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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. The legislature finds that, under current law,  
2 real estate investment trusts are entitled to a deduction for  
3 dividends paid. This deduction results in the loss of  
4 potentially millions of dollars of tax revenue to the State each  
5 year. If dividends paid by real estate investment trusts were  
6 not deductible, the dividends would be effectively taxed prior  
7 to distribution. This is significant because trust shareholders  
8 who reside in other states receive dividends from the trust, but  
9 pay taxes on those dividends to those other states. As a  
10 result, a number of states other than Hawaii receive tax  
11 revenue, leaving Hawaii taxpayers to essentially subsidize the  
12 costs of the infrastructure and government services that support  
13 properties owned by these trusts. Therefore, the legislature  
14 further finds that repealing the current deduction would promote  
15 fairness in the treatment of similar, but differently organized,  
16 business entities and would generate additional revenue for  
17 state programs.



1           The legislature further finds that although Act 239,  
2 Session Laws of Hawaii 2015, authorized a study on the impact of  
3 real estate investment trusts in Hawaii, there is little  
4 available data to begin with and, as a result, the results of  
5 any meaningful study could take years. Given the State's  
6 affordable housing crisis, action must be taken sooner, rather  
7 than later, to provide more revenue to the State and relieve the  
8 pressures of this crisis.

9           The purpose of this Act is to temporarily disallow the  
10 deductions for dividends paid by real estate investment trusts  
11 for a period of fifteen years, but with an exception for  
12 dividends generated from trust-owned housing that is affordable  
13 to households with incomes at or below two hundred per cent of  
14 the median family income, as determined by the United States  
15 Department of Housing and Urban Development.

16           SECTION 2. Section 235-2.3, Hawaii Revised Statutes, is  
17 amended by amending subsection (b) to read as follows:

18           "(b) The following Internal Revenue Code subchapters,  
19 parts of subchapters, sections, subsections, and parts of  
20 subsections shall not be operative for the purposes of this  
21 chapter, unless otherwise provided:



- 1           (1) Subchapter A (sections 1 to 59A) (with respect to  
2           determination of tax liability), except section  
3           1(h)(2) (relating to net capital gain reduced by the  
4           amount taken into account as investment income),  
5           except sections 2(a), 2(b), and 2(c) (with respect to  
6           the definition of "surviving spouse" and "head of  
7           household"), except section 41 (with respect to the  
8           credit for increasing research activities), except  
9           section 42 (with respect to low-income housing  
10          credit), except sections 47 and 48, as amended, as of  
11          December 31, 1984 (with respect to certain depreciable  
12          tangible personal property), and except section  
13          48(d)(3), as amended, as of February 17, 2009 (with  
14          respect to the treatment of United States Department  
15          of Treasury grants made under section 1603 of the  
16          American Recovery and Reinvestment Tax Act of 2009).  
17          For treatment, see sections 235-110.91, 235-110.7, and  
18          235-110.8;
- 19          (2) Section 78 (with respect to dividends received from  
20          certain foreign corporations by domestic corporations  
21          choosing foreign tax credit);



- 1           (3) Section 86 (with respect to social security and tier 1  
2           railroad retirement benefits);
- 3           (4) Section 103 (with respect to interest on state and  
4           local bonds). For treatment, see section 235-7(b);
- 5           (5) Section 114 (with respect to extraterritorial income).  
6           For treatment, any transaction as specified in the  
7           transitional rule for 2005 and 2006 as specified in  
8           the American Jobs Creation Act of 2004 section 101(d)  
9           and any transaction that has occurred pursuant to a  
10          binding contract as specified in the American Jobs  
11          Creation Act of 2004 section 101(f) are inoperative;
- 12          (6) Section 120 (with respect to amounts received under  
13          qualified group legal services plans). For treatment,  
14          see section 235-7(a)(9) to (11);
- 15          (7) Section 122 (with respect to certain reduced uniformed  
16          services retirement pay). For treatment, see section  
17          235-7(a)(3);
- 18          (8) Section 135 (with respect to income from United States  
19          savings bonds used to pay higher education tuition and  
20          fees). For treatment, see section 235-7(a)(1);



- 1           (9) Section 139C (with respect to COBRA premium  
2           assistance);
- 3           (10) Subchapter B (sections 141 to 150) (with respect to  
4           tax exemption requirements for state and local bonds);
- 5           (11) Section 151 (with respect to allowance of deductions  
6           for personal exemptions). For treatment, see section  
7           235-54;
- 8           (12) Section 179B (with respect to expensing of capital  
9           costs incurred in complying with Environmental  
10          Protection Agency sulphur regulations);
- 11          (13) Section 181 (with respect to special rules for certain  
12          film and television productions);
- 13          (14) Section 196 (with respect to deduction for certain  
14          unused investment credits);
- 15          (15) Section 199 (with respect to the U.S. production  
16          activities deduction);
- 17          (16) Section 222 (with respect to qualified tuition and  
18          related expenses);
- 19          (17) Sections 241 to 247 (with respect to special  
20          deductions for corporations). For treatment, see  
21          section 235-7(c);



- 1       (18) Section 280C (with respect to certain expenses for  
2                which credits are allowable). For treatment, see  
3                section 235-110.91;
- 4       (19) Section 291 (with respect to special rules relating to  
5                corporate preference items);
- 6       (20) Section 367 (with respect to foreign corporations);
- 7       (21) 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      (22) Section 515 (with respect to taxes of foreign  
13              countries and possessions of the United States);
- 14      (23) Subchapter G (sections 531 to 565) (with respect to  
15              corporations used to avoid income tax on  
16              shareholders);
- 17      (24) 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       (25) 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       (26) Section 646 (with respect to tax treatment of electing  
5           Alaska Native settlement trusts);
- 6       (27) Section 668 (with respect to interest charge on  
7           accumulation distributions from foreign trusts);
- 8       (28) 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       (29) Section 853 (with respect to foreign tax credit  
12          allowed to shareholders). For treatment, see section  
13          235-55;
- 14       (30) Section 853A (with respect to credits from tax credit  
15          bonds allowed to shareholders);
- 16       (31) Section 857(b)(2)(B) (with respect to the deduction  
17          for dividends paid by real estate investment trusts);  
18          provided that the deduction shall remain available for  
19          dividends generated from trust-owned housing that is  
20          affordable to households with incomes at or below two  
21          hundred per cent of the median family income, as



1           determined by the United States Department of Housing  
2           and Urban Development;

3       ~~[(31)]~~ (32) Subchapter N (sections 861 to 999) (with respect  
4           to tax based on income from sources within or without  
5           the United States), except sections 985 to 989 (with  
6           respect to foreign currency transactions). For  
7           treatment, see sections 235-4, 235-5, and 235-7(b),  
8           and 235-55;

9       ~~[(32)]~~ (33) Section 1042(g) (with respect to sales of stock  
10           in agricultural refiners and processors to eligible  
11           farm cooperatives);

12       ~~[(33)]~~ (34) Section 1055 (with respect to redeemable ground  
13           rents);

14       ~~[(34)]~~ (35) Section 1057 (with respect to election to treat  
15           transfer to foreign trust, etc., as taxable exchange);

16       ~~[(35)]~~ (36) Sections 1291 to 1298 (with respect to treatment  
17           of passive foreign investment companies);

18       ~~[(36)]~~ (37) Subchapter Q (sections 1311 to 1351) (with  
19           respect to readjustment of tax between years and  
20           special limitations);





- 1        [~~37~~] (38) Subchapter R (sections 1352 to 1359) (with  
2                    respect to election to determine corporate tax on  
3                    certain international shipping activities using per  
4                    ton rate);
- 5        [~~38~~] (39) Subchapter U (sections 1391 to 1397F) (with  
6                    respect to designation and treatment of empowerment  
7                    zones, enterprise communities, and rural development  
8                    investment areas). For treatment, see chapter 209E;
- 9        [~~39~~] (40) Subchapter W (sections 1400 to 1400C) (with  
10                    respect to District of Columbia enterprise zone);
- 11       [~~40~~] (41) Section 14000 (with respect to education tax  
12                    benefits);
- 13       [~~41~~] (42) Section 1400P (with respect to housing tax  
14                    benefits);
- 15       [~~42~~] (43) Section 1400R (with respect to employment  
16                    relief);
- 17       [~~43~~] (44) Section 1400T (with respect to special rules for  
18                    mortgage revenue bonds);
- 19       [~~44~~] (45) Section 1400U-1 (with respect to allocation of  
20                    recovery zone bonds);



1       ~~[(45)]~~ (46) Section 1400U-2 (with respect to recovery zone  
2                   economic development bonds); and  
3       ~~[(46)]~~ (47) Section 1400U-3 (with respect to recovery zone  
4                   facility bonds)."

5           SECTION 3. Section 235-71, Hawaii Revised Statutes, is  
6 amended by amending subsection (d) to read as follows:

7           "(d) In the case of a real estate investment trust, there  
8 is imposed on the taxable income, computed as provided in  
9 sections 857 and 858 of the Internal Revenue Code but with the  
10 changes and adjustments made by this chapter (without prejudice  
11 to the generality of the foregoing, for taxable years beginning  
12 before January 1, 2017, the deduction for dividends paid is  
13 limited to ~~[such]~~ the amount of dividends as is attributable to  
14 income taxable under this chapter~~[+]~~, and for taxable years  
15 beginning after December 31, 2016, no deduction for dividends  
16 paid shall be allowed), a tax consisting in the sum of the  
17 following: 4.4 per cent if the taxable income is not over  
18 \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and  
19 on all over \$100,000, 6.4 per cent. In addition to any other  
20 penalty provided by law any real estate investment trust whose  
21 tax liability for any taxable year is deemed to be increased



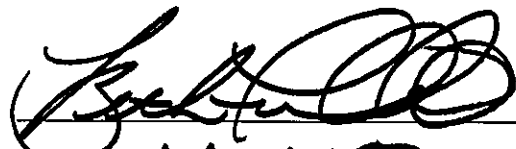


1 pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after December  
 2 31, 1978, (relating to interest and additions to tax determined  
 3 with respect to the amount of the deduction for deficiency  
 4 dividends allowed) of the Internal Revenue Code shall pay a  
 5 penalty in an amount equal to the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

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

14 SECTION 5. This Act shall take effect upon its approval  
 15 and shall apply to taxable years beginning after December 31,  
 16 2016; provided that this Act shall be repealed on December 31,  
 17 2031, and sections 235-2.3(b) and 235-71(d), Hawaii Revised  
 18 Statutes, shall be reenacted in the form in which they read on  
 19 the day prior to the effective date of this Act.

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INTRODUCED BY:

  
 \_\_\_\_\_  
 Representative L. A. Iwamoto  
  
 \_\_\_\_\_  
 Representative Alan Ono  
  
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 Representative K. I. Kono



# H.B. NO. 2073

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JAN 22 2016



# H.B. NO. 2073

**Report Title:**

Future Caucus Package; Real Estate Investment Trusts; Deduction for Dividends Paid; Disallowed; Income Tax; Taxation

**Description:**

Temporarily disallows the deduction for dividends paid by real estate investment trusts for a period of 15 years, but with an exception for dividends generated from trust-owned housing that is affordable to households with incomes at or below 200% of the median family income.

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