

JAN 28 2015

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# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. Section 235-2.45, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§235-2.45 Operation of certain Internal Revenue Code**  
4 **provisions; sections 641 to 7518.** (a) Section 641 (with  
5 respect to imposition of tax) of the Internal Revenue Code shall  
6 be operative for the purposes of this chapter subject to the  
7 following:

8           (1) The deduction for exemptions shall be allowed as  
9 provided in section 235-54(b);

10          (2) The deduction for contributions and gifts in  
11 determining taxable income shall be limited to the  
12 amount allowed in the case of an individual, unless  
13 the contributions and gifts are to be used exclusively  
14 in the State; and

15          (3) The tax imposed by section 1(e) of the Internal  
16 Revenue Code as applied by section 641 of the Internal  
17 Revenue Code is hereby imposed by this chapter at the



1 rate and amount as determined under section 235-51 on  
2 estates and trusts.

3 (b) Section 667 (with respect to treatment of amounts  
4 deemed distributed by trusts in preceding years) of the Internal  
5 Revenue Code shall be operative for the purposes of this chapter  
6 and the tax imposed therein is hereby imposed by this chapter at  
7 the rate determined under this chapter; except that the  
8 reference to tax-exempt interest to which section 103 of the  
9 Internal Revenue Code applies in section 667(a) of the Internal  
10 Revenue Code shall instead be a reference to tax-exempt interest  
11 to which section 235-7(b) applies.

12 (c) Section 685 (with respect to treatment of qualified  
13 funeral trusts) of the Internal Revenue Code shall be operative  
14 for purposes of this chapter, except that the tax imposed under  
15 this chapter shall be computed at the tax rates provided under  
16 section 235-51, and no deduction for the exemption amount  
17 provided in section 235-54(b) shall be allowed. The cost-of-  
18 living adjustment determined under section 1(f)(3) of the  
19 Internal Revenue Code shall be operative for the purpose of  
20 applying section 685(c)(3) under this chapter.



1 (d) Section 704 of the Internal Revenue Code (with respect  
2 to a partner's distributive share) shall be operative for  
3 purposes of this chapter; except that section 704(b)(2) shall  
4 not apply to:

5 (1) Allocations of the high technology business investment  
6 tax credit allowed by section 235-110.9 for  
7 investments made before May 1, 2009;

8 (2) Allocations of net operating loss pursuant to section  
9 235-111.5;

10 (3) Allocations of the attractions and educational  
11 facilities tax credit allowed by section 235-110.46;  
12 or

13 (4) Allocations of low-income housing tax credits among  
14 partners under section 235-110.8.

15 (e) Section 857 (with respect to taxation of real estate  
16 investment trusts and their beneficiaries) of the Internal  
17 Revenue Code shall be operative for purposes of this chapter,  
18 except that section 857(b)(2)(B), relating to the deduction for  
19 dividends paid, shall not be operative for purposes of this  
20 chapter.



1           ~~[(e)]~~ (f) Section 1202 (with respect to partial exclusion  
2 for gain from certain small business stock) of the Internal  
3 Revenue Code shall be operative for purposes of this chapter,  
4 except that section 1202(a)(3) and (4) shall not be operative  
5 for purposes of this chapter.

6           ~~[(f)]~~ (g) Section 1212 (with respect to capital loss  
7 carrybacks and carryforwards) of the Internal Revenue Code shall  
8 be operative for the purposes of this chapter; except that for  
9 the purposes of this chapter, the capital loss carryback  
10 provisions of section 1212 shall not be operative and the  
11 capital loss carryforward allowed by section 1212(a) shall be  
12 limited to five years; except for a qualified high technology  
13 business as defined in section 235-7.3, which shall be limited  
14 to fifteen years.

15           ~~[(g)]~~ (h) Section 1221 (with respect to the definition of  
16 capital assets) is operative; provided that the provisions of  
17 section 301 of Public Law 110-343, which provide that gain or  
18 loss from the sale or exchange of any applicable preferred stock  
19 by any applicable financial institution (such terms being  
20 defined by Public Law 110-343) shall be treated as ordinary  
21 income or loss, shall not be operative. A sale or exchange of



1 any applicable preferred stock by any applicable financial  
2 institution (as those terms are defined by section 301 of Public  
3 Law 110-343) shall be treated as a sale of a capital asset and  
4 taxed accordingly.

5 ~~[(h)]~~ (i) Subchapter S (sections 1361 to 1379) (with  
6 respect to tax treatment of S corporations and their  
7 shareholders) of chapter 1 of the Internal Revenue Code shall be  
8 operative for the purposes of this chapter as provided in part  
9 VII; except that section 1374(d)(7)(B), (C), and (D) shall not  
10 be operative for purposes of this chapter.

11 ~~[(i)]~~ (j) Section 1400N (with respect to tax benefits for  
12 Gulf Opportunity Zone) of the Internal Revenue Code shall be  
13 operative for the purposes of this chapter, except that sections  
14 1400N(a) (with respect to tax-exempt bond financing); 1400N(b)  
15 (with respect to advance refundings of certain tax-exempt  
16 bonds); 1400N(c) (with respect to the low income housing  
17 credit); 1400N(d) (with respect to special allowance for certain  
18 property acquired on or after August 28, 2005); 1400N(e) (with  
19 respect to increase in expensing under section 179); 1400N(h)  
20 (with respect to increase in rehabilitation credit); 1400N(l)  
21 (with respect to credit to holders of Gulf tax credit bonds);



1 1400N(m) (with respect to application of new markets tax credit  
2 to investments in community development entities serving Gulf  
3 Opportunity Zone); 1400N(n) (with respect to treatment of  
4 representations regarding income eligibility for purposes of  
5 qualified residential rental project requirements) shall not be  
6 operative for purposes of this chapter.

7 ~~[(j)]~~ (k) Section 1400S (with respect to additional tax  
8 relief provisions) of the Internal Revenue Code shall be  
9 operative for the purposes of this chapter, except that section  
10 1400S(d) (with respect to the special rule for determining  
11 earned income) shall not be operative for the purposes of this  
12 chapter.

13 ~~[(k)]~~ (l) Section 6015 (with respect to relief from joint  
14 and several liability on joint return) of the Internal Revenue  
15 Code is operative for purposes of this chapter.

16 ~~[(l)]~~ (m) Sections 6103(i)(3)(C) and 6103(i)(7) (with  
17 respect to disclosures of information to the United States  
18 Justice Department or appropriate federal or state law  
19 enforcement agency for purposes of investigating terrorist  
20 incidents, threats, or activities, and for analyzing  
21 intelligence concerning investigating terrorist incidents,



1 threats, or activities) of the Internal Revenue Code shall be  
2 operative for the purposes of this chapter.

3 ~~[(m)]~~ (n) Sections 6221, 6222, and 6231 (with respect to  
4 tax treatment of partnership items) of subchapter C of chapter  
5 63 of the Internal Revenue Code shall be operative for the  
6 purposes of this chapter.

7 ~~[(n)]~~ (o) Subchapter D (sections 6240 to 6255) (with  
8 respect to simplified audit procedures for electing large  
9 partnerships) of the Internal Revenue Code shall be operative  
10 for the purposes of this chapter, with due regard to chapter 232  
11 relating to tax appeals.

12 ~~[(o)]~~ (p) Section 6501(e) (with respect to limitation on  
13 assessment and collection where there is a substantial omission  
14 of items) of the Internal Revenue Code shall be operative for  
15 purposes of this chapter.

16 ~~[(p)]~~ (q) Section 6511(h) (with respect to running of  
17 periods of limitation suspended while taxpayer is unable to  
18 manage financial affairs due to disability) of the Internal  
19 Revenue Code shall be operative for purposes of this chapter,  
20 with due regard to section 235-111 relating to the limitation  
21 period for assessment, levy, collection, or credit.



1           ~~[(q)]~~ (r) Section 7518 (with respect to capital  
2 construction fund for commercial fishers) of the Internal  
3 Revenue Code shall be operative for the purposes of this  
4 chapter. Qualified withdrawals for the acquisition,  
5 construction, or reconstruction of any qualified asset that is  
6 attributable to deposits made before the effective date of this  
7 section shall not reduce the basis of the asset when withdrawn.  
8 Qualified withdrawals shall be treated on a first-in-first-out  
9 basis."

10           SECTION 2. Section 235-71, Hawaii Revised Statutes, is  
11 amended to read as follows:

12           "**§235-71 Tax on corporations; rates; credit of shareholder**  
13 **of regulated investment company.** (a) A tax at the rates herein  
14 provided shall be assessed, levied, collected, and paid for each  
15 taxable year on the taxable income of every corporation,  
16 including a corporation carrying on business in partnership,  
17 except that in the case of a regulated investment company the  
18 tax is as provided by subsection (b) ~~[and further that in the~~  
19 ~~case of a real estate investment trust as defined in section 856~~  
20 ~~of the Internal Revenue Code of 1954 the tax is as provided in~~  
21 ~~subsection (d)]~~. "Corporation" includes any professional





1 corporation incorporated pursuant to chapter 415A[+] and a real  
2 estate investment trust as defined in section 856 of the  
3 Internal Revenue Code.

4 The tax on all taxable income shall be at the rate of 4.4  
5 per cent if the taxable income is not over \$25,000, 5.4 per cent  
6 if over \$25,000 but not over \$100,000, and on all over \$100,000,  
7 6.4 per cent.

8 (b) In the case of a regulated investment company there is  
9 imposed on the taxable income, computed as provided in sections  
10 852 and 855 of the Internal Revenue Code but with the changes  
11 and adjustments made by this chapter (without prejudice to the  
12 generality of the foregoing, the deduction for dividends paid is  
13 limited to such amount of dividends as is attributable to income  
14 taxable under this chapter), a tax consisting in the sum of the  
15 following: 4.4 per cent if the taxable income is not over  
16 \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and  
17 on all over \$100,000, 6.4 per cent.

18 (c) In the case of a shareholder of a regulated investment  
19 company there is hereby allowed a credit in the amount of the  
20 tax imposed on the amount of capital gains which by section  
21 852(b)(3)(D) of the Internal Revenue Code is required to be



1 included in the shareholder's return and on which there has been  
2 paid to the State by the regulated investment company the tax at  
3 the rate imposed by subsection (b); the amount of this credit  
4 may be applied or refunded as provided in section 235-110.

5 ~~[(d) In the case of a real estate investment trust there~~  
6 ~~is imposed on the taxable income, computed as provided in~~  
7 ~~sections 857 and 858 of the Internal Revenue Code but with the~~  
8 ~~changes and adjustments made by this chapter (without prejudice~~  
9 ~~to the generality of the foregoing; the deduction for dividends~~  
10 ~~paid is limited to such amount of dividends as is attributable~~  
11 ~~to income taxable under this chapter), a tax consisting in the~~  
12 ~~sum of the 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 over~~  
14 ~~\$100,000, and on all over \$100,000, 6.4 per cent. In addition~~  
15 ~~to any other penalty provided by law any real estate investment~~  
16 ~~trust whose tax liability for any taxable year is deemed to be~~  
17 ~~increased pursuant to section 859(b)(2)(A) or 860(e)(1)(A) after~~  
18 ~~December 31, 1978, (relating to interest and additions to tax~~  
19 ~~determined with respect to the amount of the deduction for~~  
20 ~~deficiency dividends allowed) of the Internal Revenue Code shall~~  
21 ~~pay a penalty in an amount equal to the amount of interest for~~



1 ~~which such trust is liable that is attributable solely to such~~  
2 ~~increase. The penalty payable under this subsection with~~  
3 ~~respect to any determination shall not exceed one half of the~~  
4 ~~amount of the deduction allowed by section 859(a), or 860(a)~~  
5 ~~after December 31, 1978, of the Internal Revenue Code for such~~  
6 ~~taxable year.~~

7       ~~(e)]~~ (d) Any corporation acting as a business entity in  
8 more than one state and which is required by this chapter to  
9 file a return and whose only activities in this State consist of  
10 sales and which does not own or rent real estate or tangible  
11 personal property and whose annual gross sales in or into this  
12 State during the tax year are not in excess of \$100,000 may  
13 elect to report and pay a tax of .5 per cent of such annual  
14 gross sales."

15       SECTION 3. This Act does not affect rights and duties that  
16 matured, penalties that were incurred, and proceedings that were  
17 begun before its effective date.

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

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# S.B. NO. 1223

1 SECTION 5. This Act, upon its approval, shall apply to  
 2 taxable years beginning after December 31, 2014.

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# S.B. NO. 1223

**Report Title:**

Corporation Income Tax; Real Estate Investment Trusts

**Description:**

Amends the corporation income tax by taxing real estate investment trusts without regard to the federal deduction for dividends paid.

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