

JAN 22 2016

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# 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 235-2.3, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) The following Internal Revenue Code subchapters,  
4 parts of subchapters, sections, subsections, and parts of  
5 subsections shall not be operative for the purposes of this  
6 chapter, unless otherwise provided:

7 (1) Subchapter A (sections 1 to 59A) (with respect to  
8 determination of tax liability), except section  
9 1(h)(2) (relating to net capital gain reduced by the  
10 amount taken into account as investment income),  
11 except sections 2(a), 2(b), and 2(c) (with respect to  
12 the definition of "surviving spouse" and "head of  
13 household"), except section 41 (with respect to the  
14 credit for increasing research activities), except  
15 section 42 (with respect to low-income housing  
16 credit), except sections 47 and 48, as amended, as of  
17 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 103 (with respect to interest on state and  
14          local bonds). For treatment, see section 235-7(b);

15          (5) Section 114 (with respect to extraterritorial income).

16          For treatment, any transaction as specified in the  
17          transitional rule for 2005 and 2006 as specified in  
18          the American Jobs Creation Act of 2004 section 101(d)  
19          and any transaction that has occurred pursuant to a  
20          binding contract as specified in the American Jobs  
21          Creation Act of 2004 section 101(f) are inoperative;



- 1           (6) Section 120 (with respect to amounts received under  
2           qualified group legal services plans). For treatment,  
3           see section 235-7(a)(9) to (11);
- 4           (7) Section 122 (with respect to certain reduced uniformed  
5           services retirement pay). For treatment, see section  
6           235-7(a)(3);
- 7           (8) Section 135 (with respect to income from United States  
8           savings bonds used to pay higher education tuition and  
9           fees). For treatment, see section 235-7(a)(1);
- 10          (9) Section 139C (with respect to COBRA premium  
11          assistance);
- 12          (10) Subchapter B (sections 141 to 150) (with respect to  
13          tax exemption requirements for state and local bonds);
- 14          (11) Section 151 (with respect to allowance of deductions  
15          for personal exemptions). For treatment, see section  
16          235-54;
- 17          (12) Section 179B (with respect to expensing of capital  
18          costs incurred in complying with Environmental  
19          Protection Agency sulphur regulations);
- 20          (13) Section 181 (with respect to special rules for certain  
21          film and television productions);



- 1       (14) Section 196 (with respect to deduction for certain  
2           unused investment credits);
- 3       (15) Section 199 (with respect to the U.S. production  
4           activities deduction);
- 5       (16) Section 222 (with respect to qualified tuition and  
6           related expenses);
- 7       (17) Sections 241 to 247 (with respect to special  
8           deductions for corporations). For treatment, see  
9           section 235-7(c);
- 10      (18) Section 280C (with respect to certain expenses for  
11           which credits are allowable). For treatment, see  
12           section 235-110.91;
- 13      (19) Section 291 (with respect to special rules relating to  
14           corporate preference items);
- 15      (20) Section 367 (with respect to foreign corporations);
- 16      (21) Section 501(c)(12), (15), (16) (with respect to exempt  
17           organizations); except that section 501(c)(12) shall  
18           be operative for companies that provide potable water  
19           to residential communities that lack any access to  
20           public utility water services;



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- 1       (22) Section 515 (with respect to taxes of foreign  
2           countries and possessions of the United States);
- 3       (23) Subchapter G (sections 531 to 565) (with respect to  
4           corporations used to avoid income tax on  
5           shareholders);
- 6       (24) Subchapter H (sections 581 to 597) (with respect to  
7           banking institutions), except section 584 (with  
8           respect to common trust funds). For treatment, see  
9           chapter 241;
- 10      (25) Section 642(a) and (b) (with respect to special rules  
11           for credits and deductions applicable to trusts). For  
12           treatment, see sections 235-54(b) and 235-55;
- 13      (26) Section 646 (with respect to tax treatment of electing  
14           Alaska Native settlement trusts);
- 15      (27) Section 668 (with respect to interest charge on  
16           accumulation distributions from foreign trusts);
- 17      (28) Subchapter L (sections 801 to 848) (with respect to  
18           insurance companies). For treatment, see sections  
19           431:7-202 and 431:7-204;



- 1       (29) Section 853 (with respect to foreign tax credit  
2            allowed to shareholders). For treatment, see section  
3            235-55;
- 4       (30) Section 853A (with respect to credits from tax credit  
5            bonds allowed to shareholders);
- 6       (31) Section 857(b)(92)(B) (with respect to the dividends  
7           paid deduction for real estate investment trusts);
- 8       ~~(31)~~ (32) Subchapter N (sections 861 to 999) (with respect  
9            to tax based on income from sources within or without  
10           the United States), except sections 985 to 989 (with  
11           respect to foreign currency transactions). For  
12           treatment, see sections 235-4, 235-5, and 235-7(b),  
13           and 235-55;
- 14       ~~(32)~~ (33) Section 1042(g) (with respect to sales of stock  
15            in agricultural refiners and processors to eligible  
16            farm cooperatives);
- 17       ~~(33)~~ (34) Section 1055 (with respect to redeemable ground  
18            rents);
- 19       ~~(34)~~ (35) Section 1057 (with respect to election to treat  
20            transfer to foreign trust, etc., as taxable exchange);



- 1        [~~35~~] (36) Sections 1291 to 1298 (with respect to treatment  
2                    of passive foreign investment companies);
- 3        [~~36~~] (37) Subchapter Q (sections 1311 to 1351) (with  
4                    respect to readjustment of tax between years and  
5                    special limitations);
- 6        [~~37~~] (38) Subchapter R (sections 1352 to 1359) (with  
7                    respect to election to determine corporate tax on  
8                    certain international shipping activities using per  
9                    ton rate);
- 10       [~~38~~] (39) Subchapter U (sections 1391 to 1397F) (with  
11                    respect to designation and treatment of empowerment  
12                    zones, enterprise communities, and rural development  
13                    investment areas). For treatment, see chapter 209E;
- 14       [~~39~~] (40) Subchapter W (sections 1400 to 1400C) (with  
15                    respect to District of Columbia enterprise zone);
- 16       [~~40~~] (41) Section 14000 (with respect to education tax  
17                    benefits);
- 18       [~~41~~] (42) Section 1400P (with respect to housing tax  
19                    benefits);
- 20       [~~42~~] (43) Section 1400R (with respect to employment  
21                    relief);



1       ~~[(43)]~~ (44) Section 1400T (with respect to special rules for  
2                   mortgage revenue bonds);

3       ~~[(44)]~~ (45) Section 1400U-1 (with respect to allocation of  
4                   recovery zone bonds);

5       ~~[(45)]~~ (46) Section 1400U-2 (with respect to recovery zone  
6                   economic development bonds); and

7       ~~[(46)]~~ (47) Section 1400U-3 (with respect to recovery zone  
8                   facility bonds)."

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

11           "(d) In the case of a real estate investment trust there  
12   is imposed on the taxable income, computed as provided in  
13   sections 857 and 858 of the Internal Revenue Code but with the  
14   changes and adjustments made by this chapter (without prejudice  
15   to the generality of the foregoing, for taxable years beginning  
16   before January 1, 2017, the deduction for dividends paid is  
17   limited to such amount of dividends as is attributable to income  
18   taxable under this chapter), for taxable years beginning after  
19   December 31, 2016, no deduction for dividends paid shall be  
20   allowed, a tax consisting in the sum of the following: 4.4 per  
21   cent if the taxable income is not over \$25,000, 5.4 per cent if





1 over \$25,000 but not over \$100,000, and on all over \$100,000,  
 2 6.4 per cent. In addition to any other penalty provided by law  
 3 any real estate investment trust whose tax liability for any  
 4 taxable year is deemed to be increased pursuant to section  
 5 859(b)(2)(A) or 860(c)(1)(A) after December 31, 1978, (relating  
 6 to interest and additions to tax determined with respect to the  
 7 amount of the deduction for deficiency dividends allowed) of the  
 8 Internal Revenue Code shall pay a penalty in an amount equal to  
 9 the amount of interest for which such trust is liable that is  
 10 attributable solely to such increase. The penalty payable under  
 11 this subsection with respect to any determination shall not  
 12 exceed one-half of the amount of the deduction allowed by  
 13 section 859(a), or 860(a) after December 31, 1978, of the  
 14 Internal Revenue Code for such taxable year."

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

17 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: Anne Menendez

*Yudhoy*  
*Clemente*  
*Will Guerrero*  
*Stuart*  
*Breene*  
*Paul E. Pelt*



# S.B. NO. 2492

**Report Title:**

Real Estate Investment Trusts; Dividends Paid Deduction;  
Disallowed; Income Tax; Taxation

**Description:**

Disallows dividends paid deduction for real estate investment trusts.

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

