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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.

21 (d) Section 704 of the Internal Revenue Code (with respect  
22 to a partner's distributive share) shall be operative for



1 purposes of this chapter; except that section 704(b)(2) shall  
2 not apply to:

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

6 (2) Allocations of net operating loss pursuant to section  
7 235-111.5;

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

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

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

19 [~~e~~] (f) Section 1202 (with respect to partial exclusion  
20 for gain from certain small business stock) of the Internal  
21 Revenue Code shall be operative for purposes of this chapter,



1 except that section 1202(a)(3) shall not be operative for  
2 purposes of this chapter.

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

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



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

7       ~~[(i)]~~ (j) Section 1400N (with respect to tax benefits for  
8 Gulf Opportunity Zone) of the Internal Revenue Code shall be  
9 operative for the purposes of this chapter, except that sections  
10 1400N(a) (with respect to tax-exempt bond financing); 1400N(b)  
11 (with respect to advance refundings of certain tax-exempt  
12 bonds); 1400N(c) (with respect to the low income housing  
13 credit); 1400N(d) (with respect to special allowance for certain  
14 property acquired on or after August 28, 2005); 1400N(e) (with  
15 respect to increase in expensing under section 179); 1400N(h)  
16 (with respect to increase in rehabilitation credit); 1400N(l)  
17 (with respect to credit to holders of Gulf tax credit bonds);  
18 1400N(m) (with respect to application of new markets tax credit  
19 to investments in community development entities serving Gulf  
20 Opportunity Zone); 1400N(n) (with respect to treatment of  
21 representations regarding income eligibility for purposes of



1 qualified residential rental project requirements) shall not be  
2 operative for purposes of this chapter.

3 ~~[(j)]~~ (k) Section 1400S (with respect to additional tax  
4 relief provisions) of the Internal Revenue Code shall be  
5 operative for the purposes of this chapter, except that section  
6 1400S(d) (with respect to the special rule for determining  
7 earned income) shall not be operative for the purposes of this  
8 chapter.

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

12 ~~[(l)]~~ (m) Sections 6103(i)(3)(C) and 6103(i)(7) (with  
13 respect to disclosures of information to the United States  
14 Justice Department or appropriate federal or state law  
15 enforcement agency for purposes of investigating terrorist  
16 incidents, threats, or activities, and for analyzing  
17 intelligence concerning investigating terrorist incidents,  
18 threats, or activities) of the Internal Revenue Code shall be  
19 operative for the purposes of this chapter.

20 ~~[(m)]~~ (n) Subchapter C (sections 6221 to 6233) (with  
21 respect to tax treatment of partnership items) of chapter 63 of



1 the Internal Revenue Code shall be operative for the purposes of  
2 this chapter.

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

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

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

18 ~~[(q)]~~ (r) Section 7518 (with respect to capital  
19 construction fund for commercial fishers) of the Internal  
20 Revenue Code shall be operative for the purposes of this  
21 chapter. Qualified withdrawals for the acquisition,  
22 construction, or reconstruction of any qualified asset that is



1 attributable to deposits made before the effective date of this  
2 section shall not reduce the basis of the asset when withdrawn.  
3 Qualified withdrawals shall be treated on a first-in-first-out  
4 basis."

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

7 "**§235-71 Tax on corporations; rates; credit of shareholder**  
8 **of regulated investment company.** (a) A tax at the rates herein  
9 provided shall be assessed, levied, collected, and paid for each  
10 taxable year on the taxable income of every corporation,  
11 including a corporation carrying on business in partnership,  
12 except that in the case of a regulated investment company the  
13 tax is as provided by subsection (b) [~~and further that in the~~  
14 ~~case of a real estate investment trust as defined in section 856~~  
15 ~~of the Internal Revenue Code of 1954 the tax is as provided in~~  
16 ~~subsection (d)]]. "Corporation" includes any professional  
17 corporation incorporated pursuant to chapter 415A[-] and a real  
18 estate investment trust as defined in section 856 of the  
19 Internal Revenue Code.~~

20 The tax on all taxable income shall be at the rate of 4.4  
21 per cent if the taxable income is not over \$25,000, 5.4 per cent





1 if over \$25,000 but not over \$100,000, and on all over \$100,000,  
2 6.4 per cent.

3 (b) In the case of a regulated investment company there is  
4 imposed on the taxable income, computed as provided in sections  
5 852 and 855 of the Internal Revenue Code but with the changes  
6 and adjustments made by this chapter (without prejudice to the  
7 generality of the foregoing, the deduction for dividends paid is  
8 limited to such amount of dividends as is attributable to income  
9 taxable under this chapter), a tax consisting in the sum of the  
10 following: 4.4 per cent if the taxable income is not over  
11 \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and  
12 on all over \$100,000, 6.4 per cent.

13 (c) In the case of a shareholder of a regulated investment  
14 company there is hereby allowed a credit in the amount of the  
15 tax imposed on the amount of capital gains which by section  
16 852(b)(3)(D) of the Internal Revenue Code is required to be  
17 included in the shareholder's return and on which there has been  
18 paid to the State by the regulated investment company the tax at  
19 the rate imposed by subsection (b); the amount of this credit  
20 may be applied or refunded as provided in section 235-110.

21 ~~[(d) In the case of a real estate investment trust there~~  
22 ~~is imposed on the taxable income, computed as provided in~~



1 ~~sections 857 and 858 of the Internal Revenue Code but with the~~  
2 ~~changes and adjustments made by this chapter (without prejudice~~  
3 ~~to the generality of the foregoing, the deduction for dividends~~  
4 ~~paid is limited to such amount of dividends as is attributable~~  
5 ~~to income taxable under this chapter), a tax consisting in the~~  
6 ~~sum of the following: 4.4 per cent if the taxable income is not~~  
7 ~~over \$25,000, 5.4 per cent if over \$25,000 but not over~~  
8 ~~\$100,000, and on all over \$100,000, 6.4 per cent. In addition~~  
9 ~~to any other penalty provided by law any real estate investment~~  
10 ~~trust whose tax liability for any taxable year is deemed to be~~  
11 ~~increased pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after~~  
12 ~~December 31, 1978, (relating to interest and additions to tax~~  
13 ~~determined with respect to the amount of the deduction for~~  
14 ~~deficiency dividends allowed) of the Internal Revenue Code shall~~  
15 ~~pay a penalty in an amount equal to the amount of interest for~~  
16 ~~which such trust is liable that is attributable solely to such~~  
17 ~~increase. The penalty payable under this subsection with~~  
18 ~~respect to any determination shall not exceed one half of the~~  
19 ~~amount of the deduction allowed by section 859(a), or 860(a)~~  
20 ~~after December 31, 1978, of the Internal Revenue Code for such~~  
21 ~~taxable year.~~



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

9       SECTION 3. This Act does not affect rights and duties that  
10 matured, penalties that were incurred, and proceedings that were  
11 begun before its effective date.

12       SECTION 4. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14       SECTION 5. This Act, upon its approval, shall apply to  
15 taxable years beginning after December 31, 2013.



**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. Applies to taxable years beginning after December 31, 2013. (HB1726 HD1)

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

