

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.

(00:13):

I am super excited today to welcome to the GT SALT Group, Breen Schiller. Breen and I have worked together before and have been great friends for many years and I am so excited that she recently joined GT and is back in private practice. Breen, welcome to GeTtin' SALTy.

Breen Schiller (00:35):

Hi. Thank you, I'm so excited to be here.

Nikki Dobay (00:39):

Well, Breen, you haven't been on GeTtin' SALTy.

Breen Schiller (00:41):

I have not.

Nikki Dobay (00:42):

Which is... And on GeTtin' SALTy, we have a new little intro feature for guests the first time they're on the podcast.

Breen Schiller (00:51):

Okay.

Nikki Dobay (00:51):

And so, how did you get into SALT? Tell the listeners how it all happened for you.

Breen Schiller (00:59):

Interesting. Oddly enough, I just covered this in an article for the Journal of State Taxation last year because they did interviews with the editorial board about how we did, but I kind of fell into SALT very truly so. I was in law school and working at Horwood, Marcus & Berk, where then became HMB Legal Counsel, now is another firm, but that's where I spent the first 14 years of my career. And during law school I worked there and it had six different practice groups, but as probably most of your listeners are familiar, it had a very large, prestigious, well-known national state multi-tax group.

(01:42):

And I was asked to do a project for, at the time it was a partner in the group named Brian Browdy, who is now with Ryan. And I loved it and I'm like, because it kind of combined all the different things that I loved about law school. So I'd only taken some federal tax classes, but constitutional law, and I started working with Brian and I'm like, this is super fun. It's all the stuff I really enjoy, but I didn't know it had its own practice. How do you do this, Brian? How do you become a state and local tax lawyer?

(02:22):

So it just kind of morphed into, I was a clerk for the whole firm, but very slowly I started being used only by the SALT group. And then I started doing projects for people like David Hughes and Marilyn

Wethekam and Jordan Goodman, Fred Marcus. And very slowly, I just kind of became part of the SALT group as a clerk and then was offered a full-time position after I graduated. So, I used to tell Brian when I'd see him places that depending on the day he gets the blame or the credit for why I do state and local tax.

Nikki Dobay ([02:57](#)):

Well, thank you for indulging us and filling us in on that, but it's always fun to hear how people got to the place where they are. And we're going to keep going down that path here with you, because you've actually been out of private practice for a couple years.

Breen Schiller ([03:14](#)):

I have.

Nikki Dobay ([03:15](#)):

Yeah. So tell us what you've been up to the last few years and then, what kind of brought you back or made you want to come back to private practice?

Breen Schiller ([03:26](#)):

Sure. So last time we were together, Nikki, as colleagues, we were at a different firm and I left to join EY's National Group. So I was a principal in the national practice of EY, still based out of Chicago, but it was a different role. It was more of a subject matter expert role. I was part of a very large, robust team, fantastic people I got to work with over the last three and a half years. Definitely got to see a broader scope and different side of the practice being in public accounting and working with clients from a different angle. And I also got to work with people like Joe Huddleston, who I had respected my entire career and then got to spend the last few years until his retirement last year working with him and learning from him, which was, I will hold very dear to my heart for the rest of my career. I think I feel so honored to have been able to work with him.

([04:25](#)):

But my role there was kind of split into three parts. I was subject matter expert, so still that technical person. So I'd be pulled into matters from different teams around the country to advise, so like an advisory role. I still had my hand in controversy because there is an aspect of controversy that Big Four can still participate in. And then the third part was what I called the relationship part. Part of my role was to be very active with the FTA and MTC contingents and maintain those relationships with the different states and the departments of revenue for our clients and internally for different people, the different teams around the country. So, that's how I spent primarily most of my time while I've been gone from private practice.

Nikki Dobay ([05:15](#)):

So, what made you want to come back? Because I know it was a very exciting role and being in the national groups, any Big Four is very prestigious and you get a lot of exposure both internally and externally. So, why back to private practice, why now?

Breen Schiller ([05:33](#)):

Sure. So I left, I got questioned a lot about why I love private practice and how it seemed like I was doing things backwards. A lot of people spend their majority of their career in public accounting and then go

to private practice, and I was kind of doing the opposite. And I think to your point, Nikki, is that throughout my career, these national roles always were very intriguing to me. They were as this prestigious position, never really fully understood what they did, but it was always these people I greatly respected that held these roles. And so when I was approached to join the group, it was a decision that it took a lot of time to make because I was walking away from a practice that I had spent my entire career building. But I also felt like if I was going to do it at any point in my career, then was the time.

[\(06:27\)](#):

So when I got there, again, it has helped me broaden my view of the practice and been able to do things I had never previously done with clients before, but I really missed being in the trenches with my clients and having a partnership with them. Being in National, I always felt this is my personal opinion and not necessarily applicable to everybody who holds those roles.

Nikki Dobay [\(06:53\)](#):

Right.

Breen Schiller [\(06:53\)](#):

Okay, everything I say is only applicable to Breen Schiller. I always felt that I was one layer removed from the action, so to speak.

[\(07:02\)](#):

And I missed being more than just a subject matter expert and I was just very anxious to be fully engaged in the practice again and in the practice of law again, quite frankly. Because when you are a lawyer at Big Four, you are not permitted to engage in the practice of law. So there's only so far you can take a case and then you have to hand it over. And there are a lot of challenging people that do what we do, right? And so I was always trying to help clients pick the outside counsel that was best suited to their matter and so on and so forth. But at the same time in my heart I was like, oh, it pained me a little to have to do that each time because I love what we do so much. And so it's like when you're with the matter from the beginning, it becomes part of you, you become invested in it and you want to see it through to the end.

Nikki Dobay [\(07:56\)](#):

Well, yeah, I remember being at COST and there were times when I would get to help a member on an issue generally from the policy perspective. So we were working on something with the department or a legislative or regulatory issue, and then there would be this time when they'd be like, "Okay, can you give me the name of a real lawyer?" And I'd have to be like, "But I'm a real lawyer too."

Breen Schiller [\(08:23\)](#):

Wah, wah, wah.

Nikki Dobay [\(08:23\)](#):

But you can't, I know.

Breen Schiller [\(08:24\)](#):

Exactly, yeah.

Nikki Dobay ([08:25](#)):

But you can't do that and you can't, because we also didn't engage in the practice of law for members there. So, but yes, it's very hard when you've worked on something for months or years-

Breen Schiller ([08:38](#)):

Years.

Nikki Dobay ([08:38](#)):

... to just hand that off. So, and that's really one thing that I'm super excited about with you being here at GT, and we'll talk about why you picked GT in this process. But I am very excited to be working together again because I think the way our practices have both evolved, we are going to be so complimentary and such a great team for clients with all of our relationships with the work that I can do in the legislative regulatory realm, your controversy and litigation skills. I'm going to brag a little bit, but I can't think of a better team to help clients navigate this crazy state and local tax arena. So, super excited to going and doing this together.

Breen Schiller ([09:29](#)):

I couldn't agree more, yeah.

Nikki Dobay ([09:31](#)):

So now let's talk about, was it a hard decision about coming to GT? Obviously you're a very talented person and you would've had tons of options or had tons of options. So, and obviously I'm super excited that you're here because we get to work together again and really build this group. But what made you decide GT was, and we're talking about Greenberg, not the accounting firm GT. I know that's always a little confusing, but what was your thought process there?

Breen Schiller ([10:03](#)):

So it's interesting. I've been asked this question, I think I shared that with you. And it wasn't hard, I didn't think twice about it. It was just kind of a natural decision for me. And I think that's how I knew it was right. So, when I started thinking about what I wanted next and when that thought popped into my mind, I realized that I should start thinking about where to go. When I started missing private practice, when I started having that feeling, I knew it was time to kind of explore. And I don't take those decisions lightly, I was at my first firm for almost 15 years, right?

Nikki Dobay ([10:54](#)):

Right, right.

Breen Schiller ([10:55](#)):

So if this isn't something I take very lightly, and you know that because I talked to you about it at [inaudible 00:10:59].

([10:59](#)):

So when I started thinking about leaving and exploring the idea of going back out to private practice, I just naturally talked to you, given our friendship and our history of working together. But also being the good friends that we are and having talked to you over the course of the last two and a half years that

you've been there and just hearing how the amazing platform the firm provides and the level of support that you've been getting, I've just always been really in awe of that. And I thought it was incredible, the runway that you were given by the firm and the support that you were given, not just by the SALT group but by everyone at GT. And it just had always sounded like a place that I would really enjoy.

(11:44):

And so then when I started exploring the idea of going back and started connecting with more people in the SALT group other than you, one, I knew most of them already and everyone was so welcoming and it already felt like home after talking to them. And then when I talked to the firm, went a step above and talked with firm management, I just kind of knew. There was just this feeling I got, I knew I wanted to be part of this firm, and I knew I wanted to be part of what you all are building in the SALT group.

Nikki Dobay (12:15):

It's just been great to be at GT and be part of what Brad started building several years ago, and now we're really starting to build out the... and they have such a great California team and they do so many great things there and now we're really just starting to build out the rest of that multi-state team. And you are obviously just a key piece of that, with Chicago being a really major market in the Midwest. So, I just think the future is bright ahead of us and I'm just super excited for what we're going to get to do.

Breen Schiller (12:50):

Yeah. I mean, the feel that I got talking from everybody and not just the SALT group, I mean, primarily the SALT group, but what struck me even more was outside the SALT group. And that GT just provides this phenomenal platform and it is supportive, it's entrepreneurial. They're going to give you the runway to go do what you want to do to help, and they're going to be there every step of the way to support you and help you. And also, its holistic approach to client matters and the engagement is very in line with how I built my practice in private practice and how I ran my practice and how I intend to do so again.

(13:35):

Nikki, I think you've heard me say so many times over the last few years and anyone who might be listening who've been at any meeting that I've spoke at and probably heard me say this before, but I believe everything that we do is built on relationships, whether those relationships are with our clients or with our colleagues. And GT embodies that, to me. So I'm super excited, I can't stress that enough too, to be here with the SALT group. I'm excited about the growth that you all have had before I came on board. You said the expanded capabilities that we can offer clients and more than anything, I'm just excited to see that now that I'm here, how I can be a part of it and add value and just continue that growth.

Nikki Dobay (14:23):

Yeah, it's very exciting times, and I'll tell the listeners what I told Breen. As we've been going through this process, rest up because we're going to be busy, we're going to be out and about. Breen will be speaking at many conferences this later this summer and this fall. So, we look forward to engaging with you really, all, as we're kind of out and about.

(14:48):

So now Breen, let's get into a little bit, this has been a little more of a feely podcast.

Breen Schiller ([14:57](#)):

Touchy-feely, yeah.

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

Yeah, yeah, yeah, we're back together again.

Breen Schiller ([15:02](#)):

Ironic, because that's not really either of our strong suits right now, I'm just saying.

Nikki Dobay ([15:05](#)):

That's right, that's right. Right, right. So let's get into a few SALT technical updates. And so I thought what we could do for the rest of our time before the surprise non-tax question, of course, is you talk about a couple issues that have been kind of front and center for you and that you really want to make sure folks have on their radar in the SALT arena. So, how about an Illinois issue? Because Illinois, I feel like not a lot happened, there wasn't any weird legislation or anything like that. So probably not anything going on in Illinois.

Breen Schiller ([15:48](#)):

Sure. Yeah, sure. Okay, so starting with Illinois, I'll do Illinois and I'll do national. The national one isn't per se a technical issue, but it's something that has been somewhat of a soapbox of mine for the last couple of years, it's more procedural.

([15:59](#)):

But starting with Illinois, I would imagine most of the listeners know that just last month there were a lot of legislative changes that passed in Illinois last session. Illinois, moving from Joyce to Finnegan, changes to guilty. But I think most significantly, and what most of our clients are going to have issues with is the limiting of the exceptions to the add-back. So the removal of the add-back safe harbor provision for interest in tangible expenses made to related members. For those who hadn't heard that, our subject tax in another state or foreign country was removed. And so, the position that COST put out that anyone in Illinois put out that when we talk to the departments, this is grossly unfair, is the perspective. Is going to result in double taxation of the same income in another state or foreign country where this interest in intangible income is already subject to tax in those locations. And without the safe harbor, a taxpayer is going to be required to go through a process of establishing by clear and convincing evidence that the add-back is unreasonable.

([17:13](#)):

And this is concerning for many reasons, but mostly that that is very vague, because the guidelines on what constitutes clear and convincing evidence of unreasonableness in Illinois is unknown and has never been addressed by the department. Now, based on conversations with the department, they intend to issue guidance and revise the reg, but until that happens, there's no guidance on what that is going to constitute. And then you just have the issue that it appears to have constitutional issues and be internally inconsistent. And so, I think it's inevitably going to lead to litigation over what is reasonable, and it raises serious constitutional issues in Illinois, both under the internal consistency test, so.

Nikki Dobay ([18:02](#)):

Is there any indication if a taxpayer is going to have to prove that before? Do you still just take the position on the return and then you're going to have to defend it by meeting that standard, or is this something you're going to have to request in advance, or no idea yet?

Breen Schiller ([18:19](#)):

We don't have any idea yet.

Nikki Dobay ([18:21](#)):

Okay, okay. All right. So you're saying that things are going to get more difficult in Illinois?

Breen Schiller ([18:29](#)):

Yes.

Nikki Dobay ([18:30](#)):

Okay. All right, cool, cool.

Breen Schiller ([18:32](#)):

Well, because think of it, you and me, we both could have different definitions of what constitutes unreasonable, right?

Nikki Dobay ([18:38](#)):

Yeah, yeah.

Breen Schiller ([18:39](#)):

And so until the department issue something, and then that is also questionable as to whether or not that is a fair, and I hate to use the word reasonable, definition of unreasonable. So it's just, right now that is what I would anticipate. And based on conversations I had with clients, that is a huge concern for clients right now in Illinois.

([19:05](#)):

And then there were some changes in 163J that are not entirely clear, there's going to be, I'm sure clients are going to have issues with the change to guilty. So yes, there is a lot moving around in Illinois that I think are going to, it leaves a lot of uncertainty and is going to end up producing some controversies.

Nikki Dobay ([19:29](#)):

Well, yeah, and one thing I've been digging into with the new federal legislation is the changes to guilty. So, that whole regime is changing. I've really just started to unpack all those changes and I think we're going to just have a whole new wave of, I would say, discussions and having to work with the state policy makers on whether or not they're going to continue to conform to, I'll just say 951 cafe, because it's not guilty anymore. We don't have guilty anymore. So, it's going to be a lot of craziness. So, all right, so your national issue, what's sticking in your craw on that front?

Breen Schiller ([20:11](#)):

Okay, so this has been my soapbox the last few years, and I felt very strongly about this when I was in private practice. And then being at all the FTA and MTC meetings provided me a platform and also opportunities to talk more to the people who were at the helm of the agencies and kind of educate them as to taxpayers' feeling. But the lack of opportunities for our clients to resolve matters short of litigation, the inability of departments-

Nikki Dobay ([20:49](#)):

What?

Breen Schiller ([20:49](#)):

... to resolve matters at the audit level, or even let's say, okay, if auditors are limited to resolve or enter into resolution, and I don't want to even use the word settlement agreement, but even just resolve the matter and audit, even just having the next, the first administrative level being able to do that. But there are so many matters that go on and that have to go get pushed to the next level and then end up in tax court or even circuit court or commonwealth court, whatever state you're in. And it is so unnecessary and it is inefficient, it's a waste of money, it's a waste of time and resources.

Nikki Dobay ([21:34](#)):

On both sides.

Breen Schiller ([21:35](#)):

And this is something that I have been evangelizing to all the different departments that will listen to me. I get encouraged when you see things happen like in Pennsylvania, but it's still too new to know if it's really going to be successful or not. I would love to see more states give audit, audit supervisors more authority to resolve, and I'm not going to use the word settlement, but actually resolve matters, instead of punting to the next level. Because clients hear things like, "Oh, well, I'm not going to make that adjustment. You can just take it up at the next level." It's like, no, this is what we are bringing you everything right now, let's do it now.

([22:17](#)):

And so, I think this is a procedural issue, I know that. It's not a national technical issue, but it is an issue that I know is very, very near and dear to a lot of clients' hearts. It's something that I think needs to change and I will talk to anyone who will listen to me about it.

Nikki Dobay ([22:38](#)):

Well, I think there's very few taxpayers out there that really, really want to litigate-

Breen Schiller ([22:43](#)):

Exactly.

Nikki Dobay ([22:44](#)):

... anything. It's just, it leads to so much uncertainty. Even if you win, you never know if that's going to stick. And folks just tend to get embedded in their positions and that isn't a way to move the system forward in an efficient way. So, we'll keep fighting the good fight on that issue for sure.

([23:06](#)):



So, all right, Breen, well, thank you so much. We got the surprise non-tax question, so.

Breen Schiller ([23:12](#)):

I remember these.

Nikki Dobay ([23:14](#)):

Yeah, so all right. So, it's summertime.

Breen Schiller ([23:14](#)):

It is.

Nikki Dobay ([23:17](#)):

I don't know if you've noticed.

Breen Schiller ([23:18](#)):

Noticed, [inaudible 00:23:20] are coming up.

Nikki Dobay ([23:20](#)):

I know, I know, we've got birthday parties to go to. So, we sometimes have cocktails at our house just sometimes. And so we were looking for a new summer cocktail and last night we had a friend over for dinner and we were having some Peruvian food. So the question is, do you all have a summer cocktail that is your go-to this time of year? So last night we tried Pisco Sours, which is, or Pisco. Now I don't know how to say it, but it's a Peruvian distilled beverage and then you make it with lemon juice and egg white and it was pretty tasty.

Breen Schiller ([24:04](#)):

[inaudible 00:24:05] fancy.

Nikki Dobay ([24:05](#)):

Yeah. So what's your go-to summer drink?

Breen Schiller ([24:09](#)):

Nikki, I'm not fancy. I don't think I have one.

Nikki Dobay ([24:13](#)):

You do, come on.

Breen Schiller ([24:15](#)):

No, I really don't.

Nikki Dobay ([24:18](#)):

All right.

Breen Schiller ([24:19](#)):

I mean, no, I don't.

Nikki Dobay ([24:22](#)):

Wine? Come on.

Breen Schiller ([24:25](#)):

A summer cocktail? I mean, I always see things and I'm like, that seems fun, but then it's so many pieces you have to put together and it seems like a lot of work. And then I'm like, nevermind. No, I mean, I think lately I've just been doing a white wine, like a Sauvignon Blanc, something dry-

Nikki Dobay ([24:43](#)):

Something light and refreshing.

Breen Schiller ([24:45](#)):

Yeah, but the complication of the fancy cocktails.

Nikki Dobay ([24:50](#)):

Well, sometimes you got to go there. We do a lot of gin and tonics too, in the summer.

Breen Schiller ([24:54](#)):

I love that, I love that, and if someone wanted to make it for me, I'd be like, yes, please.

Nikki Dobay ([24:58](#)):

Okay. Well, you have to come out to Oregon and we'll make you some-

Breen Schiller ([25:03](#)):

I know, I know.

Nikki Dobay ([25:03](#)):

... summer, some fun.

Breen Schiller ([25:06](#)):

I mean, [inaudible 00:25:05]. When I'm at home, we'd probably have more time, but I spend so much time on the side of a soccer field or a baseball field. You're not getting served anything fancy there.

Nikki Dobay ([25:15](#)):

All right. All right. Well, Breen, thank you so much for joining me. I'm sure there'll be many more podcasts in our future. And thank you to the listeners for tuning in. Information for Breen and I will be in the show notes and I look forward to being with you again soon on the next GeTtin' SALTy.