

JAN 21 2022

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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. Chapter 247, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§247-       Conveyance tax vacancy surcharge. (a) A  
5 conveyance tax vacancy surcharge shall be imposed on every  
6 prolonged vacant property subject to the tax imposed by section  
7 247-1.

8           (b) The rate of the vacancy surcharge shall be one per  
9 cent of the actual and full consideration (whether cash or  
10 otherwise, including any promise, act, forbearance, property  
11 interest, value, gain, advantage, benefit, or profit), paid or  
12 to be paid for all transfers or conveyance of realty or any  
13 interest therein, that shall include any liens or encumbrances  
14 thereon at the time of sale, lease, sublease, assignment,  
15 transfer, or conveyance.

16           (c) The vacancy surcharge shall have the same exemptions  
17 as in section 247-3.



1        (d) As used in this section, "prolonged vacant property"  
2 means that the real property has been vacant for one hundred  
3 eighty days or more in the calendar year immediately preceding a  
4 taxable event pursuant to section 247-1."

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

7        "(b) The following Internal Revenue Code subchapters,  
8 parts of subchapters, sections, subsections, and parts of  
9 subsections shall not be operative for the purposes of this  
10 chapter, unless otherwise provided:

11        (1) Subchapter A (sections 1 to 59A) (with respect to  
12 determination of tax liability), except section  
13 1(h)(2) (relating to net capital gain reduced by the  
14 amount taken into account as investment income),  
15 except sections 2(a), 2(b), and 2(c) (with respect to  
16 the definition of "surviving spouse" and "head of  
17 household"), except section 41 (with respect to the  
18 credit for increasing research activities), except  
19 section 42 (with respect to low-income housing  
20 credit), except sections 47 and 48, as amended, as of  
21 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 91 (with respect to certain foreign branch  
14          losses transferred to specified 10-percent owned  
15          foreign corporations);

16          (5) Section 103 (with respect to interest on state and  
17          local bonds). For treatment, see section 235-7(b);

18          (6) Section 114 (with respect to extraterritorial income).

19          For treatment, any transaction as specified in the  
20          transitional rule for 2005 and 2006 as specified in  
21          the American Jobs Creation Act of 2004 section 101(d)



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



- 1       (13) Section 179B (with respect to expensing of capital  
2       costs incurred in complying with Environmental  
3       Protection Agency sulphur regulations);
- 4       (14) Section 181 (with respect to special rules for certain  
5       film and television productions);
- 6       (15) Section 196 (with respect to deduction for certain  
7       unused investment credits);
- 8       (16) Section 199 (with respect to the U.S. production  
9       activities deduction);
- 10      (17) Section 199A (with respect to qualified business  
11      income);
- 12      (18) Section 222 (with respect to qualified tuition and  
13      related expenses);
- 14      (19) Sections 241 to 247 (with respect to special  
15      deductions for corporations). For treatment, see  
16      section 235-7(c);
- 17      (20) Section 250 (with respect to foreign-derived  
18      intangible income and global intangible low-taxed  
19      income);



- 1       (21) Section 267A (with respect to certain related party  
2           amounts paid or accrued in hybrid transactions or with  
3           hybrid entities);
- 4       (22) Section 280C (with respect to certain expenses for  
5           which credits are allowable). For treatment, see  
6           section 235-110.91;
- 7       (23) Section 291 (with respect to special rules relating to  
8           corporate preference items);
- 9       (24) Section 367 (with respect to foreign corporations);
- 10      (25) Section 501(c)(12), (15), (16) (with respect to exempt  
11           organizations); except that section 501(c)(12) shall  
12           be operative for companies that provide potable water  
13           to residential communities that lack any access to  
14           public utility water services;
- 15      (26) Section 515 (with respect to taxes of foreign  
16           countries and possessions of the United States);
- 17      (27) Subchapter G (sections 531 to 565) (with respect to  
18           corporations used to avoid income tax on  
19           shareholders);
- 20      (28) Subchapter H (sections 581 to 597) (with respect to  
21           banking institutions), except section 584 (with



- 1           respect to common trust funds). For treatment, see  
2           chapter 241;
- 3           (29) Section 642(a) and (b) (with respect to special rules  
4           for credits and deductions applicable to trusts). For  
5           treatment, see sections 235-54(b) and 235-55;
- 6           (30) Section 646 (with respect to tax treatment of electing  
7           Alaska Native settlement trusts);
- 8           (31) Section 668 (with respect to interest charge on  
9           accumulation distributions from foreign trusts);
- 10          (32) Subchapter L (sections 801 to 848) (with respect to  
11          insurance companies). For treatment, see sections  
12          431:7-202 and 431:7-204;
- 13          (33) Section 853 (with respect to foreign tax credit  
14          allowed to shareholders). For treatment, see section  
15          235-55;
- 16          (34) Section 853A (with respect to credits from tax credit  
17          bonds allowed to shareholders);
- 18          (35) Section 857(b)(2)(B) (with respect to the dividends  
19          paid deduction for real estate investment trusts);
- 20          ~~[(35)]~~ (36) Subchapter N (sections 861 to 999) (with respect  
21          to tax based on income from sources within or without



1 the United States), except sections 985 to 989 (with  
2 respect to foreign currency transactions). For  
3 treatment, see sections 235-4, 235-5, and 235-7(b),  
4 and 235-55;

5 ~~[(36)]~~ (37) Section 1042(g) (with respect to sales of stock  
6 in agricultural refiners and processors to eligible  
7 farm cooperatives);

8 ~~[(37)]~~ (38) Section 1055 (with respect to redeemable ground  
9 rents);

10 ~~[(38)]~~ (39) Section 1057 (with respect to election to treat  
11 transfer to foreign trust, etc., as taxable exchange);

12 ~~[(39)]~~ (40) Sections 1291 to 1298 (with respect to treatment  
13 of passive foreign investment companies);

14 ~~[(40)]~~ (41) Subchapter Q (sections 1311 to 1351) (with  
15 respect to readjustment of tax between years and  
16 special limitations);

17 ~~[(41)]~~ (42) Subchapter R (sections 1352 to 1359) (with  
18 respect to election to determine corporate tax on  
19 certain international shipping activities using per  
20 ton rate);





1       ~~[(42)]~~ (43) Subchapter U (sections 1391 to 1397F) (with  
2                   respect to designation and treatment of empowerment  
3                   zones, enterprise communities, and rural development  
4                   investment areas). For treatment, see chapter 209E;  
5       ~~[(43)]~~ (44) Subchapter W (sections 1400 to 1400C) (with  
6                   respect to District of Columbia enterprise zone);  
7       ~~[(44)]~~ (45) Section 14000 (with respect to education tax  
8                   benefits);  
9       ~~[(45)]~~ (46) Section 1400P (with respect to housing tax  
10                  benefits);  
11       ~~[(46)]~~ (47) Section 1400R (with respect to employment  
12                  relief);  
13       ~~[(47)]~~ (48) Section 1400T (with respect to special rules for  
14                  mortgage revenue bonds);  
15       ~~[(48)]~~ (49) Section 1400U-1 (with respect to allocation of  
16                  recovery zone bonds);  
17       ~~[(49)]~~ (50) Section 1400U-2 (with respect to recovery zone  
18                  economic development bonds); and  
19       ~~[(50)]~~ (51) Section 1400U-3 (with respect to recovery zone  
20                  facility bonds)."



1 SECTION 3. 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, 2023, 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, 2022, 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. Beginning January 1, 2023,  
16 ten per cent of the revenues generated by the disallowance of  
17 the deduction under this subsection shall be used by the Hawaii  
18 housing finance and development corporation to fund housing  
19 projects in the State. In addition to any other penalty  
20 provided by law any real estate investment trust whose tax  
21 liability for any taxable year is deemed to be increased



1 pursuant to section 859(b)(2)(A) or 860(c)(1)(A) after  
2 December 31, 1978, (relating to interest and additions to tax  
3 determined with respect to the amount of the deduction for  
4 deficiency dividends allowed) of the Internal Revenue Code shall  
5 pay a penalty in an amount equal to the amount of interest for  
6 which the trust is liable that is attributable solely to the  
7 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 the  
11 taxable year.

12 Notwithstanding the foregoing, beginning January 1, 2022,  
13 the department shall require a real estate investment trust  
14 subject to this chapter to:

15 (1) Notify the department, in the manner prescribed by the  
16 department, of its operation as a real estate  
17 investment trust in the State no later than fifteen  
18 days from the first day of operation in the State;  
19 provided that, for real estate investment trusts  
20 operating in the State as of July 1, 2021, the



1 department shall be notified no later than January 15,  
2 2022;

3 (2) Properly designate on its tax return that it is a real  
4 estate investment trust, as required by the  
5 department;

6 (3) Complete its tax return in the specific manner  
7 required by the department, including following line-  
8 by-line instructions; and

9 (4) Submit a copy of the real estate investment trust's  
10 federal tax return covering the same period with each  
11 state tax return that the real estate investment trust  
12 files with the department under this chapter.

13 Any real estate investment trust that fails to comply with these  
14 requirements shall be assessed a penalty of \$50 per day."

15 SECTION 4. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval,  
18 and shall apply to taxable years beginning after December 31,  
19 2022.

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INTRODUCED BY: 



# S.B. NO. 2246

**Report Title:**

Conveyance Tax Surcharge; Prolonged Vacant Property; Taxation;  
Real Estate Investment Trusts; Dividends Paid Deduction

**Description:**

Establishes a conveyance tax vacancy surcharge on the conveyance of prolonged vacant property. Disallows dividends paid deduction for real estate investment trusts. Provides ten percent allocation of revenue from real estate investment trusts for use by the Hawaii Housing Finance and Development Corporation. Applies to taxable years beginning after 12/31/2022.

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

