

**From:** [Nicole Woo](#)  
**To:** [WAM Testimony](#)  
**Cc:** [Roger Epstein](#)  
**Subject:** SB 3067 – Relating to Taxation  
**Date:** Monday, February 12, 2018 2:25:41 PM



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This is the written testimony of Roger H. Epstein, Esq. (cc:ed on this message).

Hearing on SB 3067 – Relating to Taxation  
Before the Senate Committee on Ways and Means  
On Tuesday, February 13, 2018 at 10:15 a.m.  
In Conference Room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the Committee:

Thank you for the opportunity to provide COMMENTS on SB 3067, which would establish requirements and procedures for a real estate investment trust to file tax returns and payments.

My name is Roger Epstein, and I have over 50 years of experience in tax law. I was the chair of the Tax Department of Cades Schutte and have extensive experience in all areas of tax law handled by the Tax Department. Prior to joining Cades Schutte in 1972, I was a Tax Law Specialist with the National Office of the Internal Revenue Service in Washington, D.C. and prior to that, I was an Internal Revenue Agent in Washington D.C.

**Background: Real Estate Investment Trusts and Hawaii Tax**

Federal tax law permits REITs to pass the tax on their income to their shareholders when distributed as dividends. U.S. REIT shareholders pay regular Federal tax on their REIT dividends, when filing their annual tax returns. For foreign shareholders, the REIT withholds Federal income tax from their dividends as paid, and transmits that to the IRS as tax paid by the foreigners.

Hawaii also permits REITs to push the tax on their Hawaii income to their shareholders. But Hawaii does not have a withholding rule for its out of state shareholders that would be similar to the Federal rule for foreigners.

Accordingly, Hawaii is currently collecting no income tax from REITs and no income tax from non-Hawaii resident REIT shareholders, who make up the vast majority of Hawaii REIT shareholders. (Many may be paying tax in their home state, but not to Hawaii.)

Past legislative attempts to impose Hawaii tax on the REIT itself have not been successful, as this would result in double tax on their income, inconsistently with the Federal rules. Since REITs now bring substantial capital and jobs to Hawaii, Hawaii has not wanted to be the one State that imposes a double tax on REIT income. On the other hand, by 2014 (the last year of recorded info), annual REIT income earned in Hawaii had already risen to \$720M, and Hawaii has never gotten even a single income tax on most of this income in any year.

**Real Estate Investment Trusts Hawaii Tax:**  
**2018 Legislative Proposal Resolves Tax Conundrum in a Proper and Fair**  
**Manner**

**A simple and fair solution is proposed.** Hawaii can follow the established rules for non-residents of other “pass through” entities, such as is done at the Federal level with respect to foreign REIT shareholders. **REITs** can remain free of Hawaii income tax. They **will merely withhold and pay over a minimum Hawaii tax on behalf of all their shareholders.** The rate of this tax should be fixed somewhere between the Hawaii corporate capital gain rate of 4% and the ordinary income rate of 6.4%-say 5%. The shareholders should receive a credit against their home State tax, for the Hawaii tax withheld, so no REIT shareholders will have to pay two State income taxes. Tax-exempt shareholders, like pension plans, should be permitted to file a claim for refund.

**Summary**

- REITs and their shareholders are the only business people in Hawaii who pay no **Hawaii income tax** on their substantial income (\$720M in 2014).
- Proposal continues no Tax to REITs on their Hawaii income.
- Collection by REIT of tax owed by out of state shareholders on their REIT income received.
- Adopts a minimum tax on REIT dividends (5%) and require REIT withholding.
- We should confirm that REIT shareholders will receive a home state credit for Hawaii taxes , to insure no double tax.

Mahalo for your time and consideration of this testimony.