

MEMO# 31598

February 5, 2019

ICI Submits Written Testimony on Hawaiian REIT Proposal

[31598]

February 5, 2019 TO: ICI Members

Tax Committee SUBJECTS: Tax RE: ICI Submits Written Testimony on Hawaiian REIT Proposal

A Hawaiian proposal to require that real estate investment trusts (REITs) file returns reporting their shareholders' pro rata shares of net income and net income attributable to Hawaii was reintroduced this year. The legislation provides for composite returns and requires withholding for those shareholders who do not agree to file returns or pay tax on their pro rata share of net income attributable to Hawaii. The proposal does not address the concerns raised in the ICI letter submitted last year opposing the same measure.[\[1\]](#)

The ICI submitted the attached written testimony explaining that the proposal is not administrable and would lead to over-withholding and potential double taxation on mutual fund shareholders. Specifically, this is because:

- REITs do not have access to the shareholder information needed to comply with the proposal's report requirement, so withholding on distributions to shareholders would be required.
- REITs cannot calculate precisely—at the time each distribution is made—the portion attributable to income, gain, or return of capital, so REITs can be expected to withhold on the entire amount of their distributions.
- Mutual funds are not permitted by the Internal Revenue Code to “pass through” to their shareholders any state taxes paid by the funds, fund shareholders would not be able to claim a credit against their own state tax liability for any taxes paid by the funds to Hawaii.

Katie Sunderland
Counsel - Tax Law

[Attachment No. 1](#)

[Attachment No. 2](#)

endnotes

[1] See ICI Memorandum [No. 31101](#), “ICI Letter on Hawaiian REIT Proposal,” dated February 21, 2018.

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.