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Jeff Newgard: The committee's conversation really shifted from a how do we go and kind of reevaluate how the CAT works, to how do we go and reevaluate how the CAT works and raise taxes to be able to go and pay for it.

Nikki Dobay: [00:00:30] Hello, and welcome to Getting' Salty, a state and local tax policy podcast hosted by Greenberg Traurig. My name is Nikki Dobay, shareholder in Sacramento, California, and Portland, Oregon offices. I'm super happy today to be joined once again by a good friend and colleague in the Oregon tax world, Jeff Newgard. Jeff is the principal at Peak Policy and my go-to lobbyist for all things [00:01:00] tax in Oregon. Jeff, thank you so much for being here.

Jeff Newgard: Thanks for having me again, Nikki,

Nikki Dobay: We're going to talk about the Oregon session. And I'm going to say we keep Portland weird, but this session kept Oregon weird, or maybe not. But can you give us a lay of the land on how this session unfolded. And we're what? Now we're a little over a month since session ended, and so now we do know what the governor signed and what's a go. And we'll talk about a lot of what [00:01:30] wasn't a go. So give us a lay of the land for the session. And was it a weird one? Is this the new normal? What's going on?

Jeff Newgard: Sure. I'm happy to go and relive a trauma, sorry, drama. So in Oregon, things have been interesting for a couple of years. Obviously in 2019, Oregon enacted the corporate activity tax that really kind of set off at least this feeling that the landscape, the tax landscape in Oregon was just going to be constantly changing for several years. And then the pandemic actually really [00:02:00] changed a lot of that where we didn't see as aggressive of a policy posture from the state as we had pre-pandemic. I think that right now, and we'll get into this in a minute, but I think that we're starting to see the legislature in Oregon trying to figure out where it wants to go from here. And this year, during Oregon's legislative session, it was a six month session that began in January, ended at the end of June, there was an entire assortment of conversations. [00:02:30] I would consider some good, some bad, some kind of very interesting administrative conversations.

Oregon had the full spectrum of tax conversations this session, but in the end, the legislature actually didn't enact many of those tax bills into law, again, good or bad, or otherwise. We saw some conversations from the legislature about new and proactive reforms, pro-business reforms coming out of Oregon that the legislature was very [00:03:00] interested in. A couple examples of that, Oregon had a real conversation about repealing its throwback policy. Oregon went and looked at continuing full expensing. Oregon went and looked at an R&D credit. There's a long list of tax payer reforms that the legislature seriously considered this session. While a lot of those may not have made it all the way through the process, we have a starting point now moving forward. So for me, that's the positive note that comes out of this session.

Nikki Dobay: [00:03:30] And Jeff, a couple questions there. What do you think has shifted the conversation to some extent? You noted the pandemic. And one thing we saw really across the board in the states were revenues going through the roof. Oregon hasn't done some of the things that a lot of other states have done, like lower rates or provide significant credits of that sort. Now, we do [00:04:00] have our kicker, so that's coming its way. And we've had huge kickers, and the biggest one in history, I believe is on its way next year. So is it a revenue issue that we've just finally gotten to the point where we have revenue? So one question. And my tag along to that is, are we in that revenue situation because of the Oregon CAT? Has the Oregon CAT shifted the dynamics of these conversations?

Jeff Newgard: I'm going to answer the last question first. [00:04:30] I think that the Oregon CAT has fundamentally changed some of the underlining dynamics. I also think that it's, at the same time, it's riding the wave of where the economy is today. We have an incredibly strong economy, especially on kind of the side where it relates to the tax instruments. Oregon's revenue stream is coming in hot. It still keeps coming in hotter than they ever expected. If you go and look back at August of 2022, there were some [00:05:00] tea leaves out there that Oregon's revenue stream really could be falling backwards by this point, and we're just not seeing any of that. So Oregon still has more money than it ever expected. I don't necessarily think that that's why we're seeing the changing of at least the policy and the philosophical conversations out there. Well, before the pandemic, Oregon had abandoned the idea of tax incentives and going and engaging in tax competition, [00:05:30] lowering rates, creating new tax credits.

Oregon has not joined the rest of the country in that regard. And to a large degree, I think that Oregon struggles and competing for new investments because we don't want to compete. I think that we could have another 30 minute conversation just on that. But in lieu of having that competitive mindset, Oregon really seems to be going [00:06:00] in the direction of industrial policy. So instead of going and having the incentives to go and say, "We want to go and have this entire tool bench out or tool set out there. Let's go and see who we can recruit to come," instead, Oregon is kind of looking at it through the lens. In a big way. The same kind of applies for the Federal Chips Act of going and looking at it a specific industry and trying to see, okay, how can we go and build a Swiss Army knife that only works to get this industry here?

[00:06:30] And we're going to see, over the course of the next 10 years, how does that change the local economy here, especially because there's going to be so many examples from around the country where the other states are creating that Swiss Army knife to be able to tackle any problem in any opportunity that comes up? And Oregon, it seems like we're very... We're more narrowly focused.

Nikki Dobay: It's a very surgical approach...

Jeff Newgard: Correct.

Nikki Dobay: ... that they take. And from my [00:07:00] perspective, and I know you are much more in the weeds and in the building as they like to say the me, but it seems like what the CAT has done is really taken away that argument that businesses aren't paying their fair share. And it also seems like we don't get great answers on how much revenue the CAT is bringing in. And again, probably a whole other podcast, but I think the CAT has kind of had that shift in the dynamic. We're always going to have the businesses paying [00:07:30] their fair share and what's a fair share. But I think before when we didn't have the corporate activity tax, there was one of the biggest pieces of the three-legged stool missing. And now we have, I guess it's the third leg. So we've got that.

And then throughout this session, I was struck, especially when watching a lot of the hearings on the R&D conversation, is that Oregon is going to do a credit Oregon's way. And so I think you [00:08:00] really hit the nail on the head in this idea that Oregon's just going to do something different. It's not going to go down the road of reducing rates or offering big credits. It's just going to do what Oregon does, which is... And so what did we do on the R&D front? And we'll get to the locals, the other big conversation that happened this session.

Jeff Newgard: Yeah. Well, so on the R&D credit, so just a little bit of background for listeners that may not be as [00:08:30] familiar with kind of the Oregon tax history, Oregon was one of the, I believe the first eight states to go and create an R&D tax credit in the 1980s. Over the next 20, 30 years, the credit really brought broadened its scope as the federal government expanded the scope of the federal credit. In 2010, kind of emerging out of the great recession, Oregon was trying to work through, like many other states, a really deep budget deficit, and one of the [00:09:00] proposed solutions for balancing state revenues at the time was to go and eliminate the R&D credit. The business community was able to go and kind of negotiate a compromise, where instead of going and eliminating the R&D credit, the R&D credit was cut in half.

That was the political compromise that was reached. During that same session, the legislature created a new policy that was really driven by the Pew Charitable Trust to go and attach sunset clauses [00:09:30] to all tax expenditures. Now, just a quick sidebar, the term tax expenditure, whether we're talking about federal government or state governments, generally is not very well defined. And there's a lot that could or could shouldn't. You could argue could, shouldn't, and probably some gray area of what is a tax expenditure. I'm going to leave that at that for right now. So the Oregon went and created six year sunsets for most of its tax credits, the R&D credit being one of them. Now, during the 2017 [00:10:00] session, the legislature was scheduled to go and do a review of the R&D credit. All of the state research and state documentation suggested that the credit was serving its purpose and was useful, but at the same time, Oregon was having the very initial conversations about the corporate activity tax.

At that point, it was just called tax reform. Oregon was looking at an Ohio style gross receipts tax as part of that third stool, since we don't have a sales [00:10:30] tax here in Oregon. And there were some groups within the business community that took the position of, well, before you go and either create a new tax or raise the rates of an existing tax, the legislature should get rid of all tax credits. Go and maximize the revenue that you can get right now.

Nikki Dobay: Got it. Got it.

Jeff Newgard: That session, the legislature, the final days, probably last two weeks of the session, decided to go and not pursue that tax reform, and they [00:11:00] also didn't go and renew the R&D credit. So 2018 Oregon was without an R&D credit. Ironically, in 2019, the legislature then turned around and created the corporate activity tax. And so since 2018, Oregon hasn't had an R&D credit. We're one of 13 states that doesn't have an R&D credit. Now, go and look at last year's federal Chips and Science Act and the opportunity for states to compete for semiconductor investments in chip manufacturing. And Oregon already [00:11:30] has one of the largest chip manufacturing sectors in the country with 15% of the national workforce situated here in Oregon. So Oregon, this is the bread and butter of our economy.

The legislature put together a joint committee specifically to go and tackle the issues that needed to be solved to be able to go and attract these large investments, especially since last January, Intel, which is Oregon's largest private sector employer, announced that it was going to [00:12:00] be building a $20 billion facility out in Ohio instead of Oregon. That kind of just sent a shockwave throughout Oregon's political circles. So anyways, throughout this process of trying to identify the barriers or impediments to getting these investments in Oregon, one thing that the business community kept telling the legislature was allowing the R&D credit to expire, and not having a competitive R&D credit with other states like Arizona, it really is a hindrance to getting these investments, not just from one company, [00:12:30] but from the entire kind of sector within the semiconductor manufacturing, and advanced manufacturing, more so, not just chips.

And so the legislature spent a lot of its session kind of evaluating different proposals to create or restore the old R&D credit. There was a lot of numbers that were thrown out there. Previously, Oregon's R&D credit was capped $2 million, then $1 million per taxpayer. And so that per taxpayer annual cap was a [00:13:00] really kind of sticky issue. In these conversations, we saw that number bounce around anywhere from 5, 9, 15, $20 million.

It never really seemed to kind of coalesce around a single request. And then just as a quick sidebar, I think that was part of the problem from this session. But the conversation initially emerged as, how do we go and recreate this R&D Credit for all businesses to go and have a rural incentive tool to [00:13:30] encourage these investments in these activities here in Oregon? But kind of following that philosophy that we've talked about in Oregon, over the course of the session, the conversation morphed. Instead of a, "How do we go and create this Swiss Army knife?", "How do we go and create this one tool to go and put in this one screw?" And so where we came out of it was Oregon has created a new R&D tax credit. It is limited specifically to companies that are manufacturing semiconductors. [00:14:00] And there are a several different expenditure controls in the statute to limit how much the state is going to spend moving forward. I believe over the next six years, the most that the state could spend is about $250 million.

So it's certainly not nothing, but from where the conversation started, the outcome is in a very different place than I think where most people in the business community thought where it was going to end up. Now, one last thing on that semiconductor tax incentives package. [00:14:30] Another thing that came up out of that was what some call tax incentive modernization.

Nikki Dobay: Yeah. Lay that on us.

Jeff Newgard: So in Oregon, like we've said, there aren't many general tax incentives. However, Oregon does have enterprise zone tax incentive program where local governments can go and designate certain areas for tax abatements for a period of time before that property comes back onto the property tax rules. For some [00:15:00] progressive tax groups and some Democrats in the legislature, they have wanted to end, or in many cases curtail a lot of the benefits from those programs. Again, looking at Oregon doesn't have a sales tax, and so for local governments, it's really the property tax revenue stream that's funding local schools. Well, as part of this effort to boost business investments from the semiconductor industry, the legislature also took the opportunity to go and actually curtail some of the enterprise zone [00:15:30] incentives, specifically going and adding a new, what they've called a school support fee to go and pay an amount of money in lieu of the property taxes of the business would've otherwise paid for after, I believe it's the first six years of an incentive.

And so there's a lot of new requirements that came out of this semiconductor conversation. Some of them are good, especially if you're in a semiconductor firm. But for many others in the business community, it's a little bit [00:16:00] of a shock.

Nikki Dobay: Yeah, I think that was an area where there was so much hope that we would get back some sort of broader based R&D credit. And again, when all of those other kind of pro-business conversations were going on, there was a lot of really good momentum. You're going to get to the big... We haven't talked about the big political shakeup. But I want to just take this opportunity to note that in trying to incentivize manufacturing into the state, even if we're doing [00:16:30] it in a surgical way, having a throwback rule is really counterproductive.

Jeff Newgard: Right.

Nikki Dobay: And we've seen a shift with... There's been a couple states this year that have other states that have repealed their throwback rules. And so I would just like to have on the record on this podcast, that if Oregon's really trying to attract manufacturing to the state, having the throwback rule is counterproductive.

It's kind of this thing that grew out of an older economy, [00:17:00] and we really should just get away from that. So that's my plug for why we should continue to work on repealing the throwback rule. But Jeff, how did the politics play into the session? Because we haven't talked about that piece. And then I do want to take the... With respect to the enterprise zones and the locals, we're going to get into this broader local conversation that happened. And I think there's some connections there between some of the local tax base alignment [00:17:30] things we were working on with... As maybe things shift on the enterprise zone side, could that have locals looking at other taxes? And I think we've already seen that happening. So I laid a lot of things out there. You pick where you want to begin.

Jeff Newgard: Let's start with the throwback rule. And we've talked about this a lot, but I think that an Oregon throwback is particularly interesting. The way that I look at it is that it's an artifact of a previous tax system. It really goes back to the three factor [00:18:00] formula. And from my vantage point, and while the legislative record doesn't say this explicitly, when I go and look at Oregon's throwback policy, it really was forgotten as part of its adoption of the single sales factor. And for years, progressive tax groups have tried to defend the throwback rule as some type of gladiator defense system for abusive tax tactics. And this session proved that rhetoric was just completely missing the mark. [00:18:30] When our legislative revenue office went and examined kind of what would the revenue impact be, and who were the taxpayers that would benefit from appealing the throwback? Well, it was exactly who we said it was going to be. It was largely manufacturers.

It's generally small and me medium sized businesses because larger taxpayers have nexus everywhere. And that it would only cost about $8 million per year, which even in Oregon, a small state, $8 million a year revenue impact is [00:19:00] not even a decimal point in the state budget. And so for the big, dramatic conversation that some of the people on the other side try to drive for this conversation, it really doesn't deserve that kind of rhetoric. And this year, we saw the legislature seriously consider repealing it. I think that for a lot of conversations this year, I think that what ended up happening, it wasn't that the legislature decided that a policy was good or [00:19:30] bad, it was that it ran out of time. This is the elephant in the room that we haven't covered yet, is that this year in Oregon for six weeks, the legislature effectively stopped.

Oregon is one of I believe four states with a more than 50% quorum requirement. So in Oregon, we have to have, I believe it's two thirds of each chamber present to be able to conduct any bi business. And there was a dispute over a couple of bills, a couple [00:20:00] of social policy bills that in the Senate, the Republicans decided... The Republicans in loan independent decided that they were going to stop progression and activities on the floor for six weeks until they were able to reach a compromise at the very end of the session. But that really... While tax policy really wasn't at the heart of those walkout issues, it became collateral damage in the kind of broader policy conversations that the legislature otherwise would've had. And so [00:20:30] the way that I look at some of the bills that the legislature talked about, throwback, again, being a great example of this. The fact that the legislature didn't repeal its throwback policy for me isn't actually a rejection. It was a matter of timing and the ability for the legislature to get everything done in such a chaotic environment with those walkouts.

Nikki Dobay: And then let's talk about the other big conversation that got a lot of momentum. I think it was the bill that had, I think the most legislative hearings, maybe [00:21:00] aside from the semiconductor R&D...

Jeff Newgard: Right.

Nikki Dobay: ... piece, but local tax alignment. And what I mean by that is any locality that has a tax based on income, net income, would be required to have its definitions and rules align with the state's tax base. And from the business side of this, this is key for compliance purposes and reducing burdens. And things have gotten very [00:21:30] complicated in Portland, and so this bill was very much aimed at Portland system. And so talk us through the politics of that bill or the history or politics or wherever you'd like that conversation to go. It was a really productive conversation.

Jeff Newgard: Oh, it was absolutely a productive conversation. I actually think it was one of our most productive conversations of the session, perhaps even the last few sessions. So to start this off, in Oregon, we don't have a [00:22:00] lot of local income taxes, but in the last few years, there's been kind of the sea change of the way that local governments are raising their revenues. Back in the 1980s, city of Portland... And Multnomah County is essentially the greater Portland area, absent some of the suburbs in the south and southeast. But Portland and Multnomah County both had business income taxes. And the early 2000s, Multnomah County [00:22:30] very briefly had a personal income tax, but that was time limited. And so there's been business income taxes in the Portland area for some time. But now in 2020 Oregon Metro, which is a unique form of government that spans really the Portland urban growth boundary. And so you have a lot of cities, a lot...

For at least three counties within this metro district, they referred, voters approved a new personal income tax and a business income [00:23:00] tax. And then the next fall, well, Multnomah County went to voters and voters approved a new personal income tax. And so right now, if you are especially a pass through business in the city of Portland, you could be subject to at least five different income tax, or having to navigate five different income taxes only at the local level. That's not including state or federal, or if you're subject to a cat or anything else. And I forgot to mention, [00:23:30] all of those taxes, you can use different sets of rules for defining income. And so it's not like, "Oh, I'm going to go and look on my Oregon form 20," and "Oh, this is my taxable income. I just go and source it to the city of Portland if that's a jurisdiction that I'm working through. No, at that time, you actually would have to go and use different sourcing methods, especially for intangibles.

And so this local conversation has become very messy over the last few years. And so we went to the legislature saying the legislature has [00:24:00] a vested interest in the way these taxes are impacting the economy. Oregon is very much a local control minded state. The legislature wants the local governments to be able to go and set their own course. Oregon has strong home rule protections and authorities in our constitution. But the legislature also has the right, and I would argue the responsibility to go and step in when a tax system is becoming too cumbersome for taxpayers to reliably be [00:24:30] able to understand and comply, that the legislature actually needs to step its foot in and say, "This is the rules that we all need to follow for our income taxes."

And so House Bill 2548 actually would've accomplished that. It would've gone and said that for the purposes of determining net income, local governments needed to use the same rule book as the state, so whether it's a sourcing policy or apportionment, or whatever. So if [00:25:00] it addresses how you define net income, that it really should just go and use the same policy as the state. Now, the way that the local governments reacted to that was...

Nikki Dobay: Was not shocking.

Jeff Newgard: ... was interesting to say the least. We saw some very unique claims coming from local governments. I think the first hearing, we had... I think there was at least three of the local governments from the Portland area trying to claim that somehow this legislation would've [00:25:30] eviscerated their authority to be able to impose the taxes when it did nothing of the sort. The politics became very messy. There were a lot of claims that were simply untrue. Our legislative council actually had to come in and set the record straight to debunk a lot of the myths that local governments were sharing out there in their attempts to try to kill this bill. But at the end, it was just unfortunate. There is a serious problem with the Portland area, income taxes. Portland is incredibly difficult [00:26:00] as it relates to navigating the tax system. Portland and Oregon have a lot of issues right now. Having a complicated local tax system is avoidable, and is something that the legislature and local governments and taxpayers can work together on to go and fix.

And this was one of those issues where the legislature spent a good amount of time trying to work through the mechanics of this, trying to navigate the politics of it. And just by the time the end of session [00:26:30] came, it wasn't possible to get it across the finish line, but they did go and send it to a work group. And so starting later this summer and into the fall, there are going to be plenty more conversations about local tax alignment. And I'm really excited for the legislature to return back to that conversation.

Nikki Dobay: Yeah, I think, again, this was such a productive conversation because, as you mentioned in the beginning, the locals came out very strongly opposed and [00:27:00] said the things that they said. I think, again, a lot of that was able to be... We put those fires out and there was a really productive conversation, with the message always being, nobody's trying to take away the revenues that the local governments need. We're just trying to figure out a way to make these systems less burdensome. Because when you have burdensome systems, they could be subject to constitutional challenges, which the state would likely [00:27:30] have to get involved with defending. And so to you, to your point, I think the state could avoid a lot of hardship down the road if there's just some guardrails put in place for these taxes. And while we're seeing this is very localized to Portland, unfortunately, we're seeing some other locals create some new taxes.

And so I think this could be a broader conversation. So Salem, the city council, [00:28:00] just passed a new payroll tax, which I've been working on, and leadless to say does not align with the state rules, and is going to cause a lot of confusion and a lot of hardship, I think for businesses and individuals that have to comply. And so do you think that this local tax alignment, state and local tax alignment could be a broader conversation than just income taxes as it moves forward?

Jeff Newgard: Oh, I think it needs to be a [00:28:30] bigger conversation than just income taxes. I think that income taxes are the easier starting point, for one, because it's something that the legislature is more familiar with. And especially after this session, the legislature has taken a deeper dive into understanding the local income taxes. A great example of this is early into this session, as taxpayer advocates, we were having to educate the revenue committee staff on what the local income taxes were. The legislature has really taken [00:29:00] a hands-off approach to the local revenue streams. But now with how complicated and how expansive these local income taxes and other taxes have become, there's a real risk now for the state that if you have especially higher earning, higher income households deciding to go and move to whether it's Clark County and Vancouver, Boise in Idaho or anywhere to go and work remotely [00:29:30] or just move their businesses, the legislature in the state then have to deal with the risk of if that income flight affects the state revenues coming in.

There was an article just this past weekend that Multnomah County, again, Portland area County, lost a billion dollars in income between 2019 and 2022. That's a problem for those localities and the regions, but it's also a very big problem for the state that's relying on the higher income earners [00:30:00] as really the primary revenue stream for estate programs and services. And so I do think that the income taxes are a great starting point, but yes, you have payroll taxes. I could even argue that as it relates to transient lodging taxes and fuel taxes, there is a lot of alignment. There are a lot of opportunities to really pursue alignment, or at least having a single set of framework rules for all these taxes.

Nikki Dobay: And [00:30:30] before we leave this topic, because got one last issue to talk about. Since Wayfair, the expansion of local taxes and burdens created by local taxes has, I would say, really exploded nationwide. And so I think if Oregon could be having these conversations actually puts Oregon on the forefront because if Oregon can and can provide a path to show we're not taking away local [00:31:00] control to impose the taxes, we are just trying to put up some parameters about what those taxes need to look like. And the last thing is, this is such an important conversation for Oregon because we don't have a sales tax, which can translate down to a local option sales tax piece of that. So Oregon has to have these conversations. And I really hope that this working group can come to some sort of resolution that will help streamline these processes [00:31:30] and alleviate burdens because if the burdens aren't alleviated, hate to say it, but this will result in litigation. So we'll leave that one there. But let's talk about the last big kind of thing that I think didn't happen, although maybe we...

Jeff Newgard: That almost happened?

Nikki Dobay: Yeah. But before we get there, we should mention one thing that did happen, which is the bill that provides jurisdiction to the tax court over [00:32:00] local tax matters that involved taxes based on net income. So that is a bill that passed. What is that bill number?

Jeff Newgard: That was house bill 2576. And that's a small but important bill. Right now, if a local jurisdiction has income tax and you're a taxpayer and you need to go and appeal a tax determination from that locality, you're going to one of 36 circuit courts throughout the [00:32:30] state, most likely in Multnomah County because that's where the tax administrator for the Portland area is located.

Nikki Dobay: Right.

Jeff Newgard: But the process for a local tax appeal to the judicial branch takes a very different process than if it were a state income tax. And the state income tax, you go to the tax court, there's kind of a magistrate, and then it just the regular tax court. So there is an appeals process. And directly from there, your case would go to the Oregon Supreme Court. But now [00:33:00] for a local income tax, without this bill, you'd be going to one of the 36 circuit courts having to go and explain the nuances of not just your facts and circumstances, but how those facts and circumstances apply in the set of tax rules for the circuit court, and then the court of appeals, and then the Supreme Court.

Whereas if you can streamline that process and have those local income tax appeals, go directly to the Oregon tax Court, you're going to a [00:33:30] judicial venue that is specifically working on the nuances of tax policy. And you're having to go in tax law and you're having to go and spends significantly less time explaining the rules, and you can go and argue the rules. And I think that it's going to end up making the frustrations that come out of that tax litigation at least a little bit less frustrating in the end. Not to say that everybody's going to be happy.

Nikki Dobay: Exactly. Exactly.

Jeff Newgard: But hopefully you understand what I mean.

Nikki Dobay: Yeah. Yeah. I think the [00:34:00] takeaway is as opposed to going to a general judge, which does not specialize in tax, you're now going to the court where all they work on are tax issues. And the tax pieces of this is going to be things that they're very familiar with. So a really good win for taxpayers, I think. But yes, so let's... Okay, I think you've described this as we dodged a bullet [00:34:30] on some changes to the CAT, but we didn't open the Pandora's box. Did I get that right?

Jeff Newgard: I wouldn't say that we dodged a bullet, but I think it's ricocheting against a wall and now we might have to dodge it again and again and again in the future. Pandora's box has opened and Oregon taxes, I think, are about to get very messy in future years.

Nikki Dobay: All right. So we had a bill that was going to increase CAT rates. [00:35:00] Well, and the whole purpose was to increase the threshold for small businesses. I'm using air quotes. So to take that threshold from 1 million to, I think at one point it was 5 million. And then to make that revenue neutral or not take a big chunk of CART revenues, we saw rate increases and decreases to the subtraction, which you and I talked a lot about. These were kind of deals that were struck back when the CAT [00:35:30] was enacted that the business community felt very strongly about. So I think there was a lot of consternation about those issues just because it's like, hey, this is exactly what we said you were going to do, and you're doing it. So there's that piece of it. That didn't go anywhere. But what was really the undercurrent here, the really scary piece of this.

Jeff Newgard: Well, so first let's just go, and just as a quick explainer on where we are with the Oregon CAT. Legislature [00:36:00] created the Oregon Corporate Activity Tax in 2019. And then this seems to happen when a state creates a gross receipts tax. After Ohio and Texas, there was some type of major economic disturbance that kind of just changed the playing field. But after Oregon created the corporate activity tax, we had the pandemic. We had kind of the waves of economic uncertainty that unfolded during the pandemic. And year after year, during Oregon sessions, the revenue chairs [00:36:30] and political leadership said that before any material policy changes or revisions were going to be made to the tax, that they needed to have at least a full year's worth of complete tax, aggregate tax reform, return data to analyze, to understand who's paying how the taxes functioning. And so many of us in the lobby assumed that meant that during the 2023 session, after the legislature had two years worth of complete tax return data, that the legislature would go and have that material conversation [00:37:00] about, are there going to be exemptions?

Are there going to be different ways of approaching some of the nuanced policies within the CAT? But this year, the conversation really focused on a couple of niche exemptions. There was minor exemption for the agriculture industry. There was exemption for precious metals. There were a couple of proposals to go and exempt Medicaid and Medicare physicians, or at least [00:37:30] the reimbursements from those insurance plans, pharmaceutical drugs. And then also, I think you briefly mentioned the small businesses going and increasing the exemption threshold that's currently at $1 million to anywhere up to $5 million. Now, there was a lot of interest in at least some of these exemption and policy changes in the legislature. But in the Senate, which was... And the Senate Finance and Revenue Committee was really having the more [00:38:00] technical and kind of dense policy conversations on how do we get from A to Z. Some members of the committee went and said that they agreed that there should be targeted relief from the corporate activity tax, but only if it holds those tax revenues harmless. So there was a demand for revenue neutrality.

And so at that point, the committee's conversation really shifted from a, " [00:38:30] How do we go and kind of reevaluate how the CAT works?" to "How do we go and reevaluate how the CAT works and raise taxes to be able to go and pay for it?

Nikki Dobay: Right.

Jeff Newgard: Now, keep in mind that the CAT is outperforming all of the expectations since day one. Every time we get a revenue forecast, the number seems to be growing higher and higher and higher than what's been expected. And so there's no shortage of revenues that could be used for these more targeted reforms, [00:39:00] but that conversation about needing to have revenue neutrality really created a blunder for tax politics in Oregon this session and also moving forward. And Nikki, if you want, I can get into kind of the super majority requirement, but I think that that's where the big issue comes up.

Nikki Dobay: Yeah. We got to do the fun stuff on this podcast, so we got to get there. But can you give us a spoiler alert for what we're looking at in future sessions [00:39:30] with respect to the super majority? Because I think this is going to be an issue that we are going to come back to, and we're going to have a very in-depth conversation. And I know you're a worrier, but what's keeping you up at night with respect to this? What happened here? What kind of unfolded, and what you know are worried about going forward?

Jeff Newgard: Yeah, I think during the session a new, I don't even want to use the word new, a novel legal theory [00:40:00] really emerged from the tax conversation. So Oregon's super majority requirement. So Oregon has a three-fifths voting threshold for bills that raise revenue. Now over the years, the courts have opined on how and when that requirement applies. There's really two cases, one from 2005, another from 2015. But the courts have generally said that the requirement only applies to bills that bring money [00:40:30] into the state treasury and contain the essential features of a tax. And then the other case from 2015 went and added some clarity over what those essential features of the tax are. Well, as part of this claim in the corporate activity tax discussion on having a revenue neutral bill, there was this theory that emerged that, well, if the legislature goes and spends money, again, we're talking about tax expenditures here, what... It constitutes a tax expenditure.

But [00:41:00] if the legislature goes, and we're just going to make up numbers here, goes and spends, and air quote, spends $100 million in tax expenditures, but then on the other side of the bill goes and raises rates or eliminates tax expenditures to go and bring in $100 million for its revenue neutral, the theory that was talked to length about this session said that the super majority requirement wouldn't apply because it wasn't raising revenue, even though those taxpayers who might not benefit [00:41:30] from these targeted exemptions would very much feel like their taxes were being raised.

Nikki Dobay: Right.

Jeff Newgard: The theory stipulates that you could do that on a simple majority vote. And so much of...

Nikki Dobay: And that scares you?

Jeff Newgard: It terrifies me. It terrifies me. So much of our tax politics in Oregon really revolves around... And I would assert politics in general revolves around that super majority rule. [00:42:00] If Oregon is going to have to, whether it's some type of annual industry tax where that three-fifths requirement applies, if there is a political trade off where the minority or party wants to go if they're going to go and give those votes for that bill, that they want to get something out of it. And so that's kind of how the tax politics and that super majority requirement really play into and feed off of the politics at large of the session. [00:42:30] But now, if the legislature decides that it wants to continue pursuing this novel legal theory of revenue neutrality and tax rate increases, I think that some of the leverage that had existed previously for those negotiations goes away, and being able to go and raise taxes on a simple majority vote becomes incredibly easy.

Now, I would argue it that from my understanding of these legal cases [00:43:00] and the years that I have spent studying this issue, I don't believe that the novel legal theory is correct, and it's going to be something that I'm going to be fighting for many, many years, I'm sure. But it is going to be a problem that lingers an Oregon, and Pandora's box is certainly open

Nikki Dobay: Or to make another pond, Oregon pond, the CAT's out of the bag. The CAT's really out of the bag.

Jeff Newgard: [00:43:30] That's going to be a headline of some article. When are we writing it?

Nikki Dobay: All right. All right. Next on the list. Well Jeff, thank you so much for getting us caught up on this session. It's definitely been a crazy one, I think, even though I think it is the new normal. And it sounds like this particular issue we just talked about, the super majority is going to be, I'll just say a challenge going forward. So no rest on in Oregon politics, for sure. But before we head out, [00:44:00] I have to ask a surprise non-tax question. And so I was thinking about this, we're in the height of summer and really the height of tomato season. So the question today is, how do you feel about tomatoes? I feel like they can... You either love them and you can't get enough of them during this time of year when they're just at their peak, or some people... I think they're weird, I hope that [00:44:30] you're not at this camp, but we'll still be friends. Some people don't like tomatoes. So where do you come out on tomatoes. Again, I'm a lover of tomatoes, so very happy this time of year. Where are you at on this topic?

Jeff Newgard: I don't have incredibly strong feelings on this one, so I'll start there. There's a lot of things that I have strong feelings on, so it actually feels kind of nice to have something that doesn't certainly... This one certainly doesn't keep me up at night. Okay.

Nikki Dobay: Okay, good.

Jeff Newgard: I'm very hit or miss on tomatoes. [00:45:00] I think that tomatoes in terms of pasta sauce, absolutely. Marinara sauce, absolutely. On a sandwich, on a burger, sure. On a salad, no, I don't think so. So I'm very hit or miss. I think I have... It's very fact specific, as we would say.

Nikki Dobay: All right, so you're not out there just having tomato salads and burrata and all that, just craving... You don't just bite into a tomato this first week of August knowing that it's at its peak [00:45:30] flavor?

Jeff Newgard: No. And if it happened to be on my plate, Nikki, I have two Australian shepherds that they would happily go and just take something from directly underneath the table. So I think I have a way out of that one.

Nikki Dobay: All right. All right. Well, good. We've settled it on tomatoes, and I'm glad this is one topic, not keeping you up at night. But thanks again, Jeff, for joining me, and thanks to the listeners for tuning in. The contact information for Jeff and I will be in the show notes. And I have a sneaking suspicion there will be an article [00:46:00] on this legislative session coming out from Jeff and I in the near term. So do keep an out for that. And thank you again for listening, and I will be back with you in a few weeks.