

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

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Nikki Dobay ([00:15](#)):

To not lose sight of that. As Rosie's think she likes conformity, so I don't know why she's so upset about it.

([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 be joined once again by a good friend, Jeff Newgard. Jeff is the principal at Peak Policy and does a lot of work on the ground during the Oregon legislative session, and we work together on a lot of Oregon State and local tax policy issues. So Jeff, thank you so much for joining me once again.

Jeff Newgard ([01:04](#)):

Thank you for the invitation. It's exciting to be here.

Nikki Dobay ([01:08](#)):

It's been a little bit, we haven't talked I think since the end of last session, which 2023 was a long session for Oregon and 2024 was supposed to be or is a short session just 35 days. Jeff, I thought we weren't going to talk this year because there was just nothing to talk about, but you're telling me there's stuff to talk about.

Jeff Newgard ([01:32](#)):

Nikki, has there ever been a year where we've said, oh, we're not going to talk this year and we don't end up talking? I think it's a staple of Oregon session that there's always something for us to talk about.

([01:43](#)):

For this year, Oregon's meeting for a short session, five weeks. These sessions started after 2012 after voters put it in the constitution where the legislature would no longer meet every other year and instead go and meet every year with the even numbered years being this truncated form of the long five month session. So instead of five months, the legislature convenes in five weeks. And really what we end up seeing is that five month session just condensed into a five week period where the legislature is just working under perpetual deadlines and especially this year, taking on some material policy, not just going and looking at technical changes, but going and actually having very dense and nuanced conversations that normally you would think that there isn't enough time.

([02:33](#)):

In the world of taxes, it's at least a little bit more tame, but from whether we're looking at the conformity conversations that could come up if House resolution was it 7024 in Congress moves, there's a lot of industry specific taxes in the legislature that are starting to come up, but also just bigger philosophical questions on what tax debates are going to look like the future. I'm going to just do a brief shout out for the article that you and I authored in Tax Notes State, I believe last week on the super majority issues and the rules for raising revenue in the legislature that have been in the state of perpetual change over the last, I'll say decade. There's a lot going on in Oregon, even if we're not seeing

a big corporate activity tax type of conversation going on. But if you go and open up the hood, there are a lot of smaller conversations happening in Oregon that really could ferment and become much bigger conversations either this year or heading into next year's long session.

Nikki Dobay ([03:37](#)):

So can you catch us up on, we are in the session, it's middle to the end of the session. The session ends March 10th, so not a lot of time left for the legislature to get things done. On the tax front, are there bills that people should have on their radar to worry about or that are good and so maybe just tick off your list of those bills that you're watching?

Jeff Newgard ([04:05](#)):

Yeah, so a couple of bills that come to mind. First one is House Bill 4034. This is Oregon's annual reconnect bill or conformity bill. Now, just as a precursor, Oregon is a rolling conformity state, and so technically Oregon doesn't have to do anything as it relates to the changes in federal taxable income that the state picks up, but Oregon does have some static connection points for areas outside of federal taxable income. And so every year the legislature has what we call the reconnect bill to go and update those states from last year to this year. And besides TCJA, Tax Cuts and Jobs Act, there really hasn't been major conformity conversations in Oregon really for the last decade or so, absent TCJA. There was a little bit during the COVID relief packages, but those fuzzled out very quickly in the legislature and the legislature didn't end up doing anything, whether it was the CARES Act or I believe there was some tax changes in ARPA, Oregon just stayed with the flock with those changes.

([05:13](#)):

But now with Congress going and having some serious conversations about changing the expensing rules for research activities or reviving the full expensing or bonus depreciation rules from the Tax Cuts and Jobs Act, they certainly have the attention of democratic lawmakers and certainly progressive lawmakers that are very sensitive to anything that could impact state revenues. So that's House Bill 4034, and we actually haven't seen, I would argue, any real material activity on that one besides the state CPA's Association coming in and giving a presentation. But this is one of those issues where just because you're not seeing a lot of committee hearing activity doesn't that the conversations aren't happening. It's actually one of the bigger behind the scenes conversations right now.

Nikki Dobay ([06:02](#)):

And I think one thing we should make sure that listeners know, and especially if we have some of our friends in the legislature listening to this, is that some of the big changes that would have a revenue impact that are being proposed at the federal level, these are timing issues. They would impact Oregon revenue in the near term. In the long term, those things smooth themselves out. So I think it's really important for folks to look at the big picture when we're talking about reconnect and think about these ideas of why do we reconnect, what are the big reasons that we do? For administrative ease and compliance purposes and to not lose sight of that, as Rosie's think she likes conformity, so I don't know why she's so upset about it, but to not lose sight of those big picture items when we see a potential blip in revenue, which over the long haul will smooth itself out. So what other thoughts do you have on that?

Jeff Newgard ([07:01](#)):

Well, I would say that certainly for the statement that it's primarily a timing issue. I think that that's spot on. Last week we saw the revenue estimate that came from our legislative revenue office, our state revenue officials that work within the legislature. They came out with the impact looking at the next

three budget cycles and for the current budget cycle, if Congress were to pass the law and Oregon didn't make any changes, there is a revenue decline, but in future years it's actually a revenue increase because we're talking about timing.

[\(07:33\)](#):

Now, what's interesting to me there is that right now Oregon is flush with money. Oregon still has a lot of unanticipated revenues coming in the door, but our revenue forecast for the next biennium and following biennium are actually down. And so if you're able to go and have a timing change from the state's perspective, there's actually a benefit there because Oregon would end up picking up some of that "revenue gain". And I say that with air quotes because again, we're talking about timing issues here.

[\(08:01\)](#):

Another thing that comes to mind and is something that I'll admit, I'm a little frustrated about this, but in Oregon last year we had some very big conversations about a research and development tax credit. Oregon is one of 12 states that I'm going to say still doesn't have an R&D tax credit. Last year, the legislature went and created a very small credit for the semiconductor industry but didn't go along with recreating a general business credit like the vast majority of states has. Well, as part of the research expensing conversations, it still seems to be embedded in lawmakers' minds, at least certain lawmakers' minds that we're talking about an incentive here that we're talking about some type of a tax break as it uses a naughty word in politics and that it's about being able to go and make sure that businesses get special treatment for going and buying equipment.

[\(08:53\)](#):

And yes, equipment expensing is part of this, but for me, the way I look at the research expensing conversation is that it's really about parody with the way the other employee expenses are treated. Typically, for sales clerks, customer service employees that are going and working in producing income producing activity, the business is generally able to go and deduct the compensation costs under Section 162. Now, for employees that are working on trying to create new services or products or ways of being able to develop new products through the manufacturing process, those employees aren't actively engaged in producing income for the business today, but they're working to go and figure out ways to produce income for the business in the future. Under 162, those research employees can't be deducted.

[\(09:44\)](#):

Up until the Tax Cuts and Jobs Act and until the changes to 174 went into effect in 2022, there was no difference between the way that the business was able to go and deduct the compensation. It was different mechanisms, different areas in the code that the accountants and tax directors looked at to be able to go and make those deductions. But for 70 years, the taxpayers knew that, okay, there's this parody between regular employees and research employees.

[\(10:15\)](#):

And now with the changes that went into effect under the Tax Cuts and Jobs Act requiring all of these research employee compensation to be capitalized and amortized over five years, the business is effectively paying tax on income that it is paying in compensation to its employees, which from my vantage point just completely violates one of the guiding tenants of tax policy, especially as we think about how the tax system looks at employee compensation while trying to figure out what is income. And on top of that, we have an inequity here where you have two different types of employees that are very active in the business that are working to produce income one today, one tomorrow, that there isn't this parody in terms of how the business goes and deducts those expenses.

[\(11:04\)](#):

And so the way that I look at the changes that Congress is talking about, yes, full expense bonus depreciation is great, but from a tax fairness side of things, being able to go and have the deductibility of those research expenses really is a matter of fairness.

Nikki Dobay ([11:23](#)):

Jeff, you have a lot of thoughts on that.

Jeff Newgard ([11:26](#)):

I've spent a lot of time thinking about this one lately.

([11:29](#)):

Another bill that I think that you'll want to have on your radar is House Bill 4031.

Nikki Dobay ([11:34](#)):

That one's on mine.

Jeff Newgard ([11:36](#)):

And this is a bill that would go and clarify in state statute that local taxing agencies are exempt from fulfilling public records as it relates to tax information. I think a lot of your listeners will be familiar with at least the general premise of IRC 6103, which is the federal government's taxpayer privacy laws. Since the Nixon years, the taxing agencies can't just willy-nilly go out and hand out tax information, whether it's a return, information from the return, the names of the return, those are considered protected information. You can't go and file a FOIA request to the federal government asking for taxpayer information.

([12:20](#)):

Under 6103, states and localities also can't share that information because it's federally protected and they're under information sharing agreements with the IRS that allow the state and local taxing authorities to be able to access audit information, tax form information, and so much more out there that helps them be able to implement their tax systems. So given that, there was this, some would say ambiguity, some would say gray area, perhaps the two mean thing, in Oregon law where there wasn't a clear exemption from public records on the local taxing authority piece, and a local news organization recently issued a public records request to the city of Portland's revenue division asking for the names and amounts paid for the city's gross receipts tax called the Portland Clean Energy Surcharge. And the city, in my mind, appropriately denied that request, but now it's tied up in litigation.

([13:20](#)):

Well, the city, the business community, and many others are going to the legislature this year saying, Hey, we have a problem. There's an emergency here because of the lack of clarity. And keep in mind that if the city goes and runs afoul of that information sharing agreement that it has with the IRS, there's a lot at stake there. If Portland loses its access to federal taxing information and because the city of Portland is a creature of the state, Oregon could also be on the line there too. In Oregon, yes, we have the corporate activity tax. Yes, we have some selective sales taxes. The income tax is still what generates the vast majority of revenue for our general fund. If the state loses its information sharing agreements or if the feds start going and penalizing the state for breaching these privacy laws, the state budget could be in the world of hurt.

([14:18](#)):

And so right now, the House Revenue Committee is flushing out the language to be able to clarify the local exemption for public records. And so that's another one that's on my radar.

Nikki Dobay ([14:30](#)):

Yeah. I-

Jeff Newgard ([14:30](#)):

You're finding me fired up this morning, Nikki.

Nikki Dobay ([14:33](#)):

Well, and I have some thoughts on this one. First of all, I'm going to out the news publication that is going after taxpayer information as Oregon Public Broadcasting. I was also very disappointed to see them at a public hearing last week on this bill in opposition because the bill as drafted would simply ensure in Oregon statute that any local taxes have the same confidentiality requirements as are imposed at the state level. And again, we think, and I think a lot of us think those federal protections are also out there, but many states taken belt and suspenders approach to this and also have state statutory provisions, which Oregon does, and apparently the city has been trying for several years to get state statutes that also provide them with explicit confidentiality provisions. And so that's all that we're working on.

([15:35](#)):

What's going on in Portland right now is just really crazy and sad to my mind because OPB, this news organization claims they want to run a story about how the city is mismanaging all of these funds, all of this revenue that's being brought in through the clean energy surcharge. Well, they can do that by requesting the number of taxpayers that pay it if they really need that or just the sheer amount, the aggregate amount of tax that's coming in, and they can run with that and talk about how the city's not spending the money. Yeah, that's a great story. But you don't need, you do not need specific taxpayer names and the amount of tax they're paying to make that point. So to me, they're being very disingenuous about this and they're really pushing on an issue that taxpayers and I think everybody has felt very strongly about for many years.

([16:32](#)):

I'll also say the policymakers seem to get this point and what seems to be driving it home is that what OPB is requesting, they could request for individuals because essentially all of the arguments that they've made for purposes of the clean energy surcharge would equally be applicable to any individual taxpayer. And so do you want your individual taxpayer information out there? I think that's a question that the legislators will have to decide, but they seem to really get the issue, and I hope that we can accomplish this one during the short session. But Portland's a whole different issue, so we've got a whole different podcast on that.

Jeff Newgard ([17:16](#)):

Well, I would say that there's a very recent news story that I think also draws attention to some of this too. If you think back, I believe it was either in early 23 or late 2022 where somebody leaked taxpayer information to ProPublica going and divulging various sensitive tax information for some of the country's wealthiest people. And from what I've read, there were tens of thousands of tax returns that were shared as part of that. So it's not just the exclusive 10, 15 that were mentioned in the articles, that there was a lot of information breached as part of that. And earlier this year, once it became known who the

leaker was, we saw Section 6103 actually be enforced in the criminal provisions under that being enforced. I believe the contractor that leaked that information is facing five years in prison because of it.

[\(18:09\)](#):

And so if we go and take that story and we go and apply it to the situation in Portland, whoever it is at the Portland Revenue Division, if a court goes and requires the revenue division officials to go and fulfill that public records request, under Oregon Public Records law, if the city is found in violation of Section 6103 and IRS and the federal government goes and cracks down on that, that revenue official could be facing five years in prison, which is something that the revenue division wants to be able to go and protect its employees.

Nikki Dobay [\(18:44\)](#):

Yeah, I think that's right. And that argument has definitely been made that there are risks for the city employees. And I would also say that the city has been very strong on this issue in the sense that they have been working to protect taxpayer information with this request that OPB put forth. So all right, we're both riled up and Frankie's playing with some weird thing. I don't know, so sorry about the background noise, but any other bills that we need to have on our radar? I think there's one that deals with tax court jurisdictional issues.

Jeff Newgard [\(19:20\)](#):

So one thing that comes up fairly regularly during the short session, as part of having this truncated form of our regular five month session, not only are the deadlines much sooner, but there's also the strict imposition of bill limits on legislators. During the long session, lawmakers can essentially introduced unlimited bills at least for a certain point of time. During the short session, each member gets two bills, each committee gets three bills, and so to be able to go and have tax conversations, there's so many issues out there in so many different other different policy and budget arenas that we don't see a lot of one-off tax bills.

[\(20:03\)](#):

But in the Senate Finance and Revenue Committee, and this is normal, this isn't a, oh, it's not a five arm fire or anything, this just happens, the Senate Finance and Revenue Committee introduced an omnibus bill with the broadest relating to clause possible, relating to tax laws of the state of Oregon. So you could basically fit just about anything into that bill.

[\(20:24\)](#):

And one of the topics that's coming up in that conversation is some clarifications around a bill that was enacted last year, House Bill 2976, 2576 I believe was the bill number that went and directed local income taxes to the Oregon's tax court. Oregon has this jurisdictional court specifically for taxes, but under the existing laws before last year, local income taxes, there's five different income taxes in the Portland metro area. Those cases would actually go to the circuit court instead of the court that the state has designated for taxes. So last year the legislature went and redirected those cases to the tax court.

[\(21:09\)](#):

Now, Portland Revenue Division is actually coming to the legislature cleaning up some of the language after working with the tax court judge and administrator. And as part of that, they're also looking at going and expanding that jurisdiction not just from income taxes, but giving concurrent jurisdiction to all local taxes. So making it very clear that if there's issues relating to the city's gross receipts tax or the

Oregon Portland has, I believe it was the nation's first CEO surcharge. If it wasn't the first, then it was the second.

Nikki Dobay ([21:40](#)):

It was definitely the first.

Jeff Newgard ([21:44](#)):

I'm of the mind that those topics were already in the jurisdiction of the tax court under last year's bill because in the funky way that Portland arranges its tax systems, everything that isn't property tax or transient lodging tax is created as this sub-component of the city's business license tax, which is an income tax. And so the city's gross receipts tax is actually a surcharge on the business income tax return. The CEO surcharge is something that's embedded within the business income tax return.

([22:18](#)):

And so by going and saying that all local income taxes go to the Oregon Tax Court, I think that it covers all of those, but I also don't mind just having the clarity to know for sure. It's nice to see that the city also wants those cases to go before the tax court, and I think it's going to end up saving taxpayers, state or the local government money because Nikki, you know this far better than I do, you end up having to go and explain the inner workings and the principles of nuanced and dense tax issues to a general court. Whereas if you go to a magistrate that's specifically in the tax world or a judge that's specifically a trained tax attorney with trained tax attorneys working for them, you save a lot of time.

Nikki Dobay ([23:06](#)):

Yeah. And I think this bill will also save a lot of time and resources because I can imagine a world in which the city attorneys, to your point, I think a lot of the folks at the revenue division are very favorable towards the tax court hearing these cases because of their tax expertise. But you could see when the litigators, maybe the non-tax folks get their hands on it and they see a juicy procedural issue, and a taxpayer had filed in tax court for let's say the clean energy surcharge, the city would have used all of the litigation tools in their toolbox and there would've been a significant procedural battle that some taxpayer would've had to have put resources into.

([23:52](#)):

So I think this will just clarify a lot. The tax court's also been very involved. So I think to the extent there's a lot of eyes that have been on this to make sure that all of the procedural boxes have been checked so that we really know the path going forward. So that's not to say there probably won't be a couple fights here or there, but I hope that this buttons it up and will make things just more clear going forward.

Jeff Newgard ([24:21](#)):

Well, and there's always going to be those fights. I think the bigger question, and I don't even know if it's really a question at this point, is what's the appropriate venue to have those fights? And it really seems like there's alignment between taxpayers, the attorneys, and the local governments that the tax court having concurrent jurisdiction on all of these issues simply just makes sense.

Nikki Dobay ([24:44](#)):

Yeah. And it's also good to have one place we can look at precedent and think through the substantive issues, so. Well, the time is flying, so Jeff, we have to talk a little bit about, I know you mentioned a big



philosophical question. We don't have that much time to get into a big philosophical question at this time, but give us a little flavor for the article and maybe we can actually just come back for a whole podcast on that. But what's going on in the legislature? What's the undertone that was the impetus for this article?

Jeff Newgard ([25:18](#)):

So in the 1990s, Oregon voters actually went and put into the state constitutional requirement like many other states during that era, during that anti-tax era going and requiring an enhanced vote threshold for the legislature to go and pass bills for raising revenue tax increases. Since the inception of that constitutional amendment up until, I'll say 2000, 2005, well actually I'll say really till 2015, the way that the legislative attorneys approached those conversations around bills for raising revenue was to just be very diligent that if something raised taxes and has the common sense way of thinking about the term that the super majority requirement applied.

[\(26:02\)](#):

Then in 2005 and 2015, there were these court cases that went and created some new ground rules for determining when the rules apply. There was one case in the 2005 case *Bobo v. Kulongoski* went and said that the bill first has to bring new money or money into the treasury, and if it does, then it also needs to have the essential features of tax. The court didn't go into any detail elaborating on what those essential features were, just left that open.

[\(26:32\)](#):

Then in 2015, the Oregon Supreme Court came down and said that in order for a bill to have those essential features, essentially it needs to be a tax levied rate, so you need to go and increase the rate of an existing tax or create a new tax with a rate. That fundamentally changed the way that the legislature thought about the rules for raising revenue. It opened the door for anything that could be considered regulating the tax base, like going and adding new taxpayers into the tax base are going and changing the rules that govern the tax base. Conformity is a great example of that and be able to do that on a simple majority vote.

[\(27:11\)](#):

Now in the last year, we've seen some very creative thinking come up as part of these super majority workarounds where some lawmakers were saying that they could go and they went and they raised the rate of a tax for some taxpayers. We know where this goes, go and raise the rate of the tax rate on larger taxpayers to go and do tax cuts for either middle class, lower income individuals or small businesses. And so long as that it was revenue neutral that it wouldn't trigger the three-fifths vote, which from our interpretation of the constitution, there's nothing that allows that. And if you go and look in the case law, it's actually very clear that the revenue effect of a bill doesn't determine for constitutional purposes, whether it's a bill for raising revenue, it comes down to do you have a tax with a rate that's being increased to the creation of a new tax with a rate?

[\(28:04\)](#):

And so that was really the impetus for this article. There were so many conversations happening about how can the legislature go and twist the rules to be able to go in and avoid that super majority requirement that it felt necessary to have something in writing that goes and digs into the analytical framework that the courts has provided, the history, the arguments for why we think this novel creative theory just simply wouldn't pass muster. And it's an article that I'm pretty proud of.

Nikki Dobay ([28:38](#)):



Well, it's a great article and we'll definitely link it in the show notes. Do you think that we've stopped all those conversations or is this something that we need to continue to worry about in the future?

Jeff Newgard ([28:52](#)):

I don't think that there will be a day in my life where I don't worry about it. I do think that the article is putting a pause on some of those conversations. There were some conversations heading into the short session about using this revenue neutral theory to go and balance out the state's mild tax for freights and commercial vehicles. Up until last week, there was a lot of talk about going and lowering the rate for one class to increase the rate on the other to be able to go and provide equilibrium, which our constitution requires road users to pay commensurate with their road usage. And there was some studies that showed that that wasn't the case. And so our transportation policy people are trying to balance that out and they're trying to figure out how to do that without triggering a budget shortfall for the transportation budget.

([29:47](#)):

And up until last week, it really seemed like that was the direction that they were going to go, that they were going to go and try to do this workaround method to go and balance that out. But our article published and within a couple of days I started then hearing that legislative lawyers were no longer singing the same tune as they did last year when it was over the corporate activity tax and changing rates. And so I'm not going to go and say this mission is over. It's probably nowhere close to being over, but it's a big step and I really hope that people read the article if you're interested in Oregon politics and Oregon taxation, because this really is the bedrock for the political fights that we end up having here in the state.

Nikki Dobay ([30:31](#)):

Well, Jeff, you've given us a lot to think about, and I'm sure we'll have a few more bumps in the road before the end of this legislative session. So probably be back next month to get a postmortem of what happened and where we landed on all these issues. But before I let you go, we've got to do a surprise non-tax question. You've heard my wonderful dogs in the background. Frankie is a four and a half month old puppy, has definitely been trying my patience these days. So I'm going to ask you a dog question because I've been really trying to think about what are the things I love about my dogs.

Jeff Newgard ([31:07](#)):

Let's go.

Nikki Dobay ([31:08](#)):

So what's your favorite thing that you're doing with your dogs these days? So I'll let you know from our end, it's been fun to have two dogs as crazy as having this little puppy is, but we're in Ben and we had had a lot of snow recently. And so Frankie, the four and a half month old really loves the snow. So it's been super fun to see her out in the snow. Just it's so deep she's swimming through it, but she's just a lot of fun to watch out there and she's having a lot of fun running around and chasing Rosie and doing all the snow dog stuff. So what's going on with your dogs? What are you having fun with them on or what are you guys doing lately?

Jeff Newgard ([31:53](#)):

One of the funnest things with my dogs right now, and I have two Australian shepherds. I have two 6-year-old Australian shepherds and I also have a 2-year-old daughter in my house. So there is a lot of energy.

Nikki Dobay ([32:05](#)):

There's a lot of things.

Jeff Newgard ([32:05](#)):

With the way that my main computer is set up for Zoom and video calls, I often can see out through the windows of my office. And one thing that's just really fun to me is I will see for five minutes the dogs will be chasing my daughter around the house, but then all of a sudden they'll switch and then my daughter is chasing the dogs and it will go on for half hour, 45 minutes and it's a lot of fun and they're wearing each other out and knocking me out. And so I have to embrace it.

Nikki Dobay ([32:37](#)):

That sounds like that's pretty good because Rosie and Frankie do that, but then having a two-year-old in the mix must also make it a lot of fun to watch. So it's good they're all providing mutual exercise for one another. So thank you again Jeff.

Jeff Newgard ([32:53](#)):

I have thought about getting a treadmill for all three of them, but I don't know how that would work out.

Nikki Dobay ([32:59](#)):

All right, we'll come back to that on the next podcast. Well, thank you again, Jeff for joining me and thank you to the listeners for tuning in. Apologies for the crazy barking or weird noises in the background. She will grow up soon I hope. And we will link that article in the show notes. If you do have any comments or questions for Jeff or I, please don't hesitate to reach out. And thank you for listening and we'll be back in a few weeks on Gettin Salty.