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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 real estate  
2 investment trusts, under current law, do not pay their full  
3 share of taxes. The dividends paid deduction and the corporate  
4 structure of real estate investment trusts allows income  
5 generated by the corporation to go untaxed in Hawaii. Instead,  
6 dividends are taxed as income in a shareholder's home state.  
7 According to the department of business, economic development  
8 and tourism, the net annual income for real estate investment  
9 trusts has risen quickly in the last several years from \$79.9  
10 million in 2012 to \$720.6 million in 2014. Had real estate  
11 investment trusts been subject to the same taxation as other  
12 corporations, they would have generated an additional \$36  
13 million in state revenue in 2014.

14           It is unacceptable that real estate investment trusts are  
15 taking advantage of Hawaii's tax laws to export profits out of  
16 the state. There are two ways to ensure that Hawaii is paid its



1 fair share of income taxes from the economic activity generated  
2 by real estate investment trusts.

3 First, real estate investment trusts will be required to  
4 withhold a proportion of dividends attributable to Hawaii and  
5 remit them to the state. Similar to the way other corporate  
6 forms are taxed in Hawaii, this will have the same effect on the  
7 real estate investment trust as their shareholders being taxed  
8 in their home states. Instead of the tax income going to other  
9 states, requiring annual tax returns on dividends ensures that  
10 tax income goes to the State for business activity generated in  
11 Hawaii.

12 Second, closing the dividends paid deduction will ensure  
13 that real estate investment trusts cannot use it as a loophole  
14 to escape proper taxation. According to federal law, real  
15 estate investment trusts must distribute at least 90 percent on  
16 its taxable income to shareholders. The dividends paid  
17 deduction allows real estate investment trusts to escape paying  
18 taxes on income generated from doing business in Hawaii.  
19 Closing the loophole ensures that Hawaii receives its share of a  
20 real estate investment trust's taxable income.



1           The purpose of this Act is to require real estate  
2 investment trusts to submit returns based on dividends  
3 distributed based on income generated in Hawaii and to repeal  
4 the dividend paid deduction for real estate investment trusts.

5           SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
6 amended by adding a new section to be appropriately designated  
7 and to read as follows:

8           "§235-     Real estate investment trust returns; shareholder  
9 agreements; mandatory payments. (a) Each real estate  
10 investment trust shareholder receiving a dividend from the real  
11 estate investment trust shall take into account for purposes of  
12 this chapter a pro rata share of income attributable to the  
13 State, to the extent modified under this chapter, under rules  
14 similar to those adopted pursuant to section 235-122(c). The  
15 percentage of the dividend attributable to the State shall be  
16 the same as the real estate investment trust's overall  
17 percentage of income attributable to the State.

18           Each real estate investment trust shall make a return for  
19 each taxable year, stating specifically:

20           (1) The items of its gross income and the deductions  
21           allowable by this chapter;



- 1        (2) The name, address, and social security or federal
- 2                    identification number of each person owning stock in
- 3                    the real estate investment trust at any time during
- 4                    the taxable year;
- 5        (3) The number of shares of stock owned by each
- 6                    shareholder at all times during the taxable year;
- 7        (4) The income attributable to the State and income not
- 8                    attributable to the State with respect to each
- 9                    shareholder as determined under this chapter;
- 10       (5) Any modifications required under this chapter;
- 11       (6) The amount of money and other property distributed by
- 12                    the real estate investment trust during the taxable
- 13                    year to each shareholder;
- 14       (7) The amount of each distribution constituting a
- 15                    dividend or capital gain dividend; and
- 16       (8) Any other information that the department, by form or
- 17                    rule, may prescribe.
- 18       The real estate investment trust, on or before the day on
- 19       which its return is filed, shall furnish to each person who was
- 20       a shareholder during the year a copy of the information shown on
- 21       the return as the department may prescribe by form or rule. Any



1 return filed pursuant to this section, for purposes of sections  
2 235-111 and 235-112, shall be treated as a return filed by the  
3 real estate investment trust under section 235-92.

4 (b) The department shall permit any real estate investment  
5 trust to file composite returns and to make composite payments  
6 of tax on behalf of some or all of its nonresident shareholders.  
7 The department may permit composite returns and payments to be  
8 made on behalf of resident shareholders.

9 (c) A real estate investment trust shall file with the  
10 department, in the form prescribed by the department, the  
11 agreement of each nonresident shareholder of the real estate  
12 investment trust:

13 (1) To file a return and make timely payment of all taxes  
14 imposed by this State on the shareholder with respect  
15 to the income of the real estate investment trust; and

16 (2) To be subject to personal jurisdiction in this State  
17 for purposes of the collection of unpaid income tax,  
18 together with related interest and penalties.

19 If the real estate investment trust fails to timely file  
20 the agreements required by paragraphs (1) and (2) on behalf of  
21 each of its nonresident shareholders, then the real estate



1 investment trust, at the times set forth in subsection (d),  
2 shall pay to this State on behalf of each nonresident  
3 shareholder in respect of whom an agreement has not been timely  
4 filed an amount equal to the highest marginal tax rate in effect  
5 under section 235-75 (if the shareholder is a corporation) or  
6 235-51 (for any other shareholder), multiplied by the amount of  
7 the shareholder's pro rata share of the income attributable to  
8 the State as reflected on the real estate investment trust's  
9 return for the taxable period. A real estate investment trust  
10 shall be entitled to recover a payment made pursuant to the  
11 preceding sentence from the shareholder on whose behalf the  
12 payment was made.

13 (d) The agreements required to be filed pursuant to  
14 subsection (c) shall be filed at the following times:

15 (1) At the time the annual return is required to be filed  
16 for the first taxable period for which the real estate  
17 investment trust became subject to this chapter; and

18 (2) At the time the annual return is required to be filed  
19 for any taxable period in which the real estate  
20 investment trust had a nonresident shareholder on



1 whose behalf such an agreement has not been previously  
2 filed.

3 (e) Any amount paid by the real estate investment trust to  
4 this State pursuant to subsection (b) or (c) shall be considered  
5 to be a payment by the shareholder on account of the income tax  
6 imposed on the shareholder for the taxable period.

7 (f) Any officer of any real estate investment trust who  
8 willfully fails to provide any information, file any return or  
9 agreement, or make any payment as required by this section or by  
10 section 231-15.6 shall be guilty of a misdemeanor.

11 (g) All moneys collected pursuant to this section shall be  
12 deposited into the qualified returning resident down payment  
13 program special fund established under section §201H- , (known  
14 as the qualified returning resident down payment program).

15 (h) As used in this section, a "real estate investment  
16 trust" means a corporation for which a valid election under  
17 section 856 of the Internal Revenue Code, as amended, is in  
18 effect."

19 SECTION 3. Section 235-2.3, Hawaii Revised Statutes, is  
20 amended by amending subsection (b) to read as follows:



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

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





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



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



- 1       (15) Section 196 (with respect to deduction for certain  
2           unused investment credits);
- 3       (16) Section 199 (with respect to the U.S. production  
4           activities deduction);
- 5       (17) Section 199A (with respect to qualified business  
6           income);
- 7       (18) Section 222 (with respect to qualified tuition and  
8           related expenses);
- 9       (19) Sections 241 to 247 (with respect to special  
10          deductions for corporations). For treatment, see  
11          section 235-7(c);
- 12      (20) Section 250 (with respect to foreign-derived  
13          intangible income and global intangible low-taxed  
14          income);
- 15      (21) Section 267A (with respect to certain related party  
16          amounts paid or accrued in hybrid transactions or with  
17          hybrid entities);
- 18      (22) Section 280C (with respect to certain expenses for  
19          which credits are allowable). For treatment, see  
20          section 235-110.91;



- 1       (23) Section 291 (with respect to special rules relating to  
2           corporate preference items);
- 3       (24) Section 367 (with respect to foreign corporations);
- 4       (25) Section 501(c)(12), (15), (16) (with respect to exempt  
5           organizations); except that section 501(c)(12) shall  
6           be operative for companies that provide potable water  
7           to residential communities that lack any access to  
8           public utility water services;
- 9       (26) Section 515 (with respect to taxes of foreign  
10          countries and possessions of the United States);
- 11       (27) Subchapter G (sections 531 to 565) (with respect to  
12          corporations used to avoid income tax on  
13          shareholders);
- 14       (28) Subchapter H (sections 581 to 597) (with respect to  
15          banking institutions), except section 584 (with  
16          respect to common trust funds). For treatment, see  
17          chapter 241;
- 18       (29) Section 642(a) and (b) (with respect to special rules  
19          for credits and deductions applicable to trusts). For  
20          treatment, see sections 235-54(b) and 235-55;



- 1       (30) Section 646 (with respect to tax treatment of electing  
2           Alaska Native settlement trusts);
- 3       (31) Section 668 (with respect to interest charge on  
4           accumulation distributions from foreign trusts);
- 5       (32) Subchapter L (sections 801 to 848) (with respect to  
6           insurance companies). For treatment, see sections  
7           431:7-202 and 431:7-204;
- 8       (33) Section 853 (with respect to foreign tax credit  
9           allowed to shareholders). For treatment, see section  
10          235-55;
- 11       (34) Section 853A (with respect to credits from tax credit  
12          bonds allowed to shareholders);
- 13       (35) Section 857(b)(2)(B) (with respect to the deduction  
14          for dividends paid by real estate investment trusts);  
15          provided that the deduction shall remain available for  
16          dividends generated from trust-owned housing that is  
17          affordable to households with incomes at or below one  
18          hundred per cent of the median family income, as  
19          determined by the United States Department of Housing  
20          and Urban Development;



- 1       ~~[(35)]~~ (36) Subchapter N (sections 861 to 999) (with respect  
2           to tax based on income from sources within or without  
3           the United States), except sections 985 to 989 (with  
4           respect to foreign currency transactions). For  
5           treatment, see sections 235-4, 235-5, and 235-7(b),  
6           and 235-55;
- 7       ~~[(36)]~~ (37) Section 1042(g) (with respect to sales of stock  
8           in agricultural refiners and processors to eligible  
9           farm cooperatives);
- 10       ~~[(37)]~~ (38) Section 1055 (with respect to redeemable ground  
11           rents);
- 12       ~~[(38)]~~ (39) Section 1057 (with respect to election to treat  
13           transfer to foreign trust, etc., as taxable exchange);
- 14       ~~[(39)]~~ (40) Sections 1291 to 1298 (with respect to treatment  
15           of passive foreign investment companies);
- 16       ~~[(40)]~~ (41) Subchapter Q (sections 1311 to 1351) (with  
17           respect to readjustment of tax between years and  
18           special limitations);
- 19       ~~[(41)]~~ (42) Subchapter R (sections 1352 to 1359) (with  
20           respect to election to determine corporate tax on



1 certain international shipping activities using per  
2 ton rate);

3 ~~[(42)]~~ (43) Subchapter U (sections 1391 to 1397F) (with  
4 respect to designation and treatment of empowerment  
5 zones, enterprise communities, and rural development  
6 investment areas). For treatment, see chapter 209E;

7 ~~[(43)]~~ (44) Subchapter W (sections 1400 to 1400C) (with  
8 respect to District of Columbia enterprise zone);

9 ~~[(44)]~~ (45) Section 14000 (with respect to education tax  
10 benefits);

11 ~~[(45)]~~ (46) Section 1400P (with respect to housing tax  
12 benefits);

13 ~~[(46)]~~ (47) Section 1400R (with respect to employment  
14 relief);

15 ~~[(47)]~~ (48) Section 1400T (with respect to special rules for  
16 mortgage revenue bonds);

17 ~~[(48)]~~ (49) Section 1400U-1 (with respect to allocation of  
18 recovery zone bonds);

19 ~~[(49)]~~ (50) Section 1400U-2 (with respect to recovery zone  
20 economic development bonds);



1        [~~50~~] (51) Section 1400U-3 (with respect to recovery zone  
2                    facility bonds); and  
3        [~~51~~] (52) Subchapter Z (sections 1400Z-1 to 1400Z-2) (with  
4                    respect to opportunity zones)."

5            SECTION 4. 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, the deduction for dividends  
12 paid is limited to such amount of dividends as is attributable  
13 to income taxable under this chapter[+], and for taxable years  
14 beginning after December 31, 2019, no deduction for dividends  
15 paid shall be allowed), a tax consisting in the sum of the  
16 following: 4.4 per cent if the taxable income is not over  
17 \$25,000, 5.4 per cent if over \$25,000 but not over \$100,000, and  
18 on all over \$100,000, 6.4 per cent. In addition to any other  
19 penalty provided by law any real estate investment trust whose  
20 tax liability for any taxable year is deemed to be increased  
21 pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after December



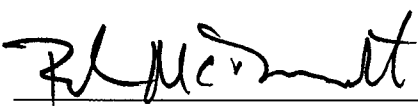


1 31, 1978, (relating to interest and additions to tax determined  
2 with respect to the amount of the deduction for deficiency  
3 dividends allowed) of the Internal Revenue Code shall pay a  
4 penalty in an amount equal to the amount of interest for which  
5 such trust is liable that is attributable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

11 SECTION 5. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on July 1, 2019 and  
14 shall apply to taxable years beginning after December 31, 2019.

15

INTRODUCED BY:   
JAN 22 2019



# H.B. NO. 740

**Report Title:**

Real estate investment trusts

**Description:**

Requires real estate investment trusts to submit returns based on dividends distributed based on income generated in Hawaii and repeals the dividend 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.*

