

Speaker 1 ([00:01](#)):

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Nikki Dobay ([00:16](#)):

Mr. Bucks also really waxes on about being an expert in this space. Do you have any thoughts or comments on that piece of the response?

Angela Pitale ([00:27](#)):

As a matter of fact, I do, Nikki.

Nikki Dobay ([00:30](#)):

Hello, and welcome to GeTtin' SALTy, a state and local tax policy podcast hosted by Greenberg Traurig. My name is Nikki Dobay, shareholder in the Sacramento, California and Portland Oregon offices. I'm very pleased today to have a very dear friend with me and colleague in the tax policy space, Angela Pitale, who is a senior tax policy advisor with Multistate Associates. Angela, thank you so much for being with me today.

Angela Pitale ([00:59](#)):

Well, thank you, Nikki. I'm very pleased to be here. Thank you for inviting me.

Nikki Dobay ([01:03](#)):

All right, and sorry, guest. There is a very rambunctious puppy who just took a three-hour car ride, so we might get a few squeaks or paws pattering across the floor here, but we'll roll with it. So, today, we are going to get into an article you wrote, and then a response that it received. So we'll get into that in a minute, but as a new guest on the podcast, I have to ask. How did you get into state and local tax policy work?

Angela Pitale ([01:32](#)):

Well, it wasn't a plan of mine from early on, but as a senior director of tax with NextEra Energy Resources for a very long time, which is a large multistate company, my primary roles involved tax research for merger and acquisition activities, sales and use tax compliance, and financial reporting under ASC 740 accounting for income taxes, and I got involved in some policy work just sporadically on the side. I really, really enjoyed that part of the job, but it wasn't one of my main responsibilities, and it was... I dabbled in it, but I really liked it, and I made that well-known within the company to my superiors and so forth. Surprisingly, for a big company, they had no one focused on state tax policy, although they did have a very pretty significant-sized state political group, but no one focused on tax policy. So, one day, they restructured the tax department, and they created this role, and they handed it to me as my full-time job, and I never looked back to all those deadlines, and the days of financial closings, and financial reporting, and ASC 740 calculations, and all of that fun stuff. So I still love the SALT policy work that I do now.

Nikki Dobay ([03:02](#)):

Well, and that is how you and I get to know each other, and so it's-

Angela Pitale ([03:06](#)):

Yes.

Nikki Dobay ([03:08](#)):

One of the things I love most about being involved in this space is the friends you make and seeing everybody at various conferences or we sometimes show up in the same state capitals at the same time and always just having that network to reach out to when you're working on something that maybe you haven't dabbled in or gotten into before. So you are always-

Angela Pitale ([03:31](#)):

Right. It's a small community and a great community full of resources and good friends.

Nikki Dobay ([03:39](#)):

Yeah, and that's how you and I, again, we get to know each other, and it's always, it still is always so fun when we get to hang out together and work on stuff. So now let's talk about today's podcast which we're going to be talking about combined reporting and a series of articles that you wrote and that were published in state tax notes, and then a response that recently came out about those articles. So why don't you kick us off and provide a high-level overview of the articles and the series, and then what prompted you to write that series?

Angela Pitale ([04:20](#)):

Okay. Well, I've been involved in several combined reporting bills in a number of states, and it always struck me, being involved in those bills, how, in general, the legislation is sparse, and incomplete, and doesn't really cover a lot of details, and leaves a lot up to taxpayers and administrators to figure out. Then, there's always this constant mantra from those on the other side of this issue that are in favor of mandatory combined reporting everywhere that it's so easy, and those who are academics and have never done any compliance or done any in-house work, how easy they think it is because many states already require combined reporting that the business community has to be exaggerating the compliance burden.

([05:18](#)):

I felt like that required some type of response, and I thought it was important to educate people about why it is so complex not just for taxpayers, but also for administrators, and how and why we in the business community are not exaggerating this issue. It really is an issue, and the article didn't start out to be a series. As I began putting this stuff on paper, it grew and even made me realize how much bigger of an issue it is than I think we in the business community really talk about or we don't really talk about why. We just talk about that it's complicated. So I felt that that was important, and when I started with Multistate, my colleagues were all writing articles and blogs, and publishing things, and I wanted to contribute to that effort, so I thought I'd write about something that I know about and I'm concerned about.

([06:21](#)):

So the starting point was simply, "Hey, why don't I write about some of the compliance issues that companies face when filing a combined return, having nothing to do with constitutional issues, having nothing to do with SCOTUS decisions, having nothing to do with federalism, just the practical side of the issue from a compliance perspective, from the people who are actually tasked with doing that work?" Of

course, it evolved into something a bit more in terms of, "Hey, legislators. Are you even aware that you need to consider these things when you're considering combined reporting?"

Nikki Dobay ([06:55](#)):

Right.

Angela Pitale ([06:56](#)):

So that was the genesis.

Nikki Dobay ([06:58](#)):

So it was really meant to be just an educational piece about some of the challenges and issues out there surrounding this topic, and I think I would say that this podcast is not about being for or against combined reporting generally. It's really when you put that word "mandatory" in front of it that I would say you may back taxpayers into a corner and create issues that, to your point, the legislators aren't aware of as they're looking at these. Especially when it's mandatory worldwide combined reporting, there's a lot of unforeseen or maybe unknown issues that can arise.

([07:45](#)):

Yes. I would say for the record, the business community is very aware that worldwide mandatory combined reporting was found to be constitutional. I don't think that's something we question. I think on this side, the issue of who is unitary raises a lot of questions and can create a lot of litigation, and we could see a case where it would be found to be unconstitutional, depending on the facts and circumstances, but we understand, by and large, that's very settled law. So we did just want to get that on the record.

Angela Pitale ([08:21](#)):

Right. Yeah. The purpose of the article, as you showed, was more educational. It didn't purport to be... It was not intended to be an analysis of the legal or constitutional validity of combined reporting. As you said, that's pretty well-settled. The business community fully understands that, but that wasn't the point of the article at all, and the authors of the RoBattle article clearly missed the entire point of the article. I will say, just because something is constitutional, does that mean it's good policy? Not necessarily, so.

Nikki Dobay ([09:00](#)):

Right, right. Also, some taxpayers do some variations of combined reporting, and I think there's also this idea that when the business community says, "Well, let's have the state allow an election that we're creating some sort of loophole," and I would respond to that with, "No. This is another practical solution to a very complicated issue because there will be taxpayers that will find it easier to file in certain various ways, and they would like that option, but that's going to be very challenging for other taxpayers." I think as we often talk about the states all having their own personalities based on their politics and how they do things, every company is different, and so it's very hard to create a one-size-fits-all solution for all companies. So, to me, elections provide, yes, flexibility for taxpayers, but also will help with compliance and administration for the states.

Angela Pitale ([10:13](#)):

Yeah. I mean, I think it's important to point out that it's not constitutional for states to impose tax on your federal consolidated group because some of those companies may not be unitary, but when a taxpayer elects to file on that basis, the taxpayer basically gives up their constitutional arguments.

Nikki Dobay ([10:34](#)):

Right.

Angela Pitale ([10:35](#)):

So the taxpayer gives up something to make that election and gains certainty, but the state also benefits by getting certainty and the-

Nikki Dobay ([10:45](#)):

Absolutely.

Angela Pitale ([10:46](#)):

The benefit of, basically, being guaranteed no litigation at least over the composition of the group.

Nikki Dobay ([10:53](#)):

Exactly, exactly, and that, in many ways, can create some real compliance or streamlined compliance when you can just rely on that federal group, and the federal return as it is. I mean, one thing I was thinking about is when the proponents of mandatory worldwide combined reporting talk about or brush aside this idea that it's challenging, what that takes away from the state is the ability to rely on the federal return for anything. They can't rely on a federal audit. They can't rely on federal taxable income as a starting point because you've gone beyond that for taxpayers that have any foreign entities out there that aren't part of the federal group which most would not be.

([11:43](#)):

So I do think that they missed a lot about your articles, the purpose of them, but it's a head scratcher when they're saying, "Oh, this is so easy for taxpayers," but they're really taking something away from the ability from their state to administer these two. So maybe let's shift to some of the specifics about the reaction because you... In reading the article that was responding to your series, Angela, you're taking down democracy as we know it. You're a powerful woman.

Angela Pitale ([12:19](#)):

Yes. I suppose I should be flattered by being given that amount of perceived power. That does just seem a bit overdramatic to me. So, yeah. They did completely miss the point, and I don't see how not doing combined reporting takes down democracy in our planet and is the cause behind all of the evils of inequality in the world today. Yeah, that cracked me up, frankly. Mr. Bucks, in particular, indicates that my articles are advocating for consistency or advocating against federalism which is so not the case.

Nikki Dobay ([13:11](#)):

Yeah, yeah.

Angela Pitale ([13:12](#)):

Again, they just missed the point. I stated in the article that the goal was to broaden the understanding of the complexities and to counter the oversimplification of those in the academic world who advocate for combined reporting because companies already do it, so it's no big deal. Well, it is a big deal. It's a big deal for taxpayers. It's a big deal for administrators. It's a big deal because they can't make the revenue estimates, they can't do accurate revenue estimates, and I do think my series effectively demonstrates that.

Nikki Dobay ([13:50](#)):

So getting into some of the points that were made, I think there was one spot in the response where Professor Chansky calls out these quotes from Alan Kline in New Jersey, and so what is wrong with some of the things that he's calling out with those comments?

Angela Pitale ([14:10](#)):

Well, Professor Chansky claims that my quoting Alan Kline of the New Jersey Division of Taxation, that auditing combined reporting will be simpler goes against the whole grain of the article. I completely disagree. I stated at the beginning of the article that all state revenue departments face increased administrative costs and require training and education if they adopt combined reporting. I think my conversation with Alan, with Mr. Kline absolutely demonstrates that. New Jersey is now six years into having enacted combined reporting. They're only now just starting to get it right in terms of their systems and so forth. They've issued hundreds and hundreds of pages of guidance. They've had to train and hire new auditors and both for combined reportings and other things, but a lot of that, I think, is precipitated by the combined reporting. They've had three major reform bills dealing with the combined reporting regime, and they're just beginning to audit combined returns, and their transition is still underway.

Nikki Dobay ([15:27](#)):

Right.

Angela Pitale ([15:27](#)):

So do the proponents believe that all that occurred magically with no administrative costs to the state? Alan is optimistic that at some point, it's going to be easier to audit, but as I said in the article, they're just starting, so it remains to be seen whether it's easier. It remains to be seen whether it leads to a lot more litigation. We don't know that yet. As I said at the beginning, all of the states that are not combined reporting are going to experience administrative costs, and transition time, and so forth, which is not without some cost.

Nikki Dobay ([16:02](#)):

I think, also, another kind of... Well, I don't know it was a main point in your series, but it was definitely alluded to was... and we don't know if this is ultimately going to result in additional revenue for the states because the thing about mandating combined reporting is yes, you may be bringing in more income, but you also are going to bring in losses from companies that weren't necessarily included or might not have been included. So I think that's always the piece of this is if a state wants to move in that direction, it shouldn't just be because they think there's going to be additional revenue. It should be for broader policy reasons, and there needs to be a lot more thought put into it to address the compliance and administrative issues.

Angela Pitale ([16:57](#)):

Absolutely. Some of the states that have been recently considering combined reporting already have pretty substantial loophole closing statutes for add backs and related party transactions, and they follow the federal transfer pricing rules and so forth. So is combined reporting really going to raise as much revenue as they think it is? I do talk about revenue estimates in the article and the difficulty with that. The agencies that are tasked with estimating it lack the details necessary to do it. I mean, they don't know what they don't know in terms of losses generated by other subsidiaries in other states, the relative profitability of those subsidiaries, and whether that's going to average up or down the revenue. They don't have apportionment factor information for those other entities.

([17:57](#)):

Some states have relied on some very, very dated information that was reported in Minnesota years and years ago like 15, I don't know, 15 years ago or something which is ancient history in terms of tax law. The implementation details, as I mentioned, are often scarce in the statute or the proposed statutes. They don't address how tax attributes are going to be brought in, how they're going to be shared, and a lot of other things that would make it impossible to do an accurate revenue estimate. I want to go back to the Alan Kline comment for just a second, if I may.

Nikki Dobay ([18:37](#)):

Mm-hmm. Yeah, yeah.

Angela Pitale ([18:38](#)):

I note that the authors give very great credence to my conversation with Mr. Kline, and they reference that as the only evidence proffered in my article for anything. Yet, they conveniently ignore the fact that some other assertions made in the article were based on actual conversations with large taxpayers which I mentioned in the article. So their view is that a conversation with a tax administrator is really good evidence, but conversations with taxpayers should be completely disregarded as evidence. To me, that just is a prime example that demonstrates really what their mindset is about taxpayers.

Nikki Dobay ([19:21](#)):

Yeah, and I think they also fail to recognize your significant personal experience and professional experience with a large multi-state company working various things within the tax department. It's not as if you are coming at this from a purely... just void of any experience with respect to tax compliance and other things that corporations have to deal with in the state and local tax base. I agree. I thought that was a very... It made me scratch my head because I wonder, "Of the folks responding, how many of them have had any actual experience doing any sort of tax work other than maybe their own tax return?" So.

Angela Pitale ([20:19](#)):

Oh, yeah.

Nikki Dobay ([20:21](#)):

Then, Mr. Bucks also really waxes on about being an expert in this space. Do you have any thoughts or comments on that piece of response?

Angela Pitale ([20:32](#)):

As a matter of fact, I do, Nikki.

Nikki Dobay ([20:34](#)):

You do? Please do tell.

Angela Pitale ([20:39](#)):

Okay. So Mr. Bucks was the director of the Department of Revenue of Montana in the 1980s which I give him great kudos for. I know it's a tough job in any decade, but at that time, Montana was one of 12 of the states that adopted worldwide combined reporting. So Mr. Bucks claims to be an expert in the audit of multinational companies. He claims that his department of less than a dozen people and those of other states, namely Colorado, North Dakota, and Idaho, he specifically names as was Montana, efficiently and effectively administered the worldwide tax system without the benefit of computers. I'm quoting him, "Without the benefit of computers, modern technology, and without ever leaving the United States." I don't know. Possibly, maybe even the borders of the state of Montana. Not sure.

([21:41](#)):

So he bases his arguments of minimal complexity for revenue departments in today's environment, 40 years later, on that experience. So where's the empirical evidence that they were actually effective and efficient? How many multinational companies were operating in Montana and the other named states in the '80s? Let alone, how many were headquartered there? Do you think technology and computerization has changed at all in the last 40 years? Can you imagine auditing any company today, let alone a worldwide company today without the benefit of computers?

Nikki Dobay ([22:23](#)):

Yeah.

Angela Pitale ([22:26](#)):

On top of his claim of expertise, he has the audacity to claim that the New Hampshire Department of Revenue Administration is absolutely wrong to be concerned about any of this complexity, language barriers, international reporting standards that differ from US standards, currency translations, and all those other things that have been mentioned in other articles and things, and that they should never have to travel to perform an audit. Really? The audacity of his assertions, frankly, just blow my mind, and he claims that I am unhooked from reality.

Nikki Dobay ([23:15](#)):

Well, Angela, are you? I don't know.

Angela Pitale ([23:19](#)):

I don't know. Maybe I'm living in a fantasy world, but I like my place in it.

Nikki Dobay ([23:27](#)):

Yeah. Well, I thought those comments were something. I'll say that. They really just leave you wondering whether or not they've thought about this outside of that bubble because things have just really changed. Again, I think if you're trying to create efficiencies in compliance and administration, there's really something to conformity with the federal code and being able to rely on those federal numbers and federal audits, and mandating worldwide combined reporting just blows that scenario up and-

Angela Pitale ([24:14](#)):

Entirely. Yeah.

Nikki Dobay ([24:16](#)):

Well, any other things you'd like to specifically respond to? This maybe hasn't been our most uplifting podcast because I think we're responding to some pretty outlandish things, but we have to get to the surprise non-tax question, but I want to make sure that if you have any final thoughts or final things you want to respond to, go for it.

Angela Pitale ([24:43](#)):

Well, I do want to say that I find it very unfortunate and disturbing that the ardent proponents of combined reporting seem to truly believe that all multistate and multinational corporations are tax cheats and that they hire hordes of lawyers to hide income and avoid or even evade taxes. That has not been my experience when I was an in-house tax professional. That has not been my experience with clients as a consultant. They continually state that this is the reason the business community is generally opposed to combined reporting, and they refuse to entertain any rational discussion of the problems and inequities that come along with combined reporting.

([25:32](#)):

Nikki, a SALT practitioner, I think you probably have some thoughts on that as well, and the authors do accurately point out that I am not a fan of combined reporting, not mandatory combined reporting. I think that while it may solve some problems, it also creates its own set of problems which I won't go into because those have been outlined in various articles from COST, and The Tax Foundation, and others. It is complex, it is difficult, and it does open the door to extensive audits and potential litigation.

([26:09](#)):

While this didn't start out as such, the series, frankly, evolved into an attempt to educate legislators, as we pointed, out on issues that they need to be aware of and that they likely are not aware of in considering and contemplating whether to enact combined reporting rather than just blindly following this "let's close the corporate loophole" mantra. My hope is that taxpayers and their lobbyists can use the information and the articles to educate their legislators and tax administrators on some of these issues.

Nikki Dobay ([26:43](#)):

Yeah. The thoughts I would add on that are when I was at COST, the members who were very active in COST and the clients that I work with today, I would not describe them as overly aggressive tax planners. A lot of the work I do is towards simplification on the administration side and how to make compliance doable. I mean, these companies are trying to comply in all 50 states on multiple, multiple tax issues and then in many more local jurisdictions. So I think that is also a fact that gets lost on folks that really are proponents of this.

([27:24](#)):

Again, that's not to say that a state shouldn't go down the road necessarily of combined reporting, but understanding the issues, understanding why taxpayers seek elections, and just having the education about this issue before, as you say, blindly jumping off that cliff because I think that's when it can be very challenging for both. I think we should also put on the record here that you have been actively engaged in state legislative conversations in states that have adopted combined reporting. So it's not as if you're pounding the table saying, "No, no, no, no, no." You're saying, "This is my experience in working



on these issues and being involved in them, and if you're going to go down this road, be aware of all these things."

Angela Pitale ([28:20](#)):

Yes, and I have personally done some of that education with legislators in states, New Jersey being a prime example. That's how I have the relationship with Mr. Kline that I was able to reach out to him. I was also involved in New Mexico's adoption of combined reporting and getting some things in there that were more... to make it a little bit more balanced between the state and the taxpayers, and have worked in a number of other states with the legislators and trying to get, like I said, a little bit more balanced approach to combined reporting. In that process, also, I've had lots of conversations in addition to my own personal experience as an in-house employee, tax professional. I talked to and had input from many, many, many other companies, large taxpayers, and what their issues are and their concerns are. So I think if a state wants to go down the road, they need to at least consider some of these things and take a more balanced approach.

Nikki Dobay ([29:24](#)):

Well, I think that's going to be on wrap on this. So thank you so much, Angela, for this conversation, and I'm glad we were able to come together to provide some thoughts on the response that your series prompted. But now, before you go, we have to do a surprise non-tax question.

Angela Pitale ([29:42](#)):

This scares me.

Nikki Dobay ([29:44](#)):

Don't be scared. So, in a few hours, there's going to be some sort of... I'm not a sports fan. There's going to be a kickoff. I think that's what's going to happen.

Angela Pitale ([29:53](#)):

There is.

Nikki Dobay ([29:55](#)):

Yes. So, my surprise non-tax question today is, will you be watching the Super Bowl? If so, do you have any fun traditions or things you like to do? So I'll answer first while you gather your thoughts. I think we are going to try. We don't have cable, so I have to figure out the streaming capabilities of this first, but Per, my husband, would like to watch it. I think we're going to try. So we got to get that going, but then we're going to try, and I mostly just watch it for the halftime show. Although I have to say, I have no idea who's performing today, but will you all be watching this evening/afternoon?

Angela Pitale ([30:32](#)):

Yes.

Nikki Dobay ([30:32](#)):

Okay.

Angela Pitale ([30:32](#)):

Most definitely.

Nikki Dobay ([30:34](#)):

Okay.

Angela Pitale ([30:34](#)):

I am actually a big sports fan. I love football. Unfortunately, neither of the teams that I like are in the Super Bowl, but no, we love watching it. We don't have any specific traditions. We'll be going to a little party at some friend's house, and watching, and eating, and vibing a little bit.

Nikki Dobay ([30:56](#)):

Okay, okay.

Angela Pitale ([30:58](#)):

I also don't know who's performing at halftime, but one of the things I do love about it is the commercials, and that makes it really difficult because I really like to watch the game, and I really like to watch the commercials, so it's like you can't take a break.

Nikki Dobay ([31:17](#)):

Well, you just have to make sure people are bringing you things so you can watch the whole thing.

Angela Pitale ([31:21](#)):

This time, yes.

Nikki Dobay ([31:21](#)):

Okay. Yes. We'll get into that on the next podcast.

Angela Pitale ([31:26](#)):

Okay.

Nikki Dobay ([31:27](#)):

Well, Angela, thank you so much again for joining me. This has been a great conversation, and thank you to the listeners. Contact information for Angela and I will be in the show notes. If you have any questions or comments, feel free to drop us a note in those, and I will be back in a few weeks on the next GeTtin' SALTy.