

Speaker 1 ([00:00](#)):

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Max Behlke ([00:16](#)):

I just had to chuckle because here I am in the Supreme Court of the United States with all of these smart folks and lawyers. I'm not a lawyer.

Nikki Dobay ([00:26](#)):

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 Portland, Oregon, and Sacramento offices. I am very excited to be joined today by a good friend, Max Behlke. He is the Deputy Executive Director of the Institute for State Policy Leaders. Max, thank you so much for joining me.

Max Behlke ([00:50](#)):

Nikki, thank you for having me. I listened to your podcast all the time and I'm pretty excited actually being asked to be on here today. So hopefully I live up to some expectations.

Nikki Dobay ([01:02](#)):

All right. I have no doubt that you will live up to all the expectations. So Max, as you probably know from listening, one thing I like to talk to my new guests about, and I think you're going to be here again, so we'll just do this question once. But how did you get into, I usually say state and local tax, but I don't know that you really got into state and local tax. So I'm just going to say how did you get into all this?

Max Behlke ([01:25](#)):

Sure. I think we fall into state tax, Nikki accidentally, I don't know if anybody grows up, when I graduate high school, I'm going to go be the best state tax policy person. So I've always been interested in state and local policy and government. I interned in the Maryland legislature when I was in college. I ended up working there afterwards. I then went and worked for a consulting firm and track legislation before I made it over to the National Conference of State Legislatures in their DC office, where I wore many hats. I actually was brought on to do energy and environment policy and they needed some help with the staff for some tax policy work, which I remember saying that night, I remember calling my dad going, "Hey, they're asking me to do tax. I can't get wait to get rid of this. How exciting can state and local tax be?"

([02:13](#)):

I remember the calls explicitly and he goes, "Okay, well you just work through this now and you get through it." And then a year later, I'm telling him how excited I am in the work at the state and local level as well as federally. So worked through NCSL and then after we had some victories there in Wayfair, I moved on to the private sector and into tax and general policy at a start of a billion-dollar company and then moved over to a trade association before my previous director of the DC office of NCSL, kind of brought me up this opportunity to come work at the institute. And after talking with him, I couldn't say no.

Nikki Dobay ([02:54](#)):

Well, I've only had two guests that basically knew they wanted to be tax lawyers from a very young age, which I think is pretty wacky. I think you've joined the ranks of most of us who say somehow I just wound up here and I kind of fell in love with the work. And you touched on your role at NCSL, which was a really exciting time and we're going to talk about the real excitement a little bit later. But let's talk about the Institute for State Policy Leaders. Give us the history and the mission and what this is all about.

Max Behlke ([03:27](#)):

Sure, thank you. We're newer. Like I said, the executive director, Neil Austin of the Institute, after he had left NCSL, he went into consulting and worked his way into retirement, had been approached by and talking to a lot of business folks as well as members of the policy community in general, saying that there's a lot of emerging in really complex issues that are out there and there isn't a good forum for all the right folks to be in the room across the country to have these discussions that are national in scope, but that state policymakers are going to have to directly engage on. And they have these state policy makers and their governments have the responsibility to be ready to meet these challenges and can't sit back flat-footed and not have the right expertise to ensure that their economic wellbeing of their states and their residents continues to adapt and evolve with the 21st century.

([04:23](#)):

So therefore launched the institute, which is a 501C3 educational foundation that hosts programs on specific topics throughout the year. And each program provides policy makers with a balanced deep dive on a policy issue and allows them to discuss the concerns and questions with the leading experts and their lawmaker peers in other states. This is what you do every day expert, what do you suggest? What happened in the other states? So we're looking at topics across the gamut. We've been approached by and are working with so many different groups right now, ranging from the automobile industry dealing with electric vehicles, ultimately autonomous vehicles. With all the federal dollars that are down there that have been thrown into that arena recently, to future of broadband rollout. That was a big initiative that's also at the federal level and where is the future of content information, artificial intelligence.

([05:17](#)):

And we've also to working on more localized at the state level. We have a couple of foundations that wanted to push through their discussions on criminal justice reform, recidivism to healthcare, things that states can do to improve their healthcare efficacy about saving dollars. So there's a lot of interest out there across a wide gamut. And there was a real niche and a need for this, and we provide this forum where we help facilitate these discussions, among the policymakers and the folks that really needed to be in the room, that they needed to hear from. Because even by creating these forums, then they can build these relationships up among all the interested stakeholders to be prepared for the next legislative session, as opposed to just starting square one after a hearing, doesn't necessarily or often lead to the best policy outcomes.

Nikki Dobay ([06:09](#)):

Yeah, I think groups like this are so important because one thing I think state policy, there's a very steep learning curve. When I joined COST, the Council on State Taxation, I covered 13 states and it was always insane to me how different the conversations were in each state. And we were just talking about one topic, tax, corporate tax, generally. And the fact that these conversations were so all over the board, was kind of wacky because then you have taxpayers that are trying to comply in all the states and on all these issues, you have multi-jurisdictional companies that are trying to do work across state lines. And so I think bringing folks together to learning best practices or maybe what really is a sound policy to

move forward is really, really important. So what is your role at the institute, or are you wearing all the hats right now?

Max Behlke ([07:09](#)):

So we're smaller, we're launching, but lots of hats, which makes it fun and nerve wracking. But I am leading up to our Tax Academy, our tax efforts in educational side. And I think you hit the nail on the head of what you said of education and there's been such turnover at the state legislative level because it's term limits, elections, just retirements. I think its about half or more 60% of the tax leadership chairs are new. A lot of these issues might be old half to a lot of folks in the state tax arena. For someone that's just coming in as a lawmaker, coming in to learn and I think everybody would agree with this, that by properly educating them on what the topics are, we can address 80% of a lot of these problems that arise of if you introduce this bill, this is what happens here and this is where this goes. And we're not always going to agree on taxes or anything, policies. But providing the education and providing best practices and that information itself is just mutually beneficial to everybody involved.

Nikki Dobay ([08:22](#)):

Yeah, I think that's right. And I also spend a lot of time with the organizations of the administrators and it's great to be talking to those folks and hearing their challenges or where they've seen success, but they don't make the law. And so you really do need to get with the policymakers and often they will say, "We don't set policy. We're just here to administer whatever the legislators want us to do." And so I definitely maintain those relationships. Those are very important relationships for the work that I do. But when it comes to fixing problems that we're seeing, sometimes the administrators think their hands are tied. And so we've got to go to the policymakers and talk to them about how do we make this system workable. And as you said, there's always going to be times where we disagree on what the right policy is.

([09:22](#)):

But I will say one place I'm definitely at in my career is I just want simplification. I just want taxpayers to be able to comply. I know a lot of my peers love complexity. They think it's great for business, but for me, I just want to help my clients be able to comply, in an efficient way, where they can do their business because as crazy as it sounds to you and I, these companies aren't just created to pay taxes and set up tax shops within their business. So they're actually doing something like electric cars or something, they're creating things. So I think it's so important to talk to these policymakers and get them to understand... My job is always to get them to understand the challenges businesses are facing and suggestions that we think could make things better and get money to the states more quickly.

Max Behlke ([10:21](#)):

I couldn't not agree, could I just high five?

Nikki Dobay ([10:23](#)):

Yes, virtual high five.

Max Behlke ([10:26](#)):

I've been actually at our upcoming meeting here in a few weeks, we actually have the deputy secretary of the Taxation Department of Pennsylvania that's coming to speak. He was a former state legislator that was a lawyer for both for and against the... And I have representatives of the MPC and FPA coming.

I do believe in good government and still having these conversations, I always encourage taxpayers to go make it to meet their tax departments and engage in that dialogue. Where are your issues because... And it's always easy to beat up on a tax department and it's easy, many folks do, but that doesn't have anything to do with outcomes in terms of where the policy is. And I do feel bad, I'll say this, at times, I feel bad for tax administrators when there's new topics that come out, the digital space keeps evolving and someone, a taxpayer comes up and goes, "Is this taxable or not?" Well then they're becoming a policy maker, which they're not supposed to be.

[\(11:22\)](#):

They have to make a decision. And if they go the wrong way, then they can get beat up by either executive, further up, or the policymaking community. It's not rocket science here is that taxes fund society, we have them. But to your point, it should be as seamless as possible for a taxpayer to remit and complete their taxes. I always like to think of it when policy comes up. I to think of it in different buckets of size of businesses. I look at, if I'm a medium to smaller business, I'm the CEO, hiring manager. I'm the one that gets the accountant. I have consultants. I don't have time to sit around all day to figure out tax compliance and I shouldn't. Our economy shouldn't want that. We should want them to be out there doing what they're supposed to do. So engaging in these dialogues to address these issues, I think is vital. They're not always the most sexy topics, so they get the big headlines.

Nikki Dobay [\(12:18\)](#):

Right, yep.

Max Behlke [\(12:18\)](#):

We fixed our accelerated tax program. But if you're that taxpayer or the administrator that's working on it, it could really make your life a lot better.

Nikki Dobay [\(12:28\)](#):

Well, yeah, talk about not sexy. I've spent the last year, Max, working on a multi-state power of attorney form, which I didn't go to law school thinking I'd be drafting a form and just talking to states about accepting this two page form to try to create some uniformity. Yeah, I'm doing some real unsexy stuff these days.

Max Behlke [\(12:52\)](#):

Are you running in any issues? Because as we always find is that states are sovereign, they want to do it their way, but it's uniform. Am I sitting sovereignty here? Are you running across any of those issues?

Nikki Dobay [\(13:04\)](#):

I would say by and large it's been really, really well received. So we've got six states that are currently accepting it, which is awesome. And we've got a handful that kind of have it in their final reviews. And I've got a little more work to do on my end just with outreach. But I think this has been an issue where we've gotten everybody to somewhat agree that you're not losing your state sovereignty, if you just accept the same bit of information in a little bit of a different format. So far, knock on wood, I don't have any wood to knock on, but it's been going really well.

[\(13:41\)](#):

Well, let's talk about the Tax Institute, because I'm super excited about this. I will be there. I know many other folks that have been working in this policy area for a while will be there. So what is the Tax Academy?

Max Behlke ([13:56](#)):

Sure. We actually have another attendee as of today. I just had a call from the Senator from Idaho is going to be at-

Nikki Dobay ([14:04](#)):

Awesome. I love those guys in Idaho.

Max Behlke ([14:07](#)):

Oh yeah, it's been interesting-

Nikki Dobay ([14:15](#)):

Tax issues, I'll say on tax issues.

Max Behlke ([14:16](#)):

You're part of the world. Yeah, I think right now, I think we have 24 states, so almost half the country and these are leaders. So either they're chairs or vice chairs or prominent tax folks or a minority ranking member on the committees. And what the academy of these seminars is intended to do, is to provide a place for discussion among the chief tax policy experts, folks such as yourself across the country, that know what's going on, that have practice and information of what they're seeing with the folks that are leading those decision makings at the state level.

([14:57](#)):

And to come in, we're going to open up, I think, I don't know if you've ever heard David Benore, provide an overview of tax policies, how to think about it. And he's very interesting and he'll go over and engage a conversation, because that's what we believe is face-to-face seminars at the institute, face-to-face seminars and dialogue and conversations really are, I think, necessary and are something that we really lost out on during the pandemic. And there aren't policies, we're not pushing perspective. Everybody will have their own unique perspectives. We try to balance the program to provide all aspects of where this is, to provide overview of what taxes to them, we'll do recaps of what other states are doing. I actually had a couple lawmakers email me the last couple days saying that. So just having an under better understanding of what states are doing.

([15:47](#)):

The conversation this morning about budget surpluses. There was a lot of Covid money that came down. What is that going to mean long term, if I'm looking next year? Where our finances going to be? Remote work taxation has been from work sales tax evolved. I'm looking forward to the panel with you speaking on importance of simplification and burden reduction right before our panel with MTC FPA, which I think would be really interesting to have where the business community sees this followed by... But the tax administrating community be able to have those back and forth as well as digital tax, online marketplaces, artificial intelligence.

([16:34](#)):

So we want to provide a base of understanding of knowledge to these leading state lawmakers, of most important topics that are out there. We're not going to be focusing on stuff that's just inside a state or that's overly political. I don't ever see that we're going to have a session on should we raise or lower the personal income tax rate. That's an inherently political question. I don't see what we could add to the conversation, to that discussion. But be able to come here and we're not going to be able to cover every issue or topic or delve into it, but be able to have that.

[\(17:10\)](#):

If I look at it as a lawmaker, I get to come, I get to meet Nikki and she focuses on these issues. I want to talk about services, taxation, here's some other folks. What are you doing in your state? What are the political ramifications? Because there's policy and then there's politics. And I think in the world that we're in now, we often try to separate them. But what is the best policy? Well, that's great. I always believe, what is the best policy and then what are the political environment? How close can you get the best policy in the politics that are there?

[\(17:43\)](#):

I think that's a key discussion of how things move and get enacted. So we're pretty excited for the topics. And then I think we're looking at... We're nearly pushing 40 state lawmakers, which is great considering the amount of feedback we've gotten saying, "Hey, I'm still in session. We have a veto session, I have, et cetera," but we're going to build off of this and we'd look to be doing this again in the fall. And I think that we're going to have the tough choices of turning legislators away, which all in all is a good problem to have.

Nikki Dobay [\(18:15\)](#):

Yeah, I was a little sad that the Oregon chairs, the revenue chairs weren't able to come there, although you've probably heard all the issues with the Oregon session right now. So maybe they will just show up, but it's not a lot of work being done in the building.

Max Behlke [\(18:32\)](#):

I hear some people work legislature for a few weeks, so they can come for a couple days.

Nikki Dobay [\(18:37\)](#):

That's right. Well, I'm super excited about the Academy because I think you're right. I think just creating a space where these conversations can happen, is going to be really important. And I think also the timing is really good with kind of post pandemic, we're in a time when people want to be together. And I tend to think we're at a little bit of a crossroad with kind of budget surpluses and what's going to happen next year. So I think that's super exciting to hear. There's about 40 folks that are going to be there, and I think it'll be a really great discussion. So just really honored to be able to be a part of that. So maybe we'll be back later this summer with a follow-up on how that all went.

[\(19:21\)](#):

But let's get into, I'm going to mash together my favorite salt issue of the week and a discussion that I know that's near and dear to your heart. It's been really fun lately to hear how excited people are about the five-year anniversary of Wayfair. So Max, I'm going to give you the floor to talk about your experience leading up to that case. Now, we can't be here too long, so I will cut you off at some point, but give us the highlights, your favorite parts, what you're most proud of. I'd just kind of love to hear it from you.

Max Behlke ([19:59](#)):

Well, thanks, Nikki. Wayfair indeed, is near and dear in my heart. Five years since the decision, it felt like decades that I had worked on it. When I joined NCSL, I said I joined the tax issue and then we were really focused on e-commerce. And to be honest, when my boss first told him about this, he goes, "Yeah, we're going to address this internet sales tax issue. And I was like, "What?" I was like, "But I don't like paying taxes for stuff online." He laughed in hindsight and of where that's evolved to. So dove into it and worked with the NCSL Salt Task Force with the colleagues there, the great lawmakers from across the country. And we spent years working on this and how to address this issue for internet. Can you imagine, what we would be talking about today if states couldn't collect sales taxes during the pandemic?

([20:49](#)):

We looked at \$23 billion a year. It turns out, we under guessed, all our estimates were actually low. So I'll just bring up a point that goes back to my mind of where a turning point that I saw here. Because we had worked on, I had spent numerous hours on Capitol Hill helping to craft legislation. We worked in 2013, I remember that, when Senate passed the Marketplace Fairness Act, 69 to 27. And I was in the chamber when it went through. And then we worked with the House sponsor, I worked with then Congressman Chaffetz.

([21:21](#)):

I felt like I was a staff for Congress helping to address the issues that were out of that. I helped organized the biggest lobby day in the history of NCSL. We met with 343 members, not their offices, 343 members of Congress in four and a half hours, one afternoon in DC to push this through. The most savvy part, I guess at that time, was that we had heard from the judiciary committee in the House where it was that we're not going to bring your bill up because it will overwhelmingly pass over half the Republicans and all... And we're like, "Well, how is that?"

Nikki Dobay ([21:52](#)):

Yeah, that's a good stretcher.

Max Behlke ([21:56](#)):

How horrible. So then we knew at that point it had to be done at a different level. And we had working through and on the task force was NCSL or South Dakota's, Senator Deb Peters, who is a very good friend of mine and actually, she's on the board, she's actually our secretary at the institute. And we had a discussion with other members of the community that were really interested in addressing this. I called her up after that meeting and I said, "You want to go to South..." We were thinking, she's like, "Yep, let's sign." I said, "Okay, we're going to have a bill sponsor." And that was in October of that year. Went out there. They had a lot of discussion. When I talked to the lawmakers in South Dakota, the number one concern they had was, "Why can't we vote on this bill today?"

([22:41](#)):

And I'm like, "Because there's a lot moving forward on it." And then working its way through, what, 19 months later being, I think it was surface granted, I remember when that happened, it was [inaudible 00:22:54]. I worked with so many states and the idea was that, "Okay, if they don't take South Dakota, they're going to have 32 other states behind it. And they're in different court jurisdictions, they're in different appellate." You're taking the Supreme Court at one way or the other. And we signal that after the 2015 DMA parole decision, we figured that that's where the court may end up.

([23:13](#)):

And then being named in a brief as an expert, I think was probably the... As well as in oral arguments as a leading expert, national expert. And I just had to chuckle because here I am in the Supreme Court of the United States with all of these smart folks and lawyers, I'm not a lawyer, to where that went through. And then after, of course, when I told my boss, I told Neil, I told him at the year before, I said, "I've been working on this," because I worked all the time. I mean I was doing...

Nikki Dobay ([23:43](#)):

Yeah, I saw you that last year. You were tired, you had a lot of energy, but I could tell you were ready.

Max Behlke ([23:55](#)):

I was, because we started, and once cert was granted, I bought together the NGA, the National Governor's Association, the Federation Tax Administrators, MTC, to bring up and go, "Look, if we get granted the opportunity to do something, we've been fighting, we're not going to screw it up." So we're trying to keep everybody in line. I was going around the country, I was speaking a lot. Here's one, okay, I'll give you my absolute favorite part. So an ex-fiancee of mine actually went to Harvard Law. So this is the day of the Forbes decision, the Supreme Court decision comes out and I looked at her and there's this text message and it was like her, and she's a lawyer that does tax stuff and she forwarded it to me. And Forbes had written out, it said, "Even before the decision, NCSLs, Max Behlke believed that this was going to be the tax case of the millennium. It turns out he was right." And she said that to me and I was like, "Yes."

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

That's pretty amazing.

Max Behlke ([24:46](#)):

I was like, I got into the Supreme Court before she did. So I know it's...

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

Bittersweet.

Max Behlke ([24:50](#)):

I know that's one of my favorite parts about it to be honest.

Nikki Dobay ([24:53](#)):

Yeah, I do want to just give you a big congratulations and say how amazing, You changed the course of history, 50 years of Supreme Court history, you were a part of that change. And that's got to be a pretty awesome feeling. So it's got to also be kind of one of those things afterwards you're like, "Well now what do I do?" So now the bar is really high, Max, so you got to keep it going.

Max Behlke ([25:24](#)):

It is funny you say that, where do we go after this? And that's honestly, with this Institute and having this opportunity. I was really fortunate to go work in the private sector. And that's a whole nother podcast about, I work at that company too, because we set tax policy for a whole category, which was really cool, to the trade association world. But the opportunity here to actually, I believe in good

government, I believe in strength, good policy benefits, everybody. Our country's too divided right now, but my little-

Nikki Dobay ([26:00](#)):

That's a whole nother podcast.

Max Behlke ([26:01](#)):

That's a whole nother, and that's not breaking news, Max Behlke thinks we're not all united. But doing our part, because we break down these policy to conversations and have... We can contribute to the policy dialogue and debate at the state level and together we could all make better policy.

Nikki Dobay ([26:17](#)):

Well, I think we got to just cut it off there because I think that's a great last quote. But we've got one more thing and it's really fun. It's the surprise non-tax question. And I found this one and I thought, "This is a great Max question." So I'll ask you the question and then I answer it to give you time to collect your thoughts. What is your favorite sandwich and why?

([26:42](#)):

And the why part, you can really elaborate as much as you want, if you feel like you need to defend your sandwich, so feel free to take the why wherever you want. So my favorite sandwich, I was struggling for a minute between a grilled cheese with tomato or a tuna melt, and I came down on the side of the tuna melt. Well, the tuna melt with tomato is my favorite. And I feel like a tuna melt is kind of a polarizing sandwich. People either love tuna melt. You don't find somebody that's just like, "Yeah, I'm okay with tuna melt." I just find it to be, you love them or you hate them. But I came down with the tuna melt. I just think it's a great combination. You can vary it. There can be variations on the theme and it's always just pretty yummy. So I'm going with the tuna melt. That's my favorite sandwich. What is Max Behlke's favorite sandwich?

Max Behlke ([27:39](#)):

The first thing that popped in my head was a grilled cheese, so I'm going with it. And you went with there. And you can also just like a tuna melt. I like tuna melts, by the way. You can add tomato, you can add whatever bacon, you can add tons of things. But honestly, to me, I think of a meal, it'd be like a cold, you're in Oregon, you have a lot of these days, cold, like rainy afternoon, and then you go inside and you have a couple of grilled cheeses and tomato soup, that I can just sit there. That to me is just perfect. So I've done with that.

Nikki Dobay ([28:11](#)):

Yeah. Well that's our surprise non-tax question. I think you nailed it. Well, Max, thank you so much for joining me. I have no doubt we will be back again soon talking about the Institute and the Academy and who knows what else. But it was really great to have you join me and get us up to speed on what you've been up to.

Max Behlke ([28:31](#)):

Will do. Thank you, Nikki, and we'll be in touch soon.

Nikki Dobay ([28:33](#)):

All right. And thanks for the listeners to listening today to GetTin' SALTy. We will be back in a few weeks. If you have any ideas for future shows, please leave comments in the show notes, contact information for Max and I, will be in the show notes as well. Thanks for listening and be with you again soon.