

## Gettin' SALTy Podcast – Episode 53

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Madeline Orlando: What does that mean for everyone else that doesn't work in this industry? Well, it really means that costs are going to be shifted around and unfortunately too, there'll be some instances where the consumers are going to end up paying more to try and balance [00:00:30] out some of these fees that the companies are having to pay to the state.

Nikki Dobay: 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. Today's episode, we are GeTtin' SALTy and beyond and I am very pleased to be joined by one of my colleagues in the Sacramento office, Madeline Orlando.

Maddie, [00:01:00] so great to have you here.

Madeline Orlando: Thanks, Nikki. I appreciate you having me on.

Nikki Dobay: So we are going to not talk about a directly SALTy thing today, we're going to talk about something SALT adjacent, which I know you spend a lot of time dealing with, and I've recently had some of my clients asking about this. So I thought it would be great to have you on and talk about extended producer responsibility laws. And so I think [00:01:30] you're going to give us an overview of what these things are, how they're not really SALTy, but maybe a little bit, kind of SALTy.

So let's start with the background. EPR is what they're known as for short. What the heck are these laws?

Madeline Orlando: Yeah. They want to be SALTy a little bit and they've become the thorn in the side of many of our clients. So as you said, EPR stands for extended producer responsibility laws. And [00:02:00] these laws are reflective of a policy shift that we've seen in the last 10 to 15 years regarding waste management and really shifting responsibility for waste management for products and packaging away from municipalities and taxpayers to the producers of the waste themselves. So EPR laws have been around in different specific product categories in a while. We've seen them commonly [00:02:30] and paint and pharmaceuticals and mattresses. And in the last five to six years we've seen states pass laws with that EPR policy framework, but for packaging specifically.

And so this has become more popular as it's affected more broader scope of companies, all types of consumer products and food and beverage companies. And the laws are written in such a broad way that they really are affecting businesses all over the [00:03:00] world and not just those businesses that are

located in the specific states that have these packaging laws. They've really grown.

Nikki Dobay:

And I know we're going to get into this in more detail in a bit, but I mean I guess how these kind of touch SALT a little bit is that these new laws include some pretty significant fees. And I think you're going to get into more detail about how the states, what they call them, how they're imposed. But that's, I think, where we've got the SALT hook [00:03:30] is when I look at these, and Oregon is a state that we're going to talk about, when I look at Oregon's EPR law, it looks very familiar in the sense that it kind of looks like a state tax. And that's how it's come to my attention as I have clients saying, what is this new tax? And so that's kind of where these things intersect.

But tell us a little bit more about the states where these are coming on and what they cover and kind of the mechanics of [00:04:00] these new laws.

Madeline Orlando:

So as far as the states that have these packaging EPR laws, so far we have five states, California, Colorado, Oregon, Minnesota, and Maine. Washington and Maryland are close to passing their own EPR packaging programs as well. So the date that we're recording this, they're on the governor's desk to be signed in those states. And these laws are really addressing single use, non-refillable, non-reusable [00:04:30] packaging that are being disposed of in these states. And the reason why they're SALT adjacent as you're saying, is that going back to that policy framework of the producers themselves are managing the end of packaging life responsibility, what we mean by managing is they're really paying for it.

So they're putting their money where their mouth is, so to speak, and they're paying these states essentially through what the [00:05:00] states call fees or dues, but which in industry might call taxes. They're paying these states to fund essentially overhaul mechanisms for the state's waste management systems. And so with that, you see these producers, which is really a legal phrase for the companies that are making the packaging or companies that are responsible for the packaging in these states, are having to collect information on the amount [00:05:30] of in scope packaging that they're sending into these states. They have to submit reports to a third party organization that handles day-to-day management of these laws. And then following the reports and based on the amount of covered packaging that they send to these states, they have to pay corresponding fees to the states, which then gets put into a fund that handles these new waste management efforts.

So we're just at the precipice [00:06:00] of this. The first state that had the reporting requirement come up was Oregon, that happened in March of this year. So March 31st, 2025 was the initial reporting date. Two more states having reporting deadlines this year, these are called Colorado and California, and this is going to be something that's happening annually. So there's a lot to think about moving forward for these businesses.

Nikki Dobay: And not to get too far [00:06:30] down in the weeds, but can you give us a sense of some of the covered products that businesses need to be aware of and then some of the conversations or the starts of those conversations you're having with clients when they realize they may have some sort of reporting duty in this space?

Madeline Orlando: So the different states naturally all have different-

Nikki Dobay: Yes, I'm familiar with that.

Madeline Orlando: ... definitions of what's [00:07:00] in scope. It really would make my job a lot easier if they were all the same, but that's not the world that we live in. So mainly these, all the states are focused on single-use, non-refillable, non-reusable packaging, and there's a lot of overlap in the different materials that those packaging items are made up of. So think mainly plastic, glass, metal, paper, fiber. The states focus a little bit differently [00:07:30] on packaging in terms of where it comes up in the supply chain. So all of these five states are really focusing on retail, kind of consumer facing packaging, what you would call primary packaging. You purchase something at a store, that immediate packaging that item comes in at the store.

Now moving up the supply chain, the states handle a little bit differently the scope of packaging in terms of supply [00:08:00] or distribution. So in California everything goes, pretty much anything that's sent into the state is covered. Oregon follows that model that has some specific exemptions for some of the distribution packaging. And then the other states it really is a mixture of different treatments. So we're not just looking at what is the consumer taking out of store and disposing of in their home. We're also looking at secondary bundling packaging [00:08:30] and tertiary distribution packaging, which really just makes this incredibly wide and broad and quite frankly onerous on a lot of these companies, not just retail, it's pretty much in some of these states can be all types of business situations.

Nikki Dobay: To your point about there being uniform definitions, if these EPR laws or anything like what we see in the general state and local tax arena, [00:09:00] uniformity will never happen. So good job security for you in this space.

But yeah, I have just been struck by the breadth of these provisions. And then as I said, I've gotten questions from some of my clients that are in the tax department, and I think what's happening is some of these are getting put in front of them because of how detailed you have to get with respect to the different types of packaging. I know you and I were talking [00:09:30] and you said sometimes you're going through SKU reports with your clients and that's what folks have to do in the sales tax space. So I definitely see a lot of overlap and folks in the tax departments may get pulled in, I won't say sucked in, that sounds a little less fun, but pulled into some of these reporting conversations just because of the complexity. And this is a place where they're used to. So

when I think about all the things states do, I just [00:10:00] like, wow, they're doing something new and crazy. I guess not so new.

And then with respect to the fees and reporting, I know you said that there's one organization that will be handling the day-to-day compliance administration for these states, but are the state fee structures all different as well?

Madeline Orlando: They are different. So we have the third party organization, which the state law is called producer responsibility [00:10:30] organization, which acts essentially as a middleman between the producer companies and the state agencies. This group, which is Circular Action Alliance in four of the five states and is expected to also be the organization in the fifth state as well, which is Maine. Maine just hasn't gotten there yet. They are the one that's handling the reporting, they're handling the fees, and they're setting the fee structures. [00:11:00] So they essentially are looking at different data collection, different information from the states, working with the state agencies to develop these fee schedules.

But ultimately, and the part that makes compliance and planning really difficult for these programs so far is that not only will the fee schedules change every single year, they will not be set until after producers make that report. [00:11:30] So producers are collecting the information on the amount of materials, they send it into the state in a given reporting year, they're submitting that. And then it's after that submittal of information that Circular Action Alliance is finalizing the fees that these producers will owe based on those materials. And they have draft fee schedules so far, but who's to say that those will be final or that those will be even [00:12:00] close to what the total numbers will be?

And as of right now, so Oregon's the state that's furthest along in this process, and we still don't have a final fee schedule. And apparently the invoices are being sent out in late May of 2025. So it's this really bizarre situation in some sense where you've signed up to say, I'm submitting these [00:12:30] reports. I have to pay these fees. I'm obligated under the state law to go through all of these exercises, but I don't know how much I'm going to be paying and I don't really have the ability as of right now to negotiate what those fees are.

Nikki Dobay: It is an interesting system. That's probably the nicest word I can use for it.

Madeline Orlando: That's a very diplomatic description.

Nikki Dobay: Yeah, I know. Again, and kind of looking at this [00:13:00] through my state and local tax lens, there's pieces of this that just make my head spin. But given how these laws are drafted, they're drafted in the way that you're talking about that there's just a lot of discretion about what the ultimate fee will be that is invoiced to a producer. So I think, to your point, we're kind of at the very beginning of this and we'll really start seeing [00:13:30] the reactions of the business community probably when those invoices ultimately go out.

Madeline Orlando: Yes. I would expect there to be a significant hoopla, let's just say that, uproar, whatever nice term you want to use there to the invoices that are sent out. And so Oregon's been a little bit of the test case seeing that their law is the first one that comes up in the reporting and the fee paying schedule. So we're really [00:14:00] kind of seeing how everything is going with Oregon. And there's already been some tweaks and adjustments when thinking about the other states as well as Circular Action Alliance is the organization that's handling management in Colorado and California and Minnesota too. So I wouldn't be surprised if we go through this initial cycle with Oregon and learn some lessons and adjust where things can adjust moving forward in the other states.

But this is [00:14:30] an annual requirement. And for a state like California, in addition to the reporting and the normal program where producers are telling the state how much packaging they're sending into the state, there are additional policy goals as well that these producers will be funding. And so California is, again, unsurprisingly the most expensive target for gathering fees from the producers and has the broadest scope of [00:15:00] what's covered and I think will be incredibly expensive for some of these companies. What does that mean for everyone else that doesn't work in this industry? Well, it really means that costs are going to be shifted around and unfortunately too going to be some instances where the consumers are going to end up paying more to try and balance out some of these fees that the companies are having to pay to the state.

Nikki Dobay: Yeah, I think that's a really important point. And it does seem like [00:15:30] this is an example, and we see this in the state tax space too, where if a state comes up with a new idea and it passes constitutional muster, we often see all the other states kind of line up and get on board. This is an area where we haven't seen any specific legal challenges. So it seems like we've got kind of that critical mass of states moving forward. And to your point, there's other states that are very quickly jumping on board. And so I can't think [00:16:00] of any real rational reason why the states wouldn't kind of continue down this path in the foreseeable future. But is that your sense too, is that this is just going to continue and more states are going to pass these laws and it's going to be a lot to comply with?

Madeline Orlando: Unfortunately, I think that's where we're at. I think the train has left the station a little bit in terms of this being isolated to a California per se. And I would expect that in addition to Washington [00:16:30] and Maryland that we have your other kind of list of more what we would say blue states that have these environmental policy agendas, New York, New Jersey, Massachusetts, Illinois are kind of another group that comes to mind in that. So I would expect that in the next five years we have additional states that are added to this. And given that we have this patchwork of the state laws, I don't think that this [00:17:00] is an area that the federal government would step into and try and make this more uniform. So I think unfortunately we're left with states having to analyze things individually and try and make determinations on a state-by-state basis.

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- Nikki Dobay: Oh, Maddie, it's like I'm looking at a younger version of myself with this. There's so many things I'd like to tell you. Yes-
- Madeline Orlando: Hopefully good things. Hopefully I'm not entering into some horrible future of work.
- Nikki Dobay: [00:17:30] Oh. No, no. It's very fun. It's very fun where you're going.
- Madeline Orlando: Oh wonderful.
- Nikki Dobay: But I mean, no, the federal government is very unlikely to get involved. I mean, we have numerous state tax issues that many have advocated for congressional action on, and we have just been waiting in the wings for many, many years while they said, well, we don't think we'll just let you all figure that out.
- And then the other piece of this that's so striking [00:18:00] is that we do often see this divide between the red and blue states. And so this is a very progressive program, so likely to see many of the progressive blue states pick that up. And then the question will be, will it be rejected by the red states? Or at some point, will this just be something that is too difficult to walk away from? But again, you're SALT adjacent, but you're kind of in the state [00:18:30] and local... It's got you. So buckle up, put your helmet on, whatever, it's going to be a wild ride.
- Any final takeaways or thoughts for the listeners before we get to the real fun of the podcast?
- Madeline Orlando: I would say further keeping the SALT focus here, just moving forward that these businesses that might be subject in these laws to think about the fee management side of this, there's [00:19:00] discussions on how this can be allocated to consumers. What's the ability to pass this off to other entities in the supply chain? What's the contractual piece of that too? So I would just say thinking about moving forward, having internal discussions on managing the fees and how contractually to exercise different provisions and different relationships to disperse [00:19:30] the costs however you can or manage that internally because it is going to get very expensive, especially as all of these states start coming online with their individual requirements.
- Nikki Dobay: And the last thing I would note is that I do know you do a lot of tracking of the new legislation or are likely any changes I imagine there will be amendments to some of these. So you have been a wonderful resources, I've been working through these issues with some of my clients. [00:20:00] And so really just want to give you kudos for all the work you've been doing and let folks know that you are a resource tracking all those new provisions as well. I am sure we're going to be back again later this year talking about this because I am a little interested or curious to see how this goes after the invoices come out.

So Maddie, thank you so much for this conversation. I think it's a really important issue that folks definitely need to have on their radar. But now we get [00:20:30] to the fun part, the surprise non-tax question.

Madeline Orlando: Yay.

Nikki Dobay: How this works is I ask you a question, I will answer first so you have time to collect your thoughts and then you can answer. So this is a fun one I found. What was the format of your first album or music that you purchased? So the first one I purchased was definitely a cassette tape, but I will say the first car I drove had an 8-track player. And at that time it was the [00:21:00] '90s and I think we only had four 8-tracks. I know ABBA very well, Bob Seger very well because they only had 8-tracks, so I only know these eight songs now. No, I know way more Bob Seger than that. But currently I buy a lot of vinyl, that's probably what I buy most. But it was definitely the cassette tape for me. So what was your first format for music that you purchased?

Madeline Orlando: I can't say that I've ever thought about this before. I'm a [00:21:30] '90s kid in the millennial category. So by the time I was a teenager it was like the beginnings of Apple iTunes. So there was a lot of iTunes purchases. But I do distinctly remember having a Barbie, like Walkman almost kind of MP3 player. And I had an Avril Lavigne CD that I would play on my Barbie [00:22:00] MP3 player and would listen to Skater Boy like 1,000 times a day as a kid in elementary school, really thinking that I resonated with her lyrics in that song. So those are some of my earliest, fondest music memories.

Nikki Dobay: Awesome, awesome. Well thank you for indulging me. And again, thank you for this great conversation on this SALT adjacent topic. Again, we will definitely be [00:22:30] back for a conversation again on this. And thank you to the listeners for tuning in. Information for Maddie and I will be in the show notes. If you have any questions or comments, please leave those in the show notes and I will be back with you again soon on the next GeTtin' SALTy.