

## Publication

---

07/31/2018

### States Push Back Against State Tax Planning With Captive REITs

When people think of state tax planning with passthrough entities, they usually think of S corporations, limited liability companies and limited partnerships. In the states that follow the federal S corporation<sup>1</sup> and “check-the-box” rules, operating a business in S corporation, LLC or limited partnership form generally eliminates the entity-level state tax on the net income of the business, leaving it up to the resident and nonresident shareholders or partners in the business to pay taxes to the state on the net income of the business. Within the past 10 to 15 years, some retailers and financial institutions with a substantial amount of real property assets saw an opportunity to reduce their tax in separate return states significantly where they were doing business by transferring the real property assets to a subsidiary<sup>3</sup> that was qualified as a real estate investment trust (a “REIT”) under the Internal Revenue Code of 1986, as amended (the “Code”). Neal Gerber Eisenberg partner and Tax Practice Group member John A. Biek authored an article that appears in the September-October 2007 edition of *CCH’s Journal of Passthrough Entities*.

---

#### CLIENT SERVICES

Taxation

State and Local Tax

---

#### RELATED PEOPLE

John A. Biek