2020-2021 for
14 deposit into the returning resident down payment special fund.

15 SECTION 4. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so much
17 thereof as may be necessary for fiscal year 2020-2021 for the
18 returning resident down payment program.

19 The sum appropriated shall be expended by the Hawaii
20 housing finance and development corporation for the purposes of
21 this Act.



1 PART II

2 SECTION 5. The legislature finds that real estate
3 investment trusts, under current law, do not pay their full
4 share of taxes. The dividends paid deduction and the corporate
5 structure of real estate investment trusts allow income
6 generated by these corporations to go untaxed in Hawaii, costing
7 the State valuable tax revenue that could be used for the
8 benefit of residents and former residents wishing to return.

9 According to the department of business, economic
10 development, and tourism, the net annual income for real estate
11 investment trusts has risen quickly in the last several years
12 from approximately \$79,900,000 in 2012 to \$720,000,000 in 2014.
13 Had real estate investment trusts been subject to the same
14 taxation as other corporations, they would have generated an
15 additional \$36,000,000 in state revenue in 2014 alone. The
16 legislature finds it unacceptable that real estate investment
17 trusts take advantage of the State's tax laws and the real
18 estate market to generate enormous profits that ultimately have
19 little or no benefit to the State.

20 The legislature believes that there are two ways to ensure
21 that the State is paid its fair share of income taxes from the



1 economic activity generated by real estate investment trusts.
2 First, real estate investment trusts should be required to
3 withhold a portion of dividends attributable to the State and
4 remit them to the State. Similar to the way other corporate
5 forms are taxed in the State, this will have the same effect on
6 the real estate investment trust as their shareholders being
7 taxed in their home states. Instead of the tax income going to
8 other states, requiring annual tax returns on dividends ensures
9 that tax income goes to this State for business activity
10 generated in this State. Second, repealing the dividends paid
11 deduction will ensure that real estate investment trusts cannot
12 use the deduction as a loophole to escape proper taxation.
13 Under federal law, each real estate investment trust must
14 distribute at least ninety per cent of its taxable income to
15 shareholders. The dividends paid deduction allows real estate
16 investment trusts to escape paying taxes on income generated
17 from doing business in this State. Closing the loophole ensures
18 that the State receives its share of a real estate investment
19 trust's taxable income.

20 The purpose of this part is to:



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1 (1) Require real estate investment trusts to submit
2 returns based on dividends distributed and income
3 generated in Hawaii; and

4 (2) Repeal the dividend paid deduction for real estate
5 investment trusts to create a revenue source for the
6 returning resident down payment program.

7 SECTION 6. Chapter 235, Hawaii Revised Statutes, is
8 amended by adding a new section to part VI to be appropriately
9 designated and to read as follows:

10 "§235- Real estate investment trust returns;
11 withholding on dividends paid. (a) Each real estate investment
12 trust shareholder's pro rata share of income attributable to the
13 State and the shareholder's pro rata share of income not
14 attributable to the State, to the extent modified under this
15 chapter, shall be taken into account by the shareholder for the
16 purposes of this chapter under rules adopted pursuant to
17 chapter 91 and similar to those applicable to S corporation
18 shareholders pursuant to section 235-122(c).

19 (b) Every real estate investment trust shall make a return
20 for each taxable year, stating specifically:



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- 1 (1) The items of its gross income and the deductions
- 2 allowable by this chapter;
- 3 (2) The name, address, and social security or federal
- 4 identification number of each person owning stock in
- 5 the real estate investment trust at any time during
- 6 the taxable year;
- 7 (3) The number of shares of stock owned by each
- 8 shareholder at all times during the taxable year;
- 9 (4) The income attributable to the State and income not
- 10 attributable to the State with respect to each
- 11 shareholder as determined under this chapter;
- 12 (5) Any modifications required under this chapter;
- 13 (6) The amount of money and other property distributed by
- 14 the real estate investment trust during the taxable
- 15 year to each shareholder;
- 16 (7) The date of each distribution; and
- 17 (8) Any other information the department may prescribe by
- 18 form or rule.
- 19 (c) The real estate investment trust, on or before the day
- 20 on which the return is filed, shall furnish to each person who
- 21 was a shareholder during the year a copy of the information



1 shown on the return as the department may prescribe by form or
2 rule. Any return filed pursuant to this section, for purposes
3 of sections 235-111 and 235-112, shall be treated as a return
4 filed by the real estate investment trust under section 235-92.

5 (d) The department may permit composite returns and
6 payments to be made on behalf of resident shareholders.

7 (e) A real estate investment trust shall withhold and pay
8 to this State, on behalf of any shareholder, an amount equal to
9 five per cent multiplied by the amount of the shareholder's pro
10 rata share of the income attributable to the State, as reflected
11 on the real estate investment trust's return for the taxable
12 period. A real estate investment trust shall be entitled to
13 recover a payment made pursuant to this subsection from the
14 shareholder on whose behalf the payment was made.

15 (f) The amount withheld by a real estate investment trust
16 under subsection (e) shall be the minimum tax due to Hawaii by
17 each real estate investment trust shareholder on their Hawaii
18 source income. A real estate investment trust shareholder that
19 is not otherwise required to file Hawaii tax returns need not
20 file a Hawaii return to report the income received and tax paid.
21 Any real estate investment trust shareholder that is tax exempt



1 under federal income tax law shall not be liable for the minimum
2 tax on their real estate investment trust income and may file a
3 claim for refund for the amount withheld and paid to the State
4 by the real estate investment trust.

5 (g) Any amount paid by the real estate investment trust to
6 this State pursuant to subsection (d) or (e) shall be considered
7 to be a payment by the shareholder on account of the income tax
8 imposed on the shareholder for the taxable period.

9 (h) All money collected pursuant to this section shall be
10 deposited into the returning resident down payment special fund
11 established pursuant to section 201H-A.

12 (i) Any officer of any real estate investment trust who
13 wilfully fails to provide any information, file any return or
14 agreement, or make any payment as required by this section or
15 section 231-15.6 shall be guilty of a misdemeanor.

16 (j) As used in this section:

17 "Real estate investment trust" means a corporation, trust,
18 or association for which a valid election in accordance with
19 section 856 of the Internal Revenue Code, as amended, is in
20 effect.



1 "Real estate investment trust shareholder" or "shareholder"
2 means any person who is ultimately responsible for the payment
3 of tax on a portion of the real estate investment trust's income
4 from dividend distributions."

5 SECTION 7. Section 235-2.3, Hawaii Revised Statutes, is
6 amended by amending subsection (b) to read as follows:

7 "(b) The following Internal Revenue Code subchapters,
8 parts of subchapters, sections, subsections, and parts of
9 subsections shall not be operative for the purposes of this
10 chapter, unless otherwise provided:

11 (1) Subchapter A (sections 1 to 59A) (with respect to
12 determination of tax liability), except section
13 1(h)(2) (relating to net capital gain reduced by the
14 amount taken into account as investment income),
15 except sections 2(a), 2(b), and 2(c) (with respect to
16 the definition of "surviving spouse" and "head of
17 household"), except section 41 (with respect to the
18 credit for increasing research activities), except
19 section 42 (with respect to low-income housing
20 credit), except sections 47 and 48, as amended, as of
21 December 31, 1984 (with respect to certain depreciable



1 tangible personal property), and except section
2 48(d)(3), as amended, as of February 17, 2009 (with
3 respect to the treatment of United States Department
4 of Treasury grants made under section 1603 of the
5 American Recovery and Reinvestment Tax Act of 2009).
6 For treatment, see sections 235-110.91, 235-110.7, and
7 235-110.8;
8 (2) Section 78 (with respect to dividends received from
9 certain foreign corporations by domestic corporations
10 choosing foreign tax credit);
11 (3) Section 86 (with respect to social security and tier 1
12 railroad retirement benefits);
13 (4) Section 91 (with respect to certain foreign branch
14 losses transferred to specified 10-percent owned
15 foreign corporations);
16 (5) Section 103 (with respect to interest on state and
17 local bonds). For treatment, see section 235-7(b);
18 (6) Section 114 (with respect to extraterritorial income).
19 For treatment, any transaction as specified in the
20 transitional rule for 2005 and 2006 as specified in
21 the American Jobs Creation Act of 2004 section 101(d)



- 1 and any transaction that has occurred pursuant to a
2 binding contract as specified in the American Jobs
3 Creation Act of 2004 section 101(f) are inoperative;
- 4 (7) Section 120 (with respect to amounts received under
5 qualified group legal services plans). For treatment,
6 see section 235-7(a)(9) to (11);
- 7 (8) Section 122 (with respect to certain reduced uniformed
8 services retirement pay). For treatment, see section
9 235-7(a)(3);
- 10 (9) Section 135 (with respect to income from United States
11 savings bonds used to pay higher education tuition and
12 fees). For treatment, see section 235-7(a)(1);
- 13 (10) Section 139C (with respect to COBRA premium
14 assistance);
- 15 (11) Subchapter B (sections 141 to 150) (with respect to
16 tax exemption requirements for state and local bonds);
- 17 (12) Section 151 (with respect to allowance of deductions
18 for personal exemptions). For treatment, see section
19 235-54;



- 1 (13) Section 179B (with respect to expensing of capital
2 costs incurred in complying with Environmental
3 Protection Agency sulphur regulations);
- 4 (14) Section 181 (with respect to special rules for certain
5 film and television productions);
- 6 (15) Section 196 (with respect to deduction for certain
7 unused investment credits);
- 8 (16) Section 199 (with respect to the U.S. production
9 activities deduction);
- 10 (17) Section 199A (with respect to qualified business
11 income);
- 12 (18) Section 222 (with respect to qualified tuition and
13 related expenses);
- 14 (19) Sections 241 to 247 (with respect to special
15 deductions for corporations). For treatment, see
16 section 235-7(c);
- 17 (20) Section 250 (with respect to foreign-derived
18 intangible income and global intangible low-taxed
19 income);



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- 1 (21) Section 267A (with respect to certain related party
2 amounts paid or accrued in hybrid transactions or with
3 hybrid entities);
- 4 (22) Section 280C (with respect to certain expenses for
5 which credits are allowable). For treatment, see
6 section 235-110.91;
- 7 (23) Section 291 (with respect to special rules relating to
8 corporate preference items);
- 9 (24) Section 367 (with respect to foreign corporations);
- 10 (25) Section 501(c)(12), (15), (16) (with respect to exempt
11 organizations); except that section 501(c)(12) shall
12 be operative for companies that provide potable water
13 to residential communities that lack any access to
14 public utility water services;
- 15 (26) Section 515 (with respect to taxes of foreign
16 countries and possessions of the United States);
- 17 (27) Subchapter G (sections 531 to 565) (with respect to
18 corporations used to avoid income tax on
19 shareholders);
- 20 (28) Subchapter H (sections 581 to 597) (with respect to
21 banking institutions), except section 584 (with



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



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

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

11 ~~[(36)]~~ (37) Section 1042(g) (with respect to sales of stock
12 in agricultural refiners and processors to eligible
13 farm cooperatives);

14 ~~[(37)]~~ (38) Section 1055 (with respect to redeemable ground
15 rents);

16 ~~[(38)]~~ (39) Section 1057 (with respect to election to treat
17 transfer to foreign trust, etc., as taxable exchange);

18 ~~[(39)]~~ (40) Sections 1291 to 1298 (with respect to treatment
19 of passive foreign investment companies);



- 1 [~~40~~] (41) Subchapter Q (sections 1311 to 1351) (with
2 respect to readjustment of tax between years and
3 special limitations);
- 4 [~~41~~] (42) Subchapter R (sections 1352 to 1359) (with
5 respect to election to determine corporate tax on
6 certain international shipping activities using per
7 ton rate);
- 8 [~~42~~] (43) Subchapter U (sections 1391 to 1379F) (with
9 respect to designation and treatment of empowerment
10 zones, enterprise communities, and rural development
11 investment areas). For treatment, see chapter 209E;
- 12 [~~43~~] (44) Subchapter W (sections 1400 to 1400C) (with
13 respect to District of Columbia enterprise zone);
- 14 [~~44~~] (45) Section 14000 (with respect to education tax
15 benefits);
- 16 [~~45~~] (46) Section 1400P (with respect to housing tax
17 benefits);
- 18 [~~46~~] (47) Section 1400R (with respect to employment
19 relief);
- 20 [~~47~~] (48) Section 1400T (with respect to special rules for
21 mortgage revenue bonds);



1 trust whose tax liability for any taxable year is deemed to be
2 increased pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after
3 December 31, 1978, (relating to interest and additions to tax
4 determined with respect to the amount of the deduction for
5 deficiency dividends allowed) of the Internal Revenue Code shall
6 pay a penalty in an amount equal to the amount of interest for
7 which such trust is liable that is attributable solely to such
8 increase. The penalty payable under this subsection with
9 respect to any determination shall not exceed one-half of the
10 amount of the deduction allowed by section 859(a), or 860(a)
11 after December 31, 1978, of the Internal Revenue Code for such
12 taxable year."

13 PART III

14 SECTION 9. In codifying the new sections added by section
15 2 of this Act, the revisor of statutes shall substitute
16 appropriate section numbers for the letters used in designating
17 the new sections in this Act.

18 SECTION 10. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.



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1 SECTION 11. This Act shall take effect on July 1, 2020,
2 and shall apply to taxable years beginning after December 31,
3 2020.

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INTRODUCED BY:

Kurt Fevella






S.B. NO. 2409

Report Title:

Returning Resident Down Payment Program; Special Fund; Real Estate Investment Trust; Deductions; Appropriation

Description:

Encourages certain former Hawaii residents to move back to Hawaii by establishing the returning resident down payment program to provide matching funds for the down payment on a residence. Funds the program with taxes on dividends paid by real estate investment trusts. Repeals dividend paid deduction for real estate investment trusts. Appropriates funds.

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