

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

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 am very excited to be back in front of the microphone to discuss all the fun and crazy state and local tax policy issues with some of my best friends and colleagues in the SALT world. So let's get this going.

([00:26](#)):

Today, I am going to be getting SALTy with Morgan Scarborough, VP of Tax Policy at Multi-State Associates, and as many of one of my favorite people to talk SALT policy with. Morgan, if people ran into you and I at a normal party, it would be awful. But when people run into you and I at assault conference, it is amazing. So we have spent a lot of time talking state tax policy and going to Waffle House. This may be a theme. So be ready. And I couldn't think of anyone better to get this podcast off the ground than you. So thank you so much for joining me today.

Morgan Scarborough ([01:02](#)):

Thank you so much, Nikki. I'm so excited to be here. It's a lot of pressure and I will just let the audience know that the other time I tried to do a first thing with Nikki was I took her to Waffle House and it was a disaster. I loved it. She hated it. But we're recovering from that, and this podcast is going to go much better.

Nikki Dobay ([01:19](#)):

I haven't held it against you, so all good there. So Morgan, you and I had a catch up at the end of 2022 about what happened on the legislative side and the policy world last year. And correct me if I'm wrong, but I think the themes were no red wave, a lot of new legislators and the states still had quite a bit of money. Am I missing anything?

Morgan Scarborough ([01:46](#)):

No, that just about sums it up.

Nikki Dobay ([01:48](#)):

All right. So getting into 2023, what's going on? Let's just start with, how many states do we currently have in session at this time?

Morgan Scarborough ([02:01](#)):

Too many. As a person who reads a lot of tax bills, too many. Right now we have 46 states in session. Virginia has adjourned. Alabama and Florida will convene next week, and Louisiana will convene in April.

Nikki Dobay ([02:15](#)):

All right. So back to this theme of a lot of new legislators. Give us the numbers on those again, because that is a pretty insane amount.

Morgan Scarborough ([02:27](#)):

So shockingly, there was never any super clear news about this, or here's the number of new legislators in the states. My colleague Bill Kramer, though, did do some back of the envelope math with the statistics that are out there, and he figures about 1,451 new legislators, which equals about 20% of

legislators are freshman legislators. We saw a interesting trend here where we did see incumbents loose primaries this year, but if you made it through your primary as an incumbent, you had a really, really strong chance only 173 incumbents total lost in their general election. So a shockingly low number lost in the general if they made it through their primary process.

Nikki Dobay ([03:12](#)):

So do you think that's impacted the number of bills that we've seen? And we'll get into the specific numbers, but oftentimes I think, you see a lot of perennial bills that come back and so are we seeing new and crazy ideas now that we have 20% of the folks there are new and haven't lived through this?

Morgan Scarborough ([03:36](#)):

I definitely think we're seeing some experimentation in the tax code, which I don't always love. Here's this cool new unique tax idea. So we are seeing some new ideas. I think we're seeing some new fervor behind some older ideas that are resurfacing. So definitely playing a role in what we're seeing in tax policy this year.

Nikki Dobay ([03:55](#)):

All right. So then what is the number of new bills? How many bills have you read? And we'll also equate that to how many cups of coffee had to have.

Morgan Scarborough ([04:08](#)):

I want you to take a guess how many bills we're tracking for... This is just corporate issues. We track a little individual income tax stuff, but very, very, very small.

Nikki Dobay ([04:19](#)):

Well, I feel like I might have an advantage on this because I've got an inside track, but I know it's well over 3,500.

Morgan Scarborough ([04:27](#)):

Yeah. So we're at about a little over 4,000 tax bills for just the business tax committee. That's certainly not just me. I have some really wonderful colleagues here who share that burden with me. Quite a number.

Nikki Dobay ([04:39](#)):

All right. Okay. So we've got a lot of bills, we have a lot of new legislators. What are the trends? What are we actually seeing? I mean, I guess first, and this I think will be the overarching question and then we can get into some specifics. Have we seen the politics shift? What's going on there?

Morgan Scarborough ([05:01](#)):

So obviously since December we haven't seen a huge shift in the partisan makeup and states, but I think we are, and I know I'm a broken record for anyone who's heard me talk about this issue, but I think it's extremely important and extremely fascinating that we are in a time where we're actively watching politics of both parties shift right now. There was a fascinating article, I think this week in the Wall Street Journal by Governor DeSantis, and I want to quote it because I don't want to take it out of context. This is a direct quote. "The regrettable upshot of the woke attendancy is that publicly traded corporations

have become combatants and battles over American politics and culture, almost invariably sighting with left causes." He then goes on and says, "In this environment, old guard corporate Republicanism isn't up to the task at hand."

[\(05:50\)](#):

So you have a leader in the Republican party, a very popular Republican leader saying, "We have to shift this." The way way we've been treating certain large corporations in our tax code granting credits and incentives. I would say the way you define credits and incentives gets a little bit murky there, but that treatment is not working anymore, and he openly saying that. So we're definitely seeing a continued shift in both the way people are talking about the business community and tax, but also actions following that too. It's not just talk, it's actions as well.

[\(06:28\)](#):

And well, I would say too, we're seeing it on the other side too. It might not be as blatant all the time, but we are seeing this trend of more progressive legislators who are going to battle or might need to go to battle with more moderate governors, need to go to battle in their eyes. Because we're seeing a number of moderate governors, democratic governors in the northeast, I'm thinking like New York, New Jersey, Connecticut, you might not consider them the most moderate governors, but are being fairly fiscally moderate.

[\(06:58\)](#):

They're saying, "We're not going to do new tax increases. We might let a tax surcharge extend, or we might let that ex, but we're not going to do these big huge new revenue increases this year." And progressive legislators pushing back on that and saying, "No, we want to raise taxes. We want to fund these new projects. We believe that raising taxes is important because we believe that there needs to be some accountability in the tax code," is how they're framing these discussions. So on both sides you see a shift and are continuing to see the shift both in tone and in legislation.

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

Well, I think on the first point with respect to the Republicans, and you have said this before, but I also think it is worth putting an even finer point on it. We can no longer expect that if you have Republicans on your revenue committee that they are going to vote against new taxes or for incentive programs. That at one point was a foregone conclusion. And I think that has shifted incredibly. And then to the latter point you made about the other side, we're also seeing this in a state like Oregon. I mean, we've the vice chair of the House Revenue Committee introduce several taxpayer bills and the chair of that committee, a democrat, she is very supportive of these bills.

[\(08:25\)](#):

And I mean, we're talking about a throwback repeal bill that she sees as sound tax policy. And that is a shift that six, seven years ago in Oregon I would not have expected. But she is really grasped and is understanding that it's a small policy shift that really signals a big change in a state like Oregon. And there's some other examples of that. But I think, you're spot on in just how the pendulum is just swinging and will it stay as it swings to one side or will it swing back for another podcast, I suppose.

Morgan Scarborough [\(09:14\)](#):

I agree. It's really fascinating. Not every Republican is a chamber Republican is how I'm thinking about that. And just because you have a moderate democratic governor in office doesn't mean that you're not at risk for tax increases with some of the really progressive members that you have in the legislature. Certainly a change from what we have seen previously.

Nikki Dobay ([09:35](#)):

So Morgan, this is where you're going to, I think burst my bubble because I believe in the principles of sound tax policy and I like to ignore all the politics, but based on this conversation, I really think the politics start to overshadow the principles of sound tax policy. And that's probably how it's always been. I know, but I just can't believe it. But I think what this means is that when you're working on a tax issue, you can't just have your tax experts in the room, you need them in the room. They're very important, but you need the people on the ground that know one, understand these politicians and can help guide you with respect to talking points and how to communicate with this legislator versus that legislator on an issue.

Morgan Scarborough ([10:27](#)):

100%. And that's something that frankly we at multi-state spend a lot of time doing because gone is, if you're trying to manifest this world where you just get a bunch of tax walks in a room and you work out all the administrative details of this provision, it's going to be great. And it's just going to improve the way that you administer your taxes and reduce the complexity there. There's a long way to go in nowhere in an environment like that. It's really politics rules. Everything right now and again, I don't think that that's a new phenomenon like you said, but it is a little bit changing in the tax policy world in particular.

Nikki Dobay ([11:02](#)):

This is not a visual podcast, but Morgan has seen, she's just completely deflated me, so we'll move on. Okay. So other big trends, I have to say, I've continued to be shocked at the rate decreases. I did not expect to continue to see those in the quantity that they are, and they've definitely slowed from 2022. But wow, what are your thoughts on that one?

Morgan Scarborough ([11:33](#)):

Absolutely. I mean, we're seeing a number of states go forward with that right now. So in my mind, if I'm thinking about who next, it's probably Utah. They're pretty much one step away from reducing their corporate rate by, I think it's 0.2 percentage points, 4.85, 4.65, and House Bill 54. Virginia is an interesting state to watch. It's one of those rare states we have here where we have divided government. Obviously we have a Republican governor, but we have a Democratic senate and a Republican house. There was predictably a lot of drama around the budget and how they were going to compromise on that.

([12:08](#)):

The legislature and the governor just agreed on a "skinny budget" recently that didn't tackle a lot of the policy provisions that Governor Youngkin was hoping to tackle, left a couple billion dollars appropriated. Governor Youngkin has suggested that he will bring the legislature back into a special session this year, which I'm sure they're going to love in an election year in Virginia. But there were a couple of corporate provisions including a rate that might go forward in the budget there. We've got a few proposals flying around in Nebraska, potentially one that might go forward in Missouri. Arizona, I'd separate a little bit. They're trying to also pass a corporate cut and I'll spill 2003. That feels a little bit more like a gamble, obviously with new Democratic Governor Hobbs, they're not sure that will go forward, but they're certainly trying. So yeah, it's extremely popular.

Nikki Dobay ([13:01](#)):

Well, I think one difference from 2022 to now on this issue is, as we started off saying, the states still have quite a bit of money, there's exceptions. We saw California dial back and New York dial back, we saw Oregon dial back, although I don't know if you saw the most recent budget, but they dialed up. But we generally still see the states having a lot of money and some of them still taking steps to reduce rates. But what I see emerging in 2023 is they're being much more cautious. So they're holding onto their cash. Even in Oregon, they're not saying, okay, let's go fund all those new programs. We shook the couch cushions and found a little more change. They're being very cautious. So that to me seems to be a definite shift from 2022. Things are still going really, really well, but the states are holding the line.

Morgan Scarborough ([14:03](#)):

I agree. So we went back and looked, and since 2018, 13 states have actually reduced their corporate income tax rates, specifically. A number of those states reduced the rate more than once. But I think what you're saying here is there was this first mover advantage isn't the right way to put it, but states just chomping at the bit had been wanting to reduce their corporate income tax rate for a number of years, really had the surplus to do so moved forward. So I think all of those really eager folks have already done so. The folks who are remaining might still want to do so, but like you said, might just be a little bit more cautious, particularly with a potential downturn. I will say state revenue, like you said, is still very healthy.

([14:45](#)):

And additionally, what's really important is that rainy day funds are very, very well funded, more well funded than they've almost ever been in the past. So in theory, states do have the cushion. If there is an economic downturn that's worse than expected or particularly tough for state revenues, they should have some cushion there to ride it out a little bit.

Nikki Dobay ([15:07](#)):

So one thing that I think the landscape currently really lends itself to is the states looking at potentially administrative issues or things that they can do to help taxpayers with respect to compliance and burdens. And those should be easy wins for the state. So I really do hope that they take this time to, if they need to wait and see if we are going to have an economic downturn or what that's going to look like, but there's still the opportunity to do some things that will help I think taxpayers as well as the states. And I do understand it's incumbent upon the business to community to express needs in that area, but that's one area I do always hope the states will gravitate towards two in these times when they're not being as big and bold on their policy proposals.

Morgan Scarborough ([16:01](#)):

Absolutely, and I really think New Jersey is a great example of that right now. So Governor Murphy gave his budget address this week, and though he didn't mention it in his address and the budget and brief, they basically have a person in there that says, "The administration is committed to working with the legislature on revenue neutral corporate business tax reforms." They particularly mention reducing the rate on guilty. They mention modifying combined reporting, potentially adopting the Finnegan method. There are a couple of things that they're working with folks and with stakeholders to do some revenue neutral reform that's really good for everybody.

Nikki Dobay ([16:39](#)):

So understanding it's still pretty early in the year, and we will continue to see how things unfold over the next three to six months. Let's tick off and rapid fire style some of the big issues, like we haven't seen

any big reform proposals in any of the states. Washington had the margins tax proposal. That's faded away into the night for this session. I think we can say definitely, I'm sure conversations will continue around that. I know you and I have some ideas about maybe ways to improve the B&O tax with the consolidated election proposal, but I'm not seeing any big proposal shifts in any of the states, maybe I missed something.

Morgan Scarborough ([17:26](#)):

No big reforms. I will say the re-emergence of the digital advertised tax is a fascinating trend to watch. I really thought, given everything that's going on in Maryland, all of the litigation, other states would be scared off by that. And they were for a little while. We didn't see any real proposals on this last year. Now we have a couple of states have introduced digital advertising tax. What's more interesting to me is the states that are in introducing this tax on data. So I'm thinking in particular of Senator Krueger's bill in New York. I'm thinking of the bill in Illinois that was introduced by the chair of the finance committee, both having a tax on data. The taxes on data aren't that surprising to me. Seeing the identical advertising tax language come back, has been a little bit of a surprise to me. I don't know about you.

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

Yeah. I was surprised that I think you're referring to the Connecticut bill in particular where it's really the exact same proposal as Maryland. And yeah, that's definitely a head scratcher. And as with you not super surprised to see these data collection tax bills being proposed. And as I've continued to noodle on those bills, I really am just going back to this idea about if these states are just so offended by these big companies having "excessive profits," now we're talking about excessive profits versus paying your fair share. We don't know what these terms mean. They're very subjective, but if that's the problem, fix the corporate income tax. These states just do not need these new regimes.

([19:08](#)):

And then if I continue to scan on my soapbox, how the heck are you going to administer this? We've got privacy issues with data. We've got just getting the data about the data. Really, we're going to be talking about data about data? So there's just so many challenges. Why if you're just defended by excessive profits, and again, I'm not defining this term in any way, but grapple with that, don't create a new thing.

Morgan Scarborough ([19:36](#)):

I totally agree. And it just feels like a misapplication of another idea. So to me, this idea of taxes on digital advertising are born out of the international conversation where there are some limitations to how this captured in tax. Those same limitations don't exist on the state level. There are already things that are available that are not these new novel, untested, complex, just burdensome taxes. We don't need to reinvent the wheel if that's what you're really after.

Nikki Dobay ([20:10](#)):

Yeah. Well, we could go on about that, but I said rapid style. All right. I'm going to give you one more. Something that's not happening or big issue you're watching right now. And we will do this again in a few months when maybe nothing will have happened. Maybe a lot will have happened.

Morgan Scarborough ([20:28](#)):

My last thing I would say that I find very interesting this session is an extension of what we were talking about earlier. Is tax policy applied to this idea of ESG or CSJ, which is what we talked about at multi-day,

is corporate social justice. So ESG to me is one bucket. Corporate social justice is another bucket. Think about more social issues is what I'm thinking about there. So think about this pair of bills in Texas that say if you are an employer who provide any aid and access to abortion, you're not eligible for credits in the state. There was a bill in Virginia that said, "If you don't have a certain level of diversity on your board, you're not eligible." A bill in New York saying you have to do detailed reporting on sexual harassment claims to be eligible for credits.

[\(21:11\)](#):

So you're seeing legislators take these social ideas, which are proving to be politically popularist maybe not the right word, but effective in getting voters motivated on both sides of the aisle. And they're saying, "How could we do this in a really quick immediate way that companies will feel an immediate impact? Tax policy, no problem." So you've got the carrot and the stick from both sides of these issues, and that's really interesting to watch.

Nikki Dobay [\(21:41\)](#):

And I think also really interesting as to how different they are among the states to the examples you gave. Those are very different social themes that are being pushed. All right. Morgan, before we got a little new question. Your favorite SALT issue of the week? Mine was actually a last week when we're recording this podcast, and I can never say the name of this case, but the sys case or however you say it, the Pennsylvania case cost of performance versus market-based sourcing.

[\(22:15\)](#):

And what I just love about this case from a legislative perspective is the court said the move to market was clarifying and just trying to align the taxation of services and intangibles with TPP, which could not be farther from the truth when the cost of performance rules were written back in the 1950s, and then it gets even... So that's crazy. And then that's even without getting into the ethics issues that they're discussing about the AG. So that was my just a super fun SALT moment of the week. And I'd be remiss if I didn't mention it's a taxpayer win. So we love that case, but then it's just like, what? So how about you?

Morgan Scarborough [\(23:03\)](#):

Well, first of all, I'd love to watch a creative interpretation of something, it's like, "Okay, sure." This one is a little bit older, so I'm sorry I'm breaking your rules. And if you ever have my colleague Ryan on, he'll have to come up with something new because I think this is his favorite issue that I've stolen from him.

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

All right. Perfect.

Morgan Scarborough [\(23:21\)](#):

There is a bill in New Mexico that would rename its "gross receipts tax" as the sales tax, and I just think everyone would be better off if we just went ahead and passed that. So that's my favorite. I'm hoping that that happens. That would really be a big win for me this session.

Nikki Dobay [\(23:39\)](#):

Okay. All right. I'll make Ryan come up with something new because he'll definitely be joining me. All right.

Morgan Scarborough [\(23:44\)](#):

Sorry, Ryan.

Nikki Dobay ([23:46](#)):

But then we've got to get a surprise non-tax question. So sticking with our Waffle House theme, I want... The Waffle House order. For me in these types of places. And Morgan knows I didn't grow up with Waffle House, and so I don't understand it maybe. But in places like that, I always gravitate towards potatoes and or something that I can put sour cream on, and they don't have sour cream. So that has become a big problem for me at the Waffle House. So I know I've gotten it wrong, and I just want you to set the record straight on this podcast as to the proper Waffle House order.

Morgan Scarborough ([24:28](#)):

Well, Nikki, I know our listeners can't see this, but I am holding up my phone case to the camera and showing Nikki that my phone case is a Waffle House menu, so we could consult this to make sure everything I'm saying is accurate here. So my strategy now is that since I no longer live very close to a Waffle House, when I go, I order all of my favorite things so I could just sample everything, which is... Wow, this is the best thing I've ever been asked in a work context and answer it. Grilled ham and cheese sandwich, one waffle lightly done, two eggs scrambled with cheese and a large hash brown scattered, smothered, covered in a cherry [inaudible 00:25:04].

Nikki Dobay ([25:05](#)):

And just for context, all of that costs about \$10?

Morgan Scarborough ([25:11](#)):

Inflation, Nikki, it's like \$12 now.

Nikki Dobay ([25:14](#)):

So it's like when you go to Taco Bell, and if you've hit the \$10 mark, you've gone crazy. All right.

Morgan Scarborough ([25:18](#)):

No, I love it. I can't get enough.

Nikki Dobay ([25:23](#)):

All right. Well, Morgan, I'm so glad you were able to set the record straight on that one because this is one where you and I have struggled and I will continue to give it a go, but I worry that I'm just never going to get it right. So thank you so much for joining me. As always, it's such a pleasure to catch up on state and local tax policy issues with you, and we will be doing it again soon. Thank you for listening today to the Gettin SALTy podcast. Can't wait to be with you again soon. Thanks so much.