



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 9, 2019

GOV. MSG. NO. 1382

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirtieth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirtieth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB301 SD1 HD1 CD1, without my approval and with the statement of objections relating to the measure.

SB301 SD1 HD1 CD1

RELATING TO TAXATION OF REAL ESTATE
INVESTMENT TRUSTS.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 9, 2019

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 301

Honorable Members
Thirtieth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 301, entitled "A Bill for an Act Relating to Taxation of Real Estate Investment Trusts."

The purpose of this bill is to repeal the deduction for dividends paid taken by a Real Estate Investment Trust ("REIT") that is subject to Hawai'i income taxes.

This bill is objectionable because it could discourage the business community from investing in Hawai'i. Disallowing the dividends paid deduction for REITs could potentially stifle economic development and scare away investment capital to address our aging infrastructure. From an economic development perspective, REITs provide stable economic growth and long-term benefits – including job creation – that will extend the supply chain into rental and commercial properties.

The benefits of continuing with this federally established legislation are clear and quantifiable. REITs are an important investment vehicle for all types of investments in Hawai'i. If the state corporate income tax is imposed on a REIT, there may be negative impacts to the State's economic health and business climate, such as the reduction of general excise, property and state income taxes.

Overall, the unintended consequences of imposing a corporate tax on REITs, are not worth the potential benefits. Hawai'i needs to be a place that is able to attract investment capital in order to create jobs and a sustainable economy.

STATEMENT OF OBJECTIONS
SENATE BILL NO. 301
Page 2

For the foregoing reasons, I am returning Senate Bill No. 301
without my approval.

Respectfully,

A handwritten signature in black ink, reading "David Y. Ige". The signature is written in a cursive style with a large, sweeping flourish at the end.

DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO TAXATION OF 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
18 tangible personal property), and except section



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



- 1 binding contract as specified in the American Jobs
2 Creation Act of 2004 section 101(f) are inoperative;
- 3 (7) Section 120 (with respect to amounts received under
4 qualified group legal services plans). For treatment,
5 see section 235-7(a) (9) to (11);
- 6 (8) Section 122 (with respect to certain reduced uniformed
7 services retirement pay). For treatment, see section
8 235-7(a) (3);
- 9 (9) Section 135 (with respect to income from United States
10 savings bonds used to pay higher education tuition and
11 fees). For treatment, see section 235-7(a) (1);
- 12 (10) Section 139C (with respect to COBRA premium
13 assistance);
- 14 (11) Subchapter B (sections 141 to 150) (with respect to
15 tax exemption requirements for state and local bonds);
- 16 (12) Section 151 (with respect to allowance of deductions
17 for personal exemptions). For treatment, see section
18 235-54;
- 19 (13) Section 179B (with respect to expensing of capital
20 costs incurred in complying with Environmental
21 Protection Agency sulphur regulations);



- 1 (14) Section 181 (with respect to special rules for certain
2 film and television productions);
- 3 (15) Section 196 (with respect to deduction for certain
4 unused investment credits);
- 5 (16) Section 199 (with respect to the U.S. production
6 activities deduction);
- 7 (17) Section 199A (with respect to qualified business
8 income);
- 9 (18) Section 222 (with respect to qualified tuition and
10 related expenses);
- 11 (19) Sections 241 to 247 (with respect to special
12 deductions for corporations). For treatment, see
13 section 235-7(c);
- 14 (20) Section 250 (with respect to foreign-derived
15 intangible income and global intangible low-taxed
16 income);
- 17 (21) Section 267A (with respect to certain related party
18 amounts paid or accrued in hybrid transactions or with
19 hybrid entities);



- 1 (22) Section 280C (with respect to certain expenses for
2 which credits are allowable). For treatment, see
3 section 235-110.91;
- 4 (23) Section 291 (with respect to special rules relating to
5 corporate preference items);
- 6 (24) Section 367 (with respect to foreign corporations);
- 7 (25) Section 501(c)(12), (15), (16) (with respect to exempt
8 organizations); except that section 501(c)(12) shall
9 be operative for companies that provide potable water
10 to residential communities that lack any access to
11 public utility water services;
- 12 (26) Section 515 (with respect to taxes of foreign
13 countries and possessions of the United States);
- 14 (27) Subchapter G (sections 531 to 565) (with respect to
15 corporations used to avoid income tax on
16 shareholders);
- 17 (28) Subchapter H (sections 581 to 597) (with respect to
18 banking institutions), except section 584 (with
19 respect to common trust funds). For treatment, see
20 chapter 241;



- 1 (29) Section 642(a) and (b) (with respect to special rules
- 2 for credits and deductions applicable to trusts). For
- 3 treatment, see sections 235-54(b) and 235-55;
- 4 (30) Section 646 (with respect to tax treatment of electing
- 5 Alaska Native settlement trusts);
- 6 (31) Section 668 (with respect to interest charge on
- 7 accumulation distributions from foreign trusts);
- 8 (32) Subchapter L (sections 801 to 848) (with respect to
- 9 insurance companies). For treatment, see sections
- 10 431:7-202 and 431:7-204;
- 11 (33) Section 853 (with respect to foreign tax credit
- 12 allowed to shareholders). For treatment, see section
- 13 235-55;
- 14 (34) Section 853A (with respect to credits from tax credit
- 15 bonds allowed to shareholders);
- 16 (35) Section 857(b)(2)(B) (with respect to the dividends
- 17 paid deduction for real estate investment trusts);
- 18 [~~35~~] (36) Subchapter N (sections 861 to 999) (with respect
- 19 to tax based on income from sources within or without
- 20 the United States), except sections 985 to 989 (with
- 21 respect to foreign currency transactions). For



- 1 treatment, see sections 235-4, 235-5, and 235-7(b),
2 and 235-55;
- 3 ~~[(36)]~~ (37) Section 1042(g) (with respect to sales of stock
4 in agricultural refiners and processors to eligible
5 farm cooperatives);
- 6 ~~[(37)]~~ (38) Section 1055 (with respect to redeemable ground
7 rents);
- 8 ~~[(38)]~~ (39) Section 1057 (with respect to election to treat
9 transfer to foreign trust, etc., as taxable exchange);
- 10 ~~[(39)]~~ (40) Sections 1291 to 1298 (with respect to treatment
11 of passive foreign investment companies);
- 12 ~~[(40)]~~ (41) Subchapter Q (sections 1311 to 1351) (with
13 respect to readjustment of tax between years and
14 special limitations);
- 15 ~~[(41)]~~ (42) Subchapter R (sections 1352 to 1359) (with
16 respect to election to determine corporate tax on
17 certain international shipping activities using per
18 ton rate);
- 19 ~~[(42)]~~ (43) Subchapter U (sections 1391 to 1397F) (with
20 respect to designation and treatment of empowerment



1 zones, enterprise communities, and rural development
2 investment areas). For treatment, see chapter 209E;
3 ~~[(43)]~~ (44) Subchapter W (sections 1400 to 1400C) (with
4 respect to District of Columbia enterprise zone);
5 ~~[(44)]~~ (45) Section 14000 (with respect to education tax
6 benefits);
7 ~~[(45)]~~ (46) Section 1400P (with respect to housing tax
8 benefits);
9 ~~[(46)]~~ (47) Section 1400R (with respect to employment
10 relief);
11 ~~[(47)]~~ (48) Section 1400T (with respect to special rules for
12 mortgage revenue bonds);
13 ~~[(48)]~~ (49) Section 1400U-1 (with respect to allocation of
14 recovery zone bonds);
15 ~~[(49)]~~ (50) Section 1400U-2 (with respect to recovery zone
16 economic development bonds);
17 ~~[(50)]~~ (51) Section 1400U-3 (with respect to recovery zone
18 facility bonds); and
19 ~~[(51)]~~ (52) Subchapter Z (sections 1400Z-1 to 1400Z-2) (with
20 respect to opportunity zones)."



1 SECTION 2. 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 there
4 is imposed on the taxable income, computed as provided in
5 sections 857 and 858 of the Internal Revenue Code but with the
6 changes and adjustments made by this chapter (without prejudice
7 to the generality of the foregoing, for taxable years beginning
8 before January 1, 2020, the deduction for dividends paid is
9 limited to [~~such~~] the amount of dividends as is attributable to
10 income taxable under this chapter[~~}] and, for taxable years
11 beginning after December 31, 2019, no deductions for dividends
12 paid shall be allowed), a tax consisting in the sum of the
13 following: 4.4 per cent if the taxable income is not over
14 \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and
15 on all over \$100,000, 6.4 per cent. In addition to any other
16 penalty provided by law any real estate investment trust whose
17 tax liability for any taxable year is deemed to be increased
18 pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after December
19 31, 1978, (relating to interest and additions to tax determined
20 with respect to the amount of the deduction for deficiency
21 dividends allowed) of the Internal Revenue Code shall pay a~~



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

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

10 SECTION 4. This Act shall take effect upon its approval
11 and shall apply to taxable years beginning after December 31,
12 2019; provided that this Act shall be repealed on December 31,
13 2023; provided further that sections 235-2.3(b) and 235-71(d),
14 Hawaii Revised Statutes, shall be reenacted in the form in which
15 they read prior to the effective date of this Act.

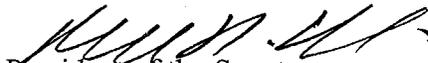
APPROVED this day of , 2019

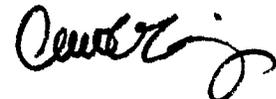
GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: April 30, 2019
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Thirtieth Legislature of the State of Hawai'i, Regular Session of 2019.


President of the Senate


Clerk of the Senate

SB No. 301, SD 1, HD 1, CD 1

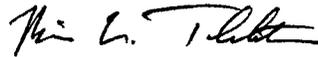
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 30, 2019
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirtieth Legislature of the State of Hawaii, Regular Session of 2019.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives