

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

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Samantha Trenchs ([00:16](#)):

And they had all of these different sessions to talk about different subspecialties that the school was offering, but I actually mixed up the times for the sessions and I ended up at a session on state and local tax.

Nikki Dobay ([00:34](#)):

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 to be joined today by a colleague here at GT, Samantha Trenchs, who recently joined us. Sam is of council in our Washington DC office, but coming to us remotely from Charleston, South Carolina. Sam, thank you so much for joining me.

Samantha Trenchs ([01:04](#)):

Yeah, thanks Nikki. It's a pleasure to be here today.

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

So Sam, you're new to the podcast. So the first question I have to ask you is, how did you get into state and local tax?

Samantha Trenchs ([01:16](#)):

Actually, that's kind of a funny question to ask because I actually got into state and local tax totally by accident. So when I was at Georgetown Law doing my tax LLM, it was orientation week and they had all of these different sessions to talk about different subspecialties that the school was offering. At the time, I thought international tax was probably the way to go. I thought it was maybe a little bit-

Nikki Dobay ([01:40](#)):

Everybody does.

Samantha Trenchs ([01:41](#)):

... glamorous, so it might be fun to be jetting off to all these foreign places. But I actually mixed up the times for the sessions and I ended up at a session on state and local tax. The presenters were super engaging and they started to talk about all these different constitutional issues that arise, and all these different taxes and how businesses really need help sorting that out and how the law is always a changing landscape in state and local tax. And it all seems really interesting and I just loved that there were all these different legal arguments with constitutional issues and the federal issues that we deal with all the time now and just not having to look at the same tax code provisions all the time. So after that, I just went all in for state and local tax and really haven't looked back since then.

Nikki Dobay ([02:37](#)):

Well, that's a great story and you're in a very good company because I think I've only had two guests that have been thinking about tax law since they were very young. So most of us just happened upon this, and I love your story. So Sam, you're newer to GT, but I want the listeners to know a little bit about your practice and where you've really focused because definitely not new to the SALT area and you and I have... We're colleagues even before you joined GT and I'm just so happy that you're here. So talk a little bit about your practice and where you like to focus or where you have focused or what you want listeners to know.

Samantha Trencs ([03:16](#)):

Yeah, for sure. After my LLM, I went straight to work at Eversheds Sutherland and I was there in their state and local tax practice for about eight years before I headed to come work with you here about three weeks ago. So it's definitely been a whirlwind since joining. In my practice, I've done a little bit of everything, but my primary focus has been more on the indirect tax side, so a lot of sales and use tax I've done in my practice. I love focusing on that. I like doing work on sales and use tax audits, helping with taxability studies, working on marketplace issues and remote seller issues, nexus type of things. And then the second-biggest part of my practice has definitely been on the legislative and policy side, which is what I love and what you do and it's been so great to be able to continue to work with you and do all the great things that we've been doing for clients on that front.

Nikki Dobay ([04:16](#)):

Well thank you for that overview. And yeah, and again, I'm super thrilled to have you because legislation on the state and local tax front, these sessions are fast and furious and it's always good to have somebody to, I'll say first commiserate with, Sam and I were just on a call bright and early this morning trying to wade through some legislative language and it's always good to have two sets of eyes on these things and so always a pleasure to work with you on this stuff. Well Sam, we're going to get into just a little potpourri, hot topics of what we're seeing on the policy front, legislative front in 2024. I think we were talking yesterday or something about, wow, it was like the beginning of the week or the beginning of the session seemed kind of sleepy and now it's like all of the sudden we're a little bit off to the races.

Samantha Trencs ([05:09](#)):

I know, it's been so crazy. We thought, "Oh, this is going to be such a slow year." Both of us are talking about, "Wait, there are things happening, there's a lot of things happening." Just it seems like almost all of the sudden.

Nikki Dobay ([05:22](#)):

Yeah, and some of it kind of just seems to have come out of left field all the sudden. And this is by no means a comprehensive overview, but we thought it'd be great to get together and just talk about some of the things we've been focusing on. So Virginia, I think Virginia is the one that really has taken us down a rabbit hole this week. So tell us about what's been going on in Virginia and what you have been looking at.

Samantha Trencs ([05:47](#)):

Yeah, Virginia, I think one of the big things is that they're looking to tax digital personal property. There's been pushes over the last few years by different states to expand their sales and use tax base to encompass digital property. And here they are looking at expanding their definition of tangible personal property to add in this digital personal property aspect. And then they're also taking a look at taxing

several new services, software application services, computer-related services, website hosting and design, data storage and streaming services. The thing that's a little bit problematic is it's in the budget bill right now and there's not definitions for some of these terms for things like computer-related service, which what could that be? We've been talking about this. It could encompass so many different things and just not having definitions is definitely problematic.

[\(06:46\)](#):

And then there's also been this question about whether there's going to be a business input exemption or not in the final budget. It seemed like in the beginning the House's version of the budget had a B2B exemption and the Senate's version did not. The governor's plan had it taxing digital products, but you had B2B exemption in there and now it looks like they just passed a conference report yesterday and it came out and it looks like they're going with the House's version to have this partial B2B exemption in there. And it looks like the General Assembly is expected to approve its budget on Saturday, so things are moving really quickly and typically the Virginia General Assembly tends to hammer things out in its final budget proposal really in the last few seconds of the session. So we'll just have to really see until then to make sure what's in and what's out.

Nikki Dobay [\(07:42\)](#):

Yeah, and Virginia, as we were commiserating this morning, it's one of the more challenging states to understand and when you're reading through things what exactly is happening because all the bills have a House bill and a Senate bill and then they get reconciled and the reconciliation to me, instead of just the straight red line that you can actually [inaudible 00:08:06].

Samantha Trens [\(08:06\)](#):

Yeah, and a whole different website that they have that's just completely separate for it. So yeah, there's definitely been just a lot of drama in Virginia too. The news is picking up a lot about the funding for the basketball/hockey arena for the Wizards and for the Caps, that the Governor has been really pushing for that was originally in the budget, now it looks like it's out. So definitely I'm sure that our listeners are going to see some coverage on that aspect. That seems to be kind of dominating the news in terms of the budget discussions right now.

Nikki Dobay [\(08:40\)](#):

For our listeners, we are recording this before their session is set to wrap, so we'll include in the show notes what the final bill that was passed, the budget bill, so we'll see if that's the end the story on this or if there's any additional activity that takes place. I know there's potentials for vetoes and then veto sessions and all sorts of things, rumors that we've been hearing about Virginia. So I think definitely a state to keep an eye on if you are concerned about digital goods and products and personal property. So speaking of those things, we've now seen legislation coming out of Maryland on this.

Samantha Trens [\(09:24\)](#):

I know, so crazy too. It looks like states want a lot more cash. So we have seen that Maryland has yet again attempted to expand their sales tax base to cover pretty much every service unless there's a specific carve out. So the definition of taxable service in this bill, it's HB1515, it's super, super broad. It's any activity engaged in for a buyer for consideration, and then they really only have a few exceptions in there for things like healthcare and education services, we aren't seeing any sort of B2B carve out in there, so no exception for business inputs. S.

[\(10:07\)](#):

O the bill seems to be pretty wide-reaching, kind of taking a play out of the books of a state like Hawaii where everything is in, unless it's specifically out. They tried this in 2020 right before the world came to a stop, but they ended up backing out of taxing all services. There was a big push from the business community and a lot of different interested individuals to kind of put a pause to that and then instead they went with the taxing digital products and coming up with their crazy digital advertising service tax instead. So we know that Maryland definitely likes to come up with some different strategies for expanding their tax base.

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

Well, it's also interesting because I do wonder, and there's a hearing on this next week, I believe it is next Wednesday, so after the podcast comes out, and there's testimony that's expected, so it will be interesting to see what happens at that hearing. We hearing this seems to be a proposal to be taken seriously, but based on the other expansions in 2021 after the veto session with the digital advertising tax and digital products, this to me is just a little bit of a head-scratcher. I mean, yes, there are other services that could be picked up, but how is that going to play out with those prior proposals that are currently in law?

Samantha Trens ([11:38](#)):

Yeah, and this is not looking just at a digital product, this is everything. So this is just going to make everything more expensive for the average buyer in Maryland now, and for Maryland businesses.

Nikki Dobay ([11:51](#)):

Yeah, Maryland is really shaking the couch cushions and trying to get money from any source they can find.

Samantha Trens ([11:59](#)):

Yeah, they have some other super unique proposals too, like a social media surcharge, sales tax on AI. And then I know we've really been following their worldwide combined reporting bill as well, so that's on the table. And so definitely keeping an eye on all of these different crazy proposals that are coming out of the state.

Nikki Dobay ([12:22](#)):

All right, so Virginia and Maryland two states to really keep an eye on. What other states on the East coast are you paying attention to right now?

Samantha Trens ([12:32](#)):

I would probably, for our listeners point out New Jersey. So there's kind of been a turn of events recently in New Jersey, so the governor there, he's flip-flopped on their 2.5% corporate business tax surtax. So Governor Phil Murphy, he's spoken in the past about allowing this surtax to expire. He said previously last year in his budget blueprint that he wanted to keep New Jersey competitive, allowing the surtax to expire would mean more money for businesses, create jobs, allow businesses to invest in new equipment, saying all of that. And then the surtax recently expired at the beginning of the year, but now Governor Murphy is proposing to completely switch course, completely flip-flop and revive the surtax, but now instead of on a temporary basis, he's proposing for it to be permanent. And he's trying to call it something different this time, so now I think it's being referred to as a corporate transit fee, basically

just a renaming of the same surtax, but because the funds will be earmarked for the New Jersey Transit, it's supposed to be a solution for the fiscal challenges that New Jersey Transit has been facing.

Nikki Dobay ([13:54](#)):

It's so interesting because it seems like there was a lot of progress, the business community was making a lot of progress in New Jersey and there was a very good working relationship where they were getting a lot of input from the business community on these proposals and for this type of changing course, I wonder if there will be some trust lost and what the response will be if that goes through.

Samantha Trencs ([14:22](#)):

Yeah, I think especially when the governor is saying he wants to make New Jersey more competitive and now New Jersey is going to be once again having the highest corporate tax rate in the nation, it's at I think 11.5%. So that doesn't seem very business friendly or want corporations to stay and build and buy equipment and all of these things like they said. So it'll be interesting. I'm sure we'll see some significant pushback from the business community and industry groups. We've already heard of some industry groups already taking meetings with the Governor's office and legislators, so definitely we'll be keeping an eye on that development for sure.

Nikki Dobay ([15:06](#)):

And I know New York always has things happening, although it's pretty quiet right now. Vermont has a worldwide combined reporting bill that's out there, although we keep hearing, well, it's Vermont, so we'll just have to wait and see if anything happens on that one.

Samantha Trencs ([15:25](#)):

Yeah, I'm definitely keeping an eye. They've talked about maybe introducing legislation to decouple from GILTI, those sort of things. We haven't seen any language yet, I don't think on that front yet, so just keeping an eye on Vermont. But let's maybe switch more to West Coast. I know that there's a lot going on on West Coast and as you probably say, West Coast Best Coast, but is that the situation right now?

Nikki Dobay ([15:54](#)):

Well, I think almost never when it comes to taxes. So first California, we kind of have some breaking news that we got last week that the chair of the, I believe it's now called the Committee on, it's the Senate Standing Committee on Revenue and Taxation. There were some changes with the senate committee that covered taxes. So this kind of new old committee, which is chaired by Senator Glazer, he is interested in a digital ad tax proposal. And so next Wednesday there is going to be an informational hearing. My understanding is that he really wanted to put language out there and try to move a bill, but he did get feedback that that would probably create a lot of attention and get a lot of folks riled up.

([16:52](#)):

So instead he has opted to hold an informational hearing. I am going to be a panelist and will be participating in that informational hearing as a representative of the business community. Professor Darien Shanske is going to also be on the panel and at this point, not sure who else will be on the panel, although I've heard that the chair's interested in getting some folks from the journalism community to come and be a part of that panel. Our understanding is that the focus of this is to create a fund to support local journalism. Sam, I think you and I, or you had some reactions that it seems a little troubling that they're going after the digital advertising format to support print journalism.

Samantha Trens ([17:48](#)):

Yeah. I'm so glad that you're going to be able to talk to the committee about all of the challenges already. We're seeing big challenges in Maryland and how this is just not a good idea, so it'll be really great that you can kind of voice concerns from our clients and the business community at large.

Nikki Dobay ([18:09](#)):

Yeah, I mean, I just think California floating this, especially when there's so much litigation happening in Maryland and-

Samantha Trens ([18:19](#)):

Do they know if it's going to be more of a Maryland style digital advertising tax or are they going more along the New York Krueger data type way?

Nikki Dobay ([18:29](#)):

Yeah, so what I've heard the meeting is about is a Maryland style digital advertising tax, and then also they've pointed to the Canadian digital services tax, which my understanding of those is that those are very similar to Maryland's version and so not these data collection type concepts. But the problem with looking to what some of these foreign countries are doing is Canada doesn't have an ITFA problem. They don't have ITFA. So even though that might seem like, "Oh, let's look at that as a proposal," bringing something like that to the US-

Samantha Trens ([19:08](#)):

You just can't do it.

Nikki Dobay ([19:09](#)):

You just can't do it.

Samantha Trens ([19:10](#)):

We have specific laws here.

Nikki Dobay ([19:12](#)):

Exactly, exactly. And one of the things as I've been thinking about testimony is just really trying to get the, because I think one thing that legislators don't understand is there's already tax systems that tax this stuff. So these revenues, these receipts are taxed by the corporate income tax, and so there's a mechanism for California to tax these. Other states also tax them under other tax regimes, but we have tax systems in place and why do we need to create these new-

Samantha Trens ([19:53](#)):

Yeah, this isn't revenue that's not being taxed. It's not like they're trying to fight some "loophole". So that'll be interesting... Hopefully that will resonate with the committee.

Nikki Dobay ([20:05](#)):

So we'll definitely provide more on this after the hearing, which will be Wednesday, March 13th at 9:30 a.m. Pacific time. So more to come on that. In California we've also heard, I'm using air quotes and I do

not want to set off any alarm bells, there's been rumors of some sort of worldwide combined reporting, mandatory worldwide combined reporting. I've not been able to verify that with anybody on the ground, but those have been the rumors that we've been hearing, but nothing tangible that we can point to on that front.

Samantha Trens ([20:44](#)):

Yeah, I guess California is having some revenue problems, so I guess they're just trying to throw things against the wall and see maybe what could stick. I mean, what were the recent estimates of their deficit, 60 billion? Something along those lines.

Nikki Dobay ([21:00](#)):

They're very large. I know every time there's a new revenue estimate they get bigger, I think it's triple what they thought it was going to be. But initially what we were hearing is that the governor still was not wanting to create or impose any new taxes and that what was being considered by the governor was just looking at the NOL suspension and using that as a tool to try to control some of the shortfalls. So that's what we were hearing out of the governor's office on the tax front, but now it seems like maybe some of the legislators have different ideas. So again, our sleepy year is getting not so sleepy.

Samantha Trens ([21:47](#)):

Busier and busier by the day.

Nikki Dobay ([21:50](#)):

Yeah. So then moving up the West Coast, just a few other quick reports. Oregon should be wrapping up its session today, and not a whole lot to report on the tax front. I would say a couple business favorable tax things that came out of the session.

Samantha Trens ([22:08](#)):

Well, that's refreshing.

Nikki Dobay ([22:09](#)):

I know, we don't hear that much.

Samantha Trens ([22:14](#)):

Especially in Oregon.

Nikki Dobay ([22:16](#)):

So the first one, HB4031, this has passed both chambers, expected that the governor will sign it. And this was really a bill that was... Apparently this concept has been around for about eight or nine years. The localities don't have anything in state statute that provides taxpayer confidentiality protections. They have local ordinances that really say that the local agencies can't provide confidential taxpayer information, similar to the state or the federal government, but nothing was in state statute here in Oregon. Oregon Public Broadcasting had put in a public records request back in November related to the Portland Clean Energy Surcharge, and they wanted specific taxpayer names and the amount of tax that they were paying. Happily, the city was really engaged in trying to protect taxpayer information and the business [inaudible 00:23:17]-

Samantha Trencs ([23:17](#)):

That's good at least, they didn't quickly just hand it all over.

Nikki Dobay ([23:19](#)):

Yeah, yeah. The business community kind of came in to back them up. And I was working with the Oregon Business and Industry, OBI, and they really led the charge on this bill to get in state statute clarification that the localities, the local governments are also required to protect confidential taxpayer information. So this was [inaudible 00:23:44].

Samantha Trencs ([23:44](#)):

That's great. It seems like was probably the intent in the beginning, it just maybe had been an oversight by just not adding in that local piece in the statute.

Nikki Dobay ([23:52](#)):

Yeah, and Oregon, many states have very strong public records acts and it's all about transparency, but there is a fine line between transparency and confidential taxpayer information. This bill was a bigger fight than I would've have hoped. OPB, Oregon Public Broadcasting really dug in their heels on the public records aspect and we had to duke it out with them, but at the end of the day, we got the bill across the finish line and we think it really does provide some good protection.

Samantha Trencs ([24:30](#)):

That's really great. Glad you could be involved and help facilitate that to make it out of the legislature.

Nikki Dobay ([24:37](#)):

Yeah. And I was a little disappointed in my public broadcasting station here in Oregon for going down this path. I had to do some soul-searching with them. The other bill I'd mention is HB2576. This was our big omnibus tax bill, nothing super interesting for our listeners. With the one exception of last year there was a bill that provided jurisdiction to the tax court over local income tax issues. And actually the tax court itself wanted to expand that, and so there was a lot of conversations with the localities and the business community, and this bill expands the tax court's jurisdiction for all local taxes.

Samantha Trencs ([25:28](#)):

Okay, where did they go before? Who had jurisdiction before?

Nikki Dobay ([25:32](#)):

Previously they would go to the local circuit court of that jurisdiction. So in Portland, for example, all the tax issues generally went to the Multnomah County Circuit Court. And so really the goal was to get tax issues in front of the court, the specialty court with specialized tax knowledge. So the provisions made it in, the bill passed, and this one should go into effect sometime in June.

Samantha Trencs ([25:58](#)):

Well, that's great. That sounds like some smart legislation too.

Nikki Dobay ([26:01](#)):



Right? I know, it's Oregon and so confusing. So yeah, a few good things coming out of Oregon. And then the last thing I'll report is out of Washington there, the legislature, there's several ballot initiatives that are being pushed really to kind of push back on some of the more progressive things that have come out on the tax front. There was an initiative that would've repealed the capital gains tax. And in Washington, if there's an initiative, the legislature can actually choose to take up those issues and just pass legislation. The legislature passed on that one. So the repeal of the capital gains tax looks like it will be on the November ballot in Washington, but the legislature did take up another ballot initiative that would prohibit the state or localities from imposing income taxes.

[\(26:53\)](#):

So I haven't looked at the specific language of this one, but Washington has a very sordid history on this front. They said they'd have a constitutional protection, but it really relates to their uniformity clause and income, an old case that treated income as property. So this is legislation that prohibits the state or localities from imposing income taxes. So Washington likes to say everything's an excise tax, so I don't know at the end of the day how much it really protects things, but pretty significant that the legislature took up that specific issue. Those are kind of the big topics out here, Sam, any other hot topics, funny things you've been paying attention to in the state and local tax realm?

Samantha Trens [\(27:41\)](#):

I mean, I think we covered most of the big ones that I've really been paying attention to. It seems like the states are keeping us on our toes. This session seems like we're definitely going to be watching everything right to the end to see what passes and what doesn't.

Nikki Dobay [\(27:58\)](#):

Yeah, and I think unfortunately it's only going to get worse for us because we've been watching more and more states, their revenues are starting to dip, and I think next year the other shoe is really going to drop.

Samantha Trens [\(28:11\)](#):

I agree. Yes, next year is going to be, I think a big year.

Nikki Dobay [\(28:17\)](#):

All right, well we'll be chatting more about that. So I can't let you go without a surprise non-tax question.

Samantha Trens [\(28:24\)](#):

Okay.

Nikki Dobay [\(28:24\)](#):

So I don't have a great answer to this question, but I'm really curious about yours. So you live in Charleston, South Carolina, I've only been there once and I think I was only there for maybe one night for an NCSL meeting several years ago. And so my question is, what's your favorite thing to do in Charleston? I don't feel like I had enough time there to actually do anything super fun. I was staying downtown, so I did go and I went on a little run around the waterfront and it's really beautiful and I think we had a good dinner there. But as a native, as a person that resides there, what is your favorite thing to do?

Samantha Trencs ([29:12](#)):

I definitely think if it's your first time visiting, you have to go downtown to the neighborhood we call South of Broad. So it's just the neighborhood that's South of Broad Street. And yeah, go walk along the waterfront, walk in and out of the neighborhoods to see the beautiful large houses, the Charlestonian style with the side porches and being able to see all of that. Of course, we've done that a lot already.

([29:40](#)):

So my favorite thing is to get out on the water. It's called the low country and there are just so many beautiful creeks to get back in. If you can get out on a boat, we are always seeing dolphins. As you probably know, it gets really hot in the summer. So it's just a nice way to stay cooler and to be able to explore nature. But I always like to encourage people if they can get out on the water and explore all of the different creeks and see the beautiful marshlands, it's an easier way to get to be able to go to the beach too. You can just drive your boat right up onto the beach. So that's definitely my favorite thing to do in Charleston. And then of course, eat. We have just amazing restaurants, so it makes a perfect destination to go to for just a weekend trip.

Nikki Dobay ([30:28](#)):

All right, well I have to get back there because it was lovely and I know I didn't get to enjoy a lot of things. Well, Sam, thank you again for joining me. I know you'll be back because we'll have lots more to talk about. And thank you to the listeners for tuning in, contact information for Sam and me will be in the show notes. We'll also try to provide some updates for those sessions that have wrapped since our recording. So thank you again for being with us and looking forward to being with you in a few weeks on the next, GeTtin' SALTy.