
A BILL FOR AN ACT

RELATING TO REAL ESTATE INVESTMENT TRUSTS.

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

1 SECTION 1. Section 235-71, Hawaii Revised Statutes, is
2 amended by amending subsection (d) to read as follows:
3 "(d) In the case of a real estate investment trust:
4 (1) ~~[there]~~ There is imposed on the taxable income,
5 computed as provided in sections 857 and 858 of the
6 Internal Revenue Code but with the changes and
7 adjustments made by this chapter (without prejudice to
8 the generality of the foregoing, the deduction for
9 dividends paid is limited to such amount of dividends
10 as is attributable to income taxable under this
11 chapter), a tax consisting in the sum of the
12 following: 4.4 per cent if the taxable income is not
13 over \$25,000, 5.4 per cent if over \$25,000 but not
14 over \$100,000, and on all over \$100,000, 6.4 per cent.
15 In addition to any other penalty provided by law any
16 real estate investment trust whose tax liability for
17 any taxable year is deemed to be increased pursuant to



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

13 (2) A taxpayer shall make an affirmative election for
14 income to be taxed as a real estate investment trust,
15 and as a requirement of that election, shall provide
16 pertinent data as may be required by the department of
17 business, economic development, and tourism solely for
18 the purposes of producing any report mandated by the
19 legislature. Failure to meet the requirements of this
20 subsection shall invalidate the election to be taxed



1 as a real estate investment trust. The information at
2 a minimum shall include:

3 (A) The total number of investors in the real estate
4 investment trust and the total amount of
5 dividends paid to its investors;

6 (B) The number of Hawaii taxpayers who are direct
7 investors in the real estate trust and the total
8 amount of dividends paid to those investors; and

9 (C) Whether the real estate investment trust is a
10 captive real estate investment trust. For
11 purposes of this paragraph, a "captive real
12 estate investment trust" means a real estate
13 investment trust that is not regularly traded on
14 an established securities market, and where fifty
15 per cent or more of the voting stock is owned or
16 controlled, directly or indirectly, by a single
17 entity treated as an association taxable as a
18 corporation under the Internal Revenue Code that
19 is not exempt from the federal income tax and is
20 itself not a real estate investment trust; and



1 (3) Notwithstanding any other law to the contrary, the
2 department may share the name and taxpayer
3 identification number of a taxpayer who has elected to
4 be taxed in accordance with this subsection with the
5 department of business, economic development, and
6 tourism, solely for the purpose of determining whether
7 the taxpayer has complied with this subsection. Any
8 tax information submitted in compliance with this
9 subsection shall be treated and afforded with the same
10 confidentiality as a return filed under section 235-
11 116."

12 SECTION 2. (a) The department of business, economic
13 development, and tourism, with the assistance of the department
14 of taxation, shall study the impact of real estate investment
15 trusts in Hawaii and the possible effect of repealing the
16 dividends paid deduction for real estate investment trusts. The
17 study shall address the following:

- 18 (1) The total number of real estate investment trusts that
19 operate in Hawaii;
- 20 (2) Of that total in paragraph (1), the number that are
21 Hawaii-based;



- 1 (3) The number of Hawaii taxpayers who are investors in
2 real estate investment trusts that operate in Hawaii;
- 3 (4) The number of Hawaii taxpayers who are investors in
4 Hawaii-based real estate investment trusts that
5 operate in Hawaii;
- 6 (5) A breakdown of Hawaii taxpayers who are investors in
7 Hawaii-based real estate investment trusts that
8 operate in Hawaii, by filing status and income;
- 9 (6) The direct and indirect impacts of real estate
10 investment trusts on the Hawaii economy, especially in
11 real estate development and operation;
- 12 (7) A comprehensive examination of captive real estate
13 investment trusts for companies operating in Hawaii;
- 14 (8) An examination of the argument that real estate
15 investment trusts provide opportunities for small
16 investors to pool funds with others and invest in real
17 estate developments, similar to investments through
18 mutual funds invested in company stocks;
- 19 (9) An examination of the possible transfer pricing if the
20 dividend paid income tax deduction for real estate
21 investment trusts is repealed;



- 1 (10) An examination of the equity and efficiency of the
2 dividends paid income tax deduction for real estate
3 investment trusts;
- 4 (11) The projected tax revenue impact to the State if the
5 dividends paid income tax deduction for real estate
6 investment trusts is repealed;
- 7 (12) The impact on the real estate development market and
8 capacity if the dividends paid income tax deduction
9 for real estate investment trusts is repealed; and
- 10 (13) The impact on the economy of the State if the
11 dividends paid income tax deduction for real estate
12 investment trusts is repealed.
- 13 (b) The department of business, economic development, and
14 tourism shall submit its findings and recommendations, including
15 any proposed legislation, to the legislature not later than
16 twenty days prior to the convening of the regular session of
17 2016.
- 18 SECTION 3. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so much
20 thereof as may be necessary for fiscal year 2015-2016 for the



1 study on real estate investment trusts required under section 2
2 of this Act.

3 The sum appropriated shall be expended by the department of
4 business, economic development, and tourism for the purposes of
5 this Act.

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

8 SECTION 5. This Act shall take effect on July 1, 2030;
9 provided that section 3 shall take effect on July 1, 2015.



Report Title:

Real Estate Investment Trusts; Dividends Paid Deduction; Income Tax; DBEDT Study; Appropriations

Description:

Requires, and appropriates funds for, DBEDT to study the impact of real estate investment trusts. Requires a real estate investment trust to make an affirmative election to be taxed as a real estate investment trust and provide certain data as may be required by DBEDT for any report mandated by the Legislature. (SB118 HD2)

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