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 about the conversation we are going to have today. I have with me my colleague, now Breen Schiller, shareholder in the Chicago office of GT. And Zach, Zachary Wyatt, legislative director from the Missouri Department of Revenue. Thank you both for joining me. Now, Zach, before we get into the conversation, am I saying Missouri right?

Zachary Wyatt (00:42):

Yes, you are.

Nikki Dobay (00:42):

Okay. Okay.

Zachary Wyatt (00:46):

Especially when you're talking about tax, we use Missouri, but if it's farm, it'd be Missouri.

Nikki Dobay (00:52):

Okay.

Zachary Wyatt (00:53):

It's interchangeable.

Nikki Dobay (00:54):

Okay. I've also heard people say Misery, which I assume is a pejorative term you don't like.

Zachary Wyatt (01:00):

They're not from here.

Nikki Dobay (01:03):

All right. All right. Well, today we are going to be talking about how the private sector and the agency folks can work together to get to efficient resolutions and easier administration. This is a topic that the three of us were supposed to have a conversation about earlier this year at the FTA annual meeting. And due to unforeseen circumstances, Breen was not able to join us. So we decided to regroup on the podcast and get her in the conversation and just chat about what we think is a very, very important topic and tools to have in your toolbox as you're trying to work within our crazy web, the state and local tax system. So, Zach, I'm going to kick it off to you to start because you had a really powerful message when we did our presentation at the FTA and I think it would be great for you to share with the listeners.

Zachary Wyatt (02:00):

Thanks, Nikki. This is kind of my beginning thought to this presentation that we started at FTA Annual, but I've lost over a hundred pounds, not once, not twice, but three times in my life and every single time I can tell you this: the biggest difference maker wasn't just the diet plan or the treadmill. It was the support. It was the accountability and it was the partnership and the Department of Revenue and businesses are in a similar relationship. A business is trying to grow and stay compliant with tax laws, and it's like someone trying to make a big life change.

(02:47):

If the Revenue Department just acts like a referee blowing the whistle when something goes wrong, that business may stumble, shut down or avoid engagement altogether. But if the department is more like a coach, walking alongside them, explaining the rules clearly, offering tools, and celebrating progress, then that business doesn't just survive. It actually thrives. Just like I didn't need someone to yell at me when I slipped up on my weight loss journey, I needed someone to guide me, check in and help me back on track. That's kind of the relationship our tax system needs as well. Not adversaries, but accountability partners because in the end we both want the same thing: a healthy, sustainable economy that works for everyone. And that's kind of where I see this relationship that we should have between the department and our businesses that we are working with, our partners.

Nikki Dobay (03:53):

Breen, I know you and I have that similar philosophy, so do you want to give your overview of why you think this is such an important conversation just to have and then how you work within it and try to achieve results for clients and business?

Breen Schiller (04:15):

First, I realize I didn't say thank you for having me, so excited to be here again on the pod, number one. Number two, Zach, love that story. I think it is very, well, first of all, commendable the journey that you went on multiple times. I mean, kudos to you, but also what a great analogy. I had some thoughts prior to doing the podcast and obviously that I had wanted talk about at FTA and anyone who has heard me speak recently, I generally bring this up particularly at the different FTA meetings when I'm on panels because of the audience. So I've been calling it the procedural soapbox that I've been on, but just kind of building off something you said, Zach, that I really loved this whole helping the parties be accountable and not adversaries. I think that's such a perfect way to put it because more often than not, and unfortunately, I find or I have seen that the parties are showing up to the table already feeling like adversaries like they have to fight each other.

(05:29):

Because I'm going to say both, I'm not going to just put this on the different Departments of Revenue, but you see the different departments coming and assuming that the taxpayers are trying to cheat the system or trying not to pay the tax that they owe. Sometimes you'll have the taxpayers show up to the table and think that the departments are being unfair or they're not listening or all different things that are going on. But I think communication is key, Nikki. I think that the more communication you have, let's say, at the start of an audit, and everyone could be on the same page and start from a similar point expressing the needs that each party has, the expectations that each party has, and then agreeing to meet those expectations of each other, right? Departments can't be demanding of taxpayers if they themselves are not willing to then also show up, and I think vice versa, right?

Nikki Dobay (06:27):

Mm-hmm.

Breen Schiller (06:28):

I think something that we're seeing from a taxpayer perspective is audits taking a long time and then all of a sudden with very little time left, they get hit with all these IDRs or different requests for information and then they're asking for waivers instead of... And then the taxpayers are sitting here going, "Well, you've had all this time and you haven't done anything and now you want to put the burden on us." Then on the flip side, you have departments getting frustrated because they're asking for certain documentation and taxpayers aren't giving it. But communication can solve all of this if you set expectations at the beginning of the audit. I had a client that used to say at the very beginning of the audit, and they still choose the same, "We will not sign a waiver. I'm going to put you on notice now."

(07:16):

They did this for every state. "We are not going to sign a waiver, but we will respond to any requests that you give us within 10 days but my expectation is that you will do the same. And if we both do this, this audit is going to run smoothly." And a lot of taxpayers are afraid to take a position like that because they've never done it before, but this particular company has historically always done it and it's worked great for them. But they set this expectation in the beginning, right? Another point I would say, a pressure point that we see is departments wanting specific documentation and a taxpayer coming back and saying, "We don't have that or we can't get that, but what information is it that you're looking for because we might be able to get you that information in a different format?"

(08:05):

The expectation would be that the department would be willing to work with the taxpayer there. Again, Zach, to your point, not being adversarial, but being more of a partner in this and saying, "Okay, I understand that you don't have that document per se, this audit checklist document, but this is the information I'm looking for. Can you provide it in a different format?" Instead of the auditor saying, "No, sorry, it has to be in this particular document." And so I just think that a lot of communication from the beginning, setting reasonable expectations for both sides and working together instead of just coming to the table with these preconceived ideas that each party is kind of out to get the other one.

Zachary Wyatt (08:53):

Do you have it? So, Breen, one thing from yours... I really like what you said there that I really see the compliance is just easier and cheaper, I believe, when there's a trust that exists between the two entities.

Breen Schiller (09:08):

A hundred percent. I think that one of the biggest problems that we're having is that there is this inherent lack of trust that exists right now. So, maybe the base question is how do you get back to a position where there is more trust? We just talked about this at NESTOA on the Ask the Experts panel. There are, I think, a lot of different factors playing into this. And Zach, I mean you probably can attest to this firsthand from Missouri's perspective, but you have a lot of seasoned auditors who are retiring who have those really good relationships with the different taxpayers who have an understanding of the business, of the documents, and they understand it better, right? And they're retiring, you're losing that institutional knowledge and you're having a new wave of people come in and they haven't built that trust up yet.

Zachary Wyatt (10:06):

Yeah, so like in Missouri, I'll say it's kind of sometimes a mixed bag of that. Yes, you have the seasoned auditors, the ones that have been there getting ready to retire, that have developed the trust because we do have a lot of auditors that have that in their wheelhouse. I've also seen those seasoned auditors that have went through I'm just going to say tough budget times and have been told to get every single penny they could [inaudible 00:10:42]. When I first started at the department, the culture was that's my money and meaning the auditors saw that as their money because they're getting essentially graded on their audit based upon on how much they find, and they're not being graded on how much they're actually helping a business or getting a business back on track or getting them back into compliance. And that's something in Missouri we've really changed a lot in the last five years.

(11:14):

Now we came out with what's called the hammer to hand approach. Instead of always coming down with a hammer, let's offer a hand to our partners, our businesses, our customers. We've really done a lot more within the perspective audits and not doing any of the retrospective type audits. So if we're doing an audit and we see that there's these issues and there are issues that have never been addressed before with the company, and the company clearly didn't understand their tax liability at that point, we would educate them and then we would maybe do a spot audit in six months or a year to see if they've changed their ways and then we would go forward that way.

(12:05):

Instead of this whole, "Well, you weren't doing it right, you never collected the tax, but we're still going to hit you with this huge finding and you owe us now all this money which could potentially shut down your business or put a huge financial strain on your business." And I've always told my auditors and my team that I work with is, "You got to think about the future. You could get that money potentially from them from going back and assessing them, but you're going to get more money out of them in the future if you can keep that business open for years to come." I think sometimes they don't look at the future, they're looking at the now, and if I can-

Nikki Dobay (12:54):

Or at the past.

Zachary Wyatt (12:56):

Well, yeah, they're looking at the past.

Nikki Dobay (12:58):

Yeah.

Zachary Wyatt (13:00):

And if I can get a business to understand what their obligations are and go forward, I think that's a bigger win than to get this huge assessment from them when that could drastically hurt their operations.

Nikki Dobay (13:16):

Well, and I would just like to jump in. We have a couple comments that you both have made. So Zach, you kind mentioned just compliance and then also how auditors were previously graded on what they brought in, but let's kind of flip that on its head. It sounds like that's really where you all are going is what if the goal is to get as much information out there to help with voluntary compliance and then the audit is really more of a check-in to make sure that the business is understanding, and so how the auditor is actually graded is on a five-year plan of whether or not their compliance got better. Then the other thing I would point out is this issue of trust, and I think you nailed it when you said we are coming to a point where a lot of folks are retiring and we're going to be getting a lot of new auditors. And to your point, it could go either way.

(14:12):

We've got the seasoned auditors that are really dug in and think nowhere income can't possibly exist, or, that every business is hiding something. So we got an opportunity with all these new auditors to really build this trust, and I think you both agree because we all go to a lot of FTA meetings that the best way to build these relationships and trust is to communicate outside of the... Yeah, when everybody's fighting about an issue, it's easy to say they're bad or they don't know what they're talking about or they don't understand. But if we're at these meetings and we're having dinner together or at receptions together and we're getting to know each other, it's a lot easier for us to be like, "Hey, Zach, we've got this situation. It's a little weird, but how do we navigate this?"

Breen Schiller (15:04):

To your point, it could potentially in certain states be a systemic problem and that's a big concern, right? Is that it sounds like the example you gave that auditors were being evaluated, rated based on that, that's a cultural issue within a department. And if that is the case, I mean... And that is every taxpayer's biggest fear is that this is what is actually going on. Nikki, yeah, I think both sides of the coin could go either way. You could have seasoned auditors who are fantastic and who understand it, or you can have seasoned auditors who are jaded and it's like... But this new fresh crew coming through, we have this opportunity to start new. But if the culture of a department isn't something that supports that, it's like relationships like these that we have with people like Zach, like with you or different people in different departments, but not everybody has those relationships and working across the table is key.

(16:17):

But I mean, the fact that it might be or that it can, and frankly is a systemic problem in some of the different departments, makes it very challenging to try to navigate the systems/ because at that point, when you reach an impasse with an auditor and audit supervisor short of having to go to a litigation's point, it is reaching out to the higher ups, the people like you, Zach, to say, "Hey, can we sit down to the table and be reasonable about this? Can we reach some sort of reasonable solution?" I think this is what we keep preaching about is there is a lack of ability to resolve matters at the lower level because of these impasses that we continually are reaching.

Zachary Wyatt (17:07):

I think sometimes some states get on this that they could just take it to litigation, right? And litigation, yes, that costs the state money even. I don't know if they think of that forward projection of they're like, "Oh, it's nothing off of our backs to take it to litigation." But if we can reduce the litigation and conflict we have, then that saves everyone money in the long run as well.

Breen Schiller (17:38):

Mm-hmm. Time and money.

Nikki Dobay (17:42):

And I think we can all agree also that there's always going to be issues that do need to go to litigation, but really there's a lot of... I wouldn't say it's frivolous.

Zachary Wyatt (17:52):

I'll blame the the legislature on that one a lot of the times.

Nikki Dobay (17:55):

As a former legislator.

Zachary Wyatt (17:57):

Yes, as a former legislator, as the recovering politician, as I like to call myself, the legislature will write laws that are so gray that it is hard for... We make a decision at the department that maybe the business industry might not agree on, and that's when litigation, the courts need to step in I would think. Now, I will say usually in Missouri if we have that issue, we reach out to the business industry to see what they are looking at. And then we don't base our decision just internally, we work with our partners, our business partners, to see where they're at, to kind of gauge where our maybe ruling might come down on for the new legislation.

Nikki Dobay (18:53):

I mean, I think there's a couple things there to highlight. One, I do a lot of policy work, so I think it's very important if there's legislation being proposed, I always go to the Department of Revenue. I would never think about trying to get a bill introduced in a state on state tax legislation without the department being at the very least aware. So they know. My goal is always to get them to a neutral or support position, and so that involves working with them. And almost all of the departments I've worked with on these issues, they're trying to stay out of the policy, but we really want their opinion on administrability and compliance.

Zachary Wyatt (19:33):

Nikki, before, I've told you on some things where I'm like, "No this can't-"

Nikki Dobay (19:36):

No, and we didn't do anything on those issues. Because it's like if I don't have Zach on my side in Missouri, this is going down in flames, so I'm not going to waste my client's money either. But then there's bills that get through that have a lot of gray, and also as a person that's drafted legislation, I think I've buttoned everything up and two years later you're like, "Oh, oh darn, that does say that. That really does say that." But then we've got to take it a step further and all work together through a stakeholder process in that regulatory or guidance period. I also put the onus on the businesses and taxpayers to come forward with questions. Again, if we want this to be a true partnership, then... And I think Breen, this goes to some of the things you're talking about is there's not always the trust on the taxpayer side too, but it's like we've also got to come to the table and say, "Okay, this is a gray area. What are we supposed to do in this situation?" And just having that line of communication open.

Zachary Wyatt (20:47):

I think you're right on that. When you went down to the regulation side, when we're drafting regulation, we work with our business partners as well, especially when we're drafting new regulation. Just because, one, in Missouri, it's being... Since Loper Bright and all that stuff, I will say the legislature has been really, really watching rules and regulations coming out of the different agencies and departments, and so we work closely on the new rules and regulations. If we're doing an update to a rule, if it's just an amendment and it's not any substantial, I'm not going to bug my business people in regards to that. I'll give them a heads-up. But they also have the onus of understanding when it goes to the Secretary of State and it's posted on the registry, that they have time to comment on it at that time as well. But if there's a substantive change, we do work with our business industry on our rules and regulations.

Breen Schiller (21:50):

I think it's one of the most important and successful parts of a partnership that states can do are the practitioner councils that a lot of them have, or some call it practitioner councils, some call it practitioner committee or industry council, industry committee. The name varies from state to state, but most states have it and I think that that is such a crucially important piece of the puzzle when it comes to the legislative part. But also, I mean just again, it's giving more exposure for practitioners and industry to department executives. And just again, opening the conversation up a little bit more.

(22:36):

I mean, I've had this conversation with the Massachusetts Director of Revenue, New Jersey Director of Revenue, people at all the different FTA meetings and just talking about taxpayers needing more ability to contact and talk to people because... Or they're unaware of issues that are happening at that time. That happens so often where you'll say, not disclosing any names, but talking on an anonymous basis about an issue that one of your clients face. You talk to the directors or the deputy directors and they're like, wait a second, "What! What's going on? You should have called me." But not everybody has the ability to just pick up the phone and call these people. And so I do think that those committees and those councils that the state departments of revenue set up are incredibly important and just very useful for helping this process along.

Nikki Dobay (23:29):

Well, Breen, you were reading my mind. That was the question I was going to ask you. But I think the last topic I want to touch on is going back to this idea of the opportunity we have, and Zach, you and I have these conversations all the time. Last year I talked at the MTC audit committee about prospective audit. So doing something on the sales transactional tax side that looked forward or was in kind of a real time scenario as opposed to a retrospective audit. You are very open to ideas like that and very, I would say, committed to looking at processes and things that have always been done a certain way and thinking about how is that the right way or maybe we should do it differently? So what would you say to your colleagues on the department side, the agency side, as to why you think that's so important?

Zachary Wyatt (24:29):

Well, I just think it's important because again, it's looking towards the future, making sure... You want to make sure that the businesses stay open and they're functioning properly, they're collecting and remitting properly. And if they didn't understand their tax obligation at a certain point in their business because opening a business and getting a business started, it's difficult. And you want to be there to help them through that process as much as you can. I think if you're able to look at prospective audits and kind of go forward in that realm, that is something then you create a trust, a bond, I think, with the businesses and the customers that you work with that will pay off dividends in the future. Especially even, I can tell you the whole culture in Missouri like I remember when I first started, heck, I remember when I was in the legislature, DOR was not very well-spoken about.

(25:36):

I think it was probably on a weekly or even sometimes daily basis of how horrible the Department of Revenue was because they were hearing from the businesses, they were hearing from other... There were other issues that were coming to the forefront during those times, but it was really negative. And I can say since I've been there for the eight years, that has all changed in Missouri. We have a lot more, I think, goodwill with the business community. We have a lot more collaboration with them. We work with them on legislation, even on old legislation that we've been trying to get passed for many years. For example, there's a durable medical good like sales tax exemption and for some reason there's a Oxford comma in legislation that really makes it where certain things for brain tumors and stuff, certain medical goods, durable medical goods for brain tumors aren't part of the exemption, the sales tax exemption and these things prolong people's lives, makes their less pain and stuff.

(26:51):

But when I first started, it was like, "Bad DOR. They're reading it wrong, they're doing this wrong." Then now when the legislation's presented, it's like, "DOR and us work together to make sure this is right." So that whole dynamic has changed even in that small piece of legislation that has been introduced probably for 10 years now. That whole narrative has even changed. And I can just see the change on even the matrices we're putting out there at the department, explaining to businesses that they can go to that and they can see what their tax liability could be as well. So, it's a whole plethora of things. I think that departments, they just need to think outside the box.

Nikki Dobay (27:36):

All right, Breen, you've got the final word. Tell the people why this issue is so important from your perspective and then we got to get into our surprise non-tax question.

Breen Schiller (27:49):

I think this issue is so important because... And this is coming from someone that considers themselves a state and local tax litigator. I mean, my practice is much broader than just controversy, but I am saying this because I spent my formative years as an attorney learning from someone who litigated cases, but also spent the first 25 years of her career in-house. So there's part of me that approaches every matter with what's the best way to resolve the matter. Okay? And like Nikki said, there are cases that out of principle, you have to go to litigation... There's no other solution. You got to go to the mat on this one because it's too vague, we need answers, things like that.

Nikki Dobay (28:37):

But that's probably 10% of it.

Breen Schiller (28:39):

Exactly. But with all other cases, the first question is what is the best resolution for the client here and what is the path of least resistance to get there? And I say this to every department, most taxpayers don't want to litigate. They just want the right answer. If we can get the right answer at a lower level at audit, I mean, how much easier would our lives be? Zach, you talked about how there's a cost for the departments as well. It is not cost and time efficient to go to litigation on every single matter that you have. There is a state right now, and I had a discussion with them last week that almost every single case, every single matter audit that I have that has gone through the audit level, you have to go to the first level appeal, then the second level of appeal, and more often than not, into the court system.

(29:38):

It is a systemic problem there. I mean, we're talking not just new audits, but a second audit cycle that you resolve the first one and you're simply looking for the same outcome. So, I think that it's just in all parties' best interest to be able to look for the most reasonable solution to every case. I personally don't believe that having to go full-blown litigation on every single matter is the answer.

Nikki Dobay (30:07):

Well, I know I said I'd give you the last word, but I just had a thought based on what you said, which is part two of this conversation. Because I think it would be really good to talk about those levels of appeals and maybe rethinking those in the future. I think those historically were put in place to provide taxpayer protections, which we all think are very laudable. But as times have changed, I think those embedded agency opinions have sometime filtered into what was supposed to be an independent review and be able to allow-

Breen Schiller (30:41):

Become a rubber stamp.

Nikki Dobay (30:43):

.... it to become a rubber stamp. So, that's 2.0. All right, we're going to do-

Breen Schiller (30:47):

Sometimes it's just providing the audit level more ability and authority to resolve, and not every state does that. Again, that goes back to the legislature, right? Is there the ability to rework that? I'm not saying it's an easy fix, it's just one that we managed to talk about.

Nikki Dobay (31:03):

We got to think about it.

Breen Schiller (31:04):

Yeah.

Nikki Dobay (31:07):

So, all right, 2.0 of the conversation. So surprise non-tax question. We had a little pre-funk on this podcast and I had so many ways I could have taken this, but I'm going to go back to my initial question, which is I am pretty sure you both spend some time around a lake in a house. You have a lake house, you go to a lake house. So my question is, we don't have a lake house, but we go to lakes with our dogs. So my question today is when you're at a lake house, what is your favorite thing to do? For us, we like to take the dogs and Frankie, our little pup is a super swimmer, so she's really funny to just watch swim around. Sometimes I take a stop or a little inner tube and she just will swim all over the lake in her little doggy life vest, and so that's really entertaining. I look forward to doing it with a glass of rosé next summer. Didn't get to that this summer. But all right, Zach, I'm going to start with you. What's your favorite thing to do at a lake house?

Zachary Wyatt (32:11):

Oh, I'd say it's actually being outside and going on our boat and enjoying the lake itself. I did have to laugh. This year I really didn't get into the lake, the Ozarks, where our cabin is located. But I was at table rock down in Branson a lot more this year, but it's been a good lake year down here.

Nikki Dobay (32:36):

All right, Breen, favorite lake house activity?

Breen Schiller (32:40):

Going out on the boat. We love being out on the water and tubing, taking the kids tubing and all of that. That's the best.

Nikki Dobay (32:48):

Do you guys water ski?

Zachary Wyatt (32:50):

I did tubing just last two weeks ago. I hadn't done it probably for, I'm going to say 15 years.

Breen Schiller (32:58):

Yeah.

Zachary Wyatt (32:58):

I was like, "I'm going to be leaving for NESTOA and I'm not going to be able to get on the plane because I can barely walk."

Breen Schiller (33:04):

I know. I know, right?

Zachary Wyatt (33:04):

And there's video, I'll show you [inaudible 00:33:12].

Nikki Dobay (33:11):

But do you water ski? Do either of you water ski?

Breen Schiller (33:13):

I haven't in years.

Nikki Dobay (33:16):

Yeah, I grew up water-skiing.

Breen Schiller (33:18):

I'm not even going to attempt it.

Nikki Dobay (33:20):

All right.

Breen Schiller (33:20):

We limit it to tubing and then the kids just have started doing the wakeboarding. No, I haven't in years and I don't intend to do it.

Nikki Dobay (33:32):

All right. Well, thank you both for this conversation, a really important one, and we will keep it going with the second iteration of this talking about ways we can continue to improve the system. So thank you to the listeners for joining us, Breen and Zach and I's information will be in the show notes. If you have any comments or questions, feel free to leave those in the show notes and looking forward to being back with you again in a few weeks on the next GeTtin' SALTy.