

GeTtin' SALTy Podcast – Episode 72

- Nikki Dobay: Hello and welcome to GeTtin' SALTy, State and Local Tax Policy Podcast hosted by Greenberg Traurig. My name is Nikki Dobay, shareholder in the Sacramento, California and Portland, Oregon offices. We are back in Oregon today, getting a post-session catch up with Jeff Newgard. Jeff, of course, as many of you know, is the... I'm making up some titles here. Jeff, executive director, president, principal, the man, the myth, [00:00:30] the legend of peak policy, focusing on all things Oregon tax policy. So Jeff, I've given you about a week or so to recover from the end of session, but catch us up. What happened in Salem in that short 35 days, which I'm sure felt like an eternity this year.
- Jeff Newgard: Thanks, Nikki. It's great to be here. And I will say it's hard for me to accept that it was just a little bit over a month ago that we did our session preview podcast.
- Nikki Dobay: Yeah, [00:01:00] yeah.
- Jeff Newgard: To me, it actually feels like that was five or six months ago.
- Nikki Dobay: I was going to say years.
- Jeff Newgard: And it's really a statement of how much the legislature tried to take a bite out of the apple in this short session. And so just as kind of a primer, in Oregon, we have the long session during odd numbered years, which is a little bit more than five months. And then during even numbered years, during election years, we have a 35-day session. That's still a relatively new phenomenon, only starting in 2012. And the idea [00:01:30] for those short sessions was for the legislature to go and rebalance the budget, and then tend to emergencies and urgencies. But in the political world, the term urgency is a very relative term where everything is an urgency if it's something that you care about. And so for this session, we really just saw the legislature trying to go... And I don't even say this hyperbolically, the legislature went and tried to go and fit in as many high stakes and controversial issues in [00:02:00] the short session as it would in the long session.
- Nikki Dobay: Right, right. And I feel like this is, unfortunately, this is going to be kind of a new norm.
- Jeff Newgard: Oh, absolutely. I think that there's no walking back from this. And especially with Oregon, relatively recently, moving toward this model of having the short sessions, and having the short sessions during election year. What do politicians love to do during election years? They like to campaign.
- Nikki Dobay: Right.
- Jeff Newgard: And while there is serious policy and [00:02:30] political matters needing attention, there's also a lot of positioning for the election season. And to be fair, that's not something new. That's something that we've seen since 2012. I think what's different for us here in Oregon is that this is really the first time where

we've seen such a large volume of issues coming up. We've had hot button topics and short sessions before. 2016, the legislature went and raised the minimum wage, I believe, in four weeks. We've done conformity during the short session [00:03:00] before tackling things like repatriation, guilty, and other issues.

What separates this session from all of those short sessions of the past is just that when I look back at the previous short sessions, it's one, two, maybe three kind of high caliber issues in a session. I think for this session, and if I really thought about it, I could come up with probably two dozen.

Nikki Dobay: All right. Well, dealers choice. Where are we going to start on [00:03:30] those two dozen? So get us going.

Jeff Newgard: The biggest political issue in the realm of taxes this session was Senate Bill 1599. This is one, if anybody was following Oregon, this is the transportation referendum. And Oregon really has a saga that's contained in this transportation debate. The legislature spent all of the long session trying to go and put together a partisan transportation package that failed on the very last day of the session. Governor Kotek then called the legislature into special session that was only supposed to last for three or four days over the Labor [00:04:00] Day weekend in September. That ended up lasting 35 days. I'll note the same length as the short session. They passed a partisan transportation funding package that then in December qualified for a referendum where a few Republican lawmakers and volunteers went and gathered more than 250,000 signatures, far more than they needed to refer that package to voters.

And so heading into the short session, like we talked about on our last podcast, [00:04:30] one of the top Democratic priorities of the session was going and changing the referendum date from November when you'll have all these contests between Democrats and Republicans, and moving that referendum election to the May primary, which really gives a very short window for anybody to go and put together voters pamphlet statements or really go and rally the troops on both sides of the referendum debate. The legislature ultimately changed that election, but it really took a long time [00:05:00] for lawmakers to be able to get that on the governor's desk.

Nikki Dobay: And I've seen two legal challenges have been filed with respect to that date change. I know one of them, the date change was upheld already. I believe that the second one was just filed, so I don't think we have any action taken on that. But did you get any sense during the debates or kind of what people were talking about down in the public [00:05:30] hearings or in the building when this was moving through as to whether or not... I mean, apparently they think it will withstand a legal challenge and so the date change will stick.

Jeff Newgard: My understanding is that the Marion County Circuit Court Judge, that's in Salem, that's the capital, has already ruled that the date change will stay in effect. There's also a case in federal court, which my understanding for that case is that

it's really around the ability for people to go and get statements [00:06:00] in the voter's pamphlet statement. Traditionally, if the ballot measure was for November or for a longer period of time, you can either go and pay a set fee to go and have a voter's pamphlet statement added for the ballot, or you can go and collect signatures to go and bypass that fee requirement.

Nikki Dobay: Yeah. Okay.

Jeff Newgard: And the argument that was considered in the federal court was, does it block somebody from exercising their First Amendment [00:06:30] rights? And then I believe there's also an ADA argument that's part of that.

Nikki Dobay: I see.

Jeff Newgard: I haven't followed the actual arguments in that case, but I do know that the judge has ruled saying that there needs to be a pathway for at least the petitioner in that case to be able to go and do a voter's pamphlet statement.

Nikki Dobay: All right. But it seems like we're moving forward with a May election on this issue?

Jeff Newgard: That's sure how it seems. There's been some talk about appeals, but the clock is really [00:07:00] running out at this point. And with the way that it works in Oregon, Oregon has been a vote by mail state since I believe 1990 or '92. So everybody receives a mail-in ballot, everybody receives a voter's pamphlet statement. But for military personnel and others who are overseas, all of those documents need to be printed well ahead of time. And so once those documents are printed, it's very hard to go and perhaps even impossible to go and unwind that. So there's a very narrow timeline [00:07:30] for any appeals to really proceed.

Nikki Dobay: And Jeff, I don't know, this is not meant to be a trick question, but as I kind of think about our conversations we've been having on this, what is the real policy here that the voters are ultimately going to vote on? It's a gas tax? It seems like this thing has gotten so much bigger than the tax at issue. I don't think in any of these [00:08:00] conversations we've ever really said the word tax more than three times. So can you remind us, what is this tax everybody's really, really gotten themselves tied up about?

Jeff Newgard: There is the increase of the state gas tax. There's a doubling of the statewide payroll transit tax. There's some fees that are part of this package. This whole process to me is far more politics than policy.

Nikki Dobay: Yeah, yeah.

Jeff Newgard: And there are some very [00:08:30] real policy arguments, especially on where Oregon stands economically right now of, can consumers really bear the burden

of these increases? But I think that there's... If you were to go and put this on the scale, I think that the politics are outweighing the policy on this one.

Nikki Dobay: All right. I just wanted to make sure I wasn't kind of reading the tea leaves wrong, but it seems like the politics have just kind of sucked all the air out of the room on this.

Jeff Newgard: Well, one other [00:09:00] thing to consider is, especially with the speed at which they were able to go and collect those signatures, 250,000 signatures in a matter of just a few weeks really is an impressive effort. And the group that went and collected those signatures is actually existing now as an ongoing volunteer organization. And so in the future, are we going to end up seeing other proposals out there that at least have that threat of if it [00:09:30] passes, it could very well end up on the ballot? And it's a threat that has always existed, but there's never been a recent example to go and say, "This has happened and very well could happen again if you go and push the wrong button."

Nikki Dobay: All right. So we'll put a little pin in that until the May election, and then we'll be back to talk about this issue. I feel like this is you and I's Groundhogs Day. So we'll be back in a few months on that. [00:10:00] My sense, correct me if I'm wrong, conformity was the next big issue?

Jeff Newgard: Yep. And this is another one that we had the spotlight on going back to our preview episode. Like many other states in Oregon, conformity was a very multifaceted policy and political issue. But from the start of session, it became very clear from the leaders of the tax and budget writing process that the Democrats had their sights on, at the very least, three provisions, going and disconnecting from the new deduction [00:10:30] on auto loan interest, then excluding the qualified small business stock exemption, and then also decoupling from the full expensing provisions in 168K.

Now, after that was the starting point for the conformity process, it very quickly morphed into progressive groups in the public employee unions trying to see if it was possible to go and take a bigger bite of the apple. We saw the public employee unions running ads on Facebook and other social media [00:11:00] venues targeting moderate Democrats to go and push harder on this disconnect. And the claim at the time was that the public employee unions actually wanted a full disconnect. And in other words, switching from rolling conformity to static conformity or switching from federal taxable income to AGI.

And on the corporation side, that's not nearly the same as it is on the personal income tax side. We're so reliant on the personal income taxes. If you think about our brackets, the 9.9% [00:11:30] rate kicks in at 125,000 for an individual filer, and the 8.75 rate applies at, I believe it's around 12,000. It's been a while since I've looked up the inflation adjusted numbers on that one. But my point there being that in Oregon, Oregon effectively starts at a 8.75% rate for the state income tax. And from my research over the years, there's not really any other state that has such a high rate applying at such a low level of income.

But the point [00:12:00] there being when Oregon has conversations about changes to the tax base, especially when it comes to federal conformity, these changes have a over-weighted impact on our tax politics, but also our tax and revenue policy. And the conversation that happens far less frequently in Oregon and should happen a lot more is when we go and disconnect from something, what is the audit impact because of our reliance on the personal income tax?

Nikki Dobay: Right, [00:12:30] right. So where did we end up ultimately on this one? And I know there were limited disconnects, but is this going to, again, kind of a perpetuating issue or are we just in a loop on conformity as well?

Jeff Newgard: I think that we're in a loop on conformity. I think that when really the second that the OBBA passed, Democrats had their sights on that they had [00:13:00] to go and disconnect from something. There was a political statement that Oregon Democrats needed to make, and then the fight within the party became, "Is it a political statement or do they try to go and leverage as much as they can out of making that political statement?"

Because there's plenty of other provisions in federal tax law that the legislature could have brought up, but didn't. I think that, especially with looking at the funding stress or the budget stress in the out years, especially starting in 2027, I think conformity is [00:13:30] going to be one of those pieces that will regularly come up in regard to funding, but with the size of the budget hole that the state is facing in the coming years, you can only go and leverage federal conformity to raise so much. And with Oregon being a state without a sales tax, now keep in mind, we also have a corporate activity tax.

Nikki Dobay: We sure do.

Jeff Newgard: We are a state without a sales tax, but we are not a state without a consumption tax-

Nikki Dobay: Correct, yes.

Jeff Newgard: ... which is a very important thing to keep [00:14:00] in mind. But without the sales tax, Oregon really does have at least one hand, perhaps even two, tied behind its back. And just to be clear, that's not me advocating for a sales tax. It's just a matter of fact with where we stand in terms of the term that we always use in state politics is the three legs of the stool. And we have the [inaudible 00:14:23], so we have the third leg, but it's perhaps not as long as the other legs.

Nikki Dobay: Sure. And there was... I mean, [00:14:30] the last bit I want to just touch on before we leave conformity is there was a bill that was more laser-focused on a particular issue related to what used to be GILTI now is NCTI. And so, Oregon did update its terminology in its DRD. So Oregon continues to conform to NCTI

through the DRD, but does offer, those DRDs [00:15:00] didn't change. So still an 80 or 75% or 85% DRD.

Jeff Newgard: That's correct. And one thing that I would point on that bill, and for those that are taking notes for this class, Senate Bill 1510, that bill also extended Oregon's pass-through entity tax, our workaround for the state and local tax deduction for businesses. But from the international provision's perspective, to me, Oregon's a little bit unique in that area. In 2018 and 2019, to my knowledge, [00:15:30] and for as far as I've been able to see, Oregon is the only state where the business community actually proactively went to the legislature saying, "We will support conformity with these provisions so long as we have a seat at the table to make sure that they're technically simple and also fair for taxpayers."

And this session, again, we saw taxpayers going up to the legislature saying, "Yes, we support the previous agreements from 2018-'19 to go. And so let's go and update these terms to maintain the status quo." [00:16:00] And so to me, everybody always likes to think that they're special. Every state thinks that it's special.

Nikki Dobay: They are.

Jeff Newgard: But from everything that I've seen, we don't really see a lot of states where the business community has actually gone and taken that proactive step. And I think we're a little bit unique in that regard.

Nikki Dobay: And so then keeping on this theme of foreign source income, there was a little bit of craziness. So what was the drama surrounding this issue [00:16:30] more broadly?

Jeff Newgard: So if you think back a few minutes ago when I mentioned that the public employee unions wanted to go and really upend the entire connection to federal taxable income. One area where their allies in the progressive tax group universe really were pushing for was going and upending Oregon's conformity to NCTI and the way that Oregon treats NCTI and then also FDII. And I'm not quite sure how to pronounce the new acronym for FDII, so I'll just [00:17:00] continue to just say FDII. But that was a conversation that really never took off the ground. There was a lot of chatter behind the scenes that there was going to be an amendment, that the legislature was going to try to go and do something, but that really fizzled out fairly early.

What ended up gaining some traction was a proposal to go and create a task force on international taxation. This came up in the House. And the idea behind the task force was to go and create a public venue for stakeholders [00:17:30] to be able to go and talk about the tax treatment of international companies. And I believe the language in the proposal was to go and investigate ways to simplify or improve, again, very relative terms there. But then also, it contained language to go and explore other statutory policies.

And so you had a task force that would've been billed as on a specific topic, but with its charge actually really being a task force on debating tax policy, which [00:18:00] the public venue... And we've seen this before where some of those progressive groups love to go and use, whether it be a committee hearing or something else, as a way to be able to go and create a public spectacle and really vilify corporations and vilify the entire process that we use for creating policy. And it becomes more of a fund-

Nikki Dobay: Weaponization.

Jeff Newgard: And a fundraising spectacle. And for me and for the clients that I represent, it's a [00:18:30] very counterproductive step for the legislature. Businesses in Oregon, again, going back to those 2018 and 2019 conversations on GILTI, taxpayers have shown that they're willing to come to the table to go and have difficult conversations. But if the conversation is really engineered to go and be a public spectacle, that's really a different story.

And the bill moved out of the Ways and Means Committee with two courtesy yes votes. It moved out of the House floor with a [00:19:00] vote margin of one with several Democrats voting against it. And it ultimately died on the Senate floor on the final day. Now, I fully expect there to be some type of work group or some type of process. These conversations aren't going away. And I've been doing tax policy here in Oregon for nearly 20 years, and there hasn't been one of our long sessions without mandatory worldwide reporting or corporate tax disclosure. So it's the regurgitation of the greatest hits of failed policies from my [00:19:30] vantage point. And a work group is a much more productive venue to have those conversations where it's not finger pointing for the sake of the cameras and microphones being turned on.

Nikki Dobay: Well, I think first of all, that was an incredible quote, "The greatest hits of failed tax policy." I think that some state and local band out there should pick that up and that should be the name of their next album.

But I also want to circle back to this idea of [00:20:00] productive tax policy conversations. Because I think there are businesses out there, and I think you represent a fair number of them. A lot of the clients I work with, they too are interested in having productive conversations about tax policy. And it's not always just about what's the lowest tax or the lowest rate or whatnot? It's really about what is fair, what is administrable, what [00:20:30] makes sense in the scheme of both the business environment as well as the state's overall tax regime? And so any conversation that can facilitate that, I think is a good thing.

But to your point, to just create a venue to be able to vilify and raise issues that are not meant to lead to productive answers is counterproductive to [00:21:00] my mind, and only leads to the further divide of the taxpayer community and those that... We know the states need revenue, but let's have a good conversation about that. So we'll see if that happens. We can always hope. We're hopeful people, right?

GeTtin' SALTy Podcast – Episode 72

Jeff Newgard: Yeah.

Nikki Dobay: All right.

Jeff Newgard: For what we do in this world, [00:21:30] we are the gladiators, so we have no choice but to be hopeful.

Nikki Dobay: Okay. All right. Just got all the zingers today. All right. So any other big issues that made it across the finish line that we need to know about?

Jeff Newgard: I have two issues for you. One is one that got across the finish line and one that died a very quiet death at the end of the session. So on the first hand, there's a couple of lodging tax bills, actually two lodging tax bills. One goes and increases [00:22:00] the rate of the statewide lodging tax to go and fund conservation efforts for wildlife. In the world of controversial tax votes, it's actually not that controversial, but in Oregon, since we have a super majority requirement for tax votes, it's always worth noting those tax votes because those are harder conversations in Oregon. It also marks really the first time that our lodging tax has taken a departure from funding tourism to funding other programs, and it kind of opens the [00:22:30] door potentially in my mind for that tax or other taxes that are dedicated taxes to be used more as a generalized tax outside of our normal general fund revenue scheme.

The other one is a bill that went in and upended, some would say, reform, the distribution model for local lodging taxes. In Oregon, we call them transient lodging taxes. Previously, there was a split where more money went for local [00:23:00] tourism promotion, and then a smaller portion went towards local government general fund. That agreement was set up in 2001 and is a long-standing understanding from the industry. And the industry has actually supported these lodging taxes, because it goes into funds that go and promote tourism promotion.

The legislature went and changed that distribution where more money now is going towards local government general funds. And while your listeners might be thinking [00:23:30] like, "Well, if I don't care about the tourism industry in Oregon, why do I particularly care about this issue?"

Nikki Dobay: Right.

Jeff Newgard: But for me, it's showing that the contemporary legislature has far more interest in unwinding longstanding agreements for tax programs and especially tax programs that industry has supported. And for me, that is concerning because like the conversation with GILTI and the other international provisions, when businesses go to the table saying, "Yes, we will support [00:24:00] you going and taxing us."

And then a few years later, and granted, in this case, it's two decades later, but nonetheless, coming down the road saying, "Well, we're just going to go and change all of this," really alters the paradigm that these programs were created in the first place.

Nikki Dobay: Yeah, that's not a positive step. I noticed on your notes you had that, and I was probably in the camp of like, "Okay, there's some listeners out there that can't care about transient lodging taxes." But [00:24:30] I see the broader point and the concern.

And so my take on this, and you were living it and breathing it 24/7 pretty much, is that there's just a real shift in the overall politics that are starting to take control of these issues, and it doesn't necessarily seem like a positive shift. How does that play out in your world that you lived in?

Jeff Newgard: I think that that is accurate. And I'll say that [00:25:00] while there's many things that keep me up at night, at least when the legislature-

Nikki Dobay: [inaudible 00:25:04] don't. You talk about that a lot.

Jeff Newgard: That's a very true statement when the legislature is in session. When the legislature's out of session, it's these bigger trend lines that actually keep me up at night, that there is a bigger willingness to go and open up Pandora's box just to see what's inside of it. And we're used to seeing that on the bigger ticket items when, "Oh, we're going to go and raise the personal or corporate income tax rates." [00:25:30] Or, "We're going to go and create a whole new tax program that has wide-reaching ramifications."

But when there's such an appetite to go and open up the box on industry secular issues, it puts a lot more on the table that can come up in the future. And not just for one specific industry, but looking at this from that broader perspective, there's a lot more that can come up if that's going to be the mindset that the legislature takes moving forward.

Nikki Dobay: [00:26:00] All right. Any other final thoughts on this crazy time?

Jeff Newgard: One more.

Nikki Dobay: All right. All right.

Jeff Newgard: And I'm only bringing this up, Nikki, because it's something that you and I have actually written in Tax Notes about before.

Nikki Dobay: Okay.

Jeff Newgard: So Oregon has the lowest exemption threshold for the state tax in the country. This has been a really pestering issue in the legislature for as long as I've been

around, but for especially the last five or six years. And there's been some really concentrated efforts at going and finding ways to raise that threshold. But the issue that [00:26:30] the legislature keeps running into is that progressives in the legislature and the public employee unions and other groups keep coming back saying, "Well, any type of tax relief or material tax change needs to be... The prerequisite needs to be revenue neutrality."

And so with the Oregon's low exemption for the estate tax, which is at 1 million dollars, it really means that somebody who purchased a home 30 years ago that is nearing the end of their life, [00:27:00] they may have purchased that home for \$75,000.00, 30 years ago, but now that home is worth \$900,000.00 or even more.

Nikki Dobay: Right.

Jeff Newgard: And just the sale of the home will go and bypass the exemption threshold. So there's, like I said, concentrated interest in going and raising that threshold. But when the demand on the other side becomes, "We need to go and have this be revenue neutral," it then requires some creative thinking.

And so the proposal in Senate Bill 1511 this session [00:27:30] was, was to go and raise that threshold, but as the countervailing factor of that, go and increase the rates for the estate tax. And there's a progressive scale of tax rates based on estate value thresholds. But there's a couple of problems with that. First is that you have a bill containing a tax rate increase that's originating in the Senate. In Oregon, we have the origination clause. That's one issue. Second issue is that there is no, [00:28:00] from my vantage point and from what we've written about before, there's really no legal basis in the argument that revenue neutrality can go and bypass the super majority requirement in the legislature.

Nikki Dobay: Yeah.

Jeff Newgard: In the article that we wrote in Tax Notes, we talked about how the courts have even commented on that if you have a bill that raises rates, but otherwise spends the money through a tax expenditure, it's still raising the rates, and it's no different than going and raising revenue and spending it through the ways and means process.

The bill passed [00:28:30] out of the Senate, but then in the House Revenue Committee, faltered. And again, it's one of those issues where, especially if you're a corporate interest elsewhere, you're probably thinking, "Well, why do I care about the estate tax in Oregon?"

This is another one of those trending issues. A couple of years ago, we had to face the same novel legal theory in relation to the corporate activity tax.

Nikki Dobay: Right.

GeTtin' SALTy Podcast – Episode 72

- Jeff Newgard: And we're just seeing more of this creative legislating around the super majority requirement in Oregon, and it's very much becoming a bug that [00:29:00] just needs to be swat.
- Nikki Dobay: Yeah. And that popped up in a few other bills more on the fee side assessments where there were some equally creative arguments about not including a rate, and it wouldn't raise revenue because there was no rate, although there is a, to your point, a funding requirement at a certain level. So it's not going to raise revenue, but we have to back into a rate. So very, very [00:29:30] interesting mental gymnastics that are being done to try to get around those constitutional requirements.
- Jeff Newgard: I will say the one thing that's different in today's world than even just a couple of years ago is that during the '25 legislative session, the legislature passed a bill and the bill number alludes me at this point, it feels like years ago, well, many years ago. But anyways, the legislature created a pathway for trade associations to be able to go and raise issues in the tax court. [00:30:00] And so there is now, I will say, a more fruitful, legal pathway to be able to go and raise these issues in the tax court versus what it was just a few years ago.
- Nikki Dobay: I think you're right. And we could see some of those cases being filed. Well, Jeff, thank you so much. Got to ask a surprise non-tax question.
- Jeff Newgard: Of course.
- Nikki Dobay: And I came across this one and I thought, one, you've kind of [00:30:30] depressed me with this overview. And so, maybe we're at a little bit of a low point. But this one popped out to me when I was looking through a list of icebreakers, which is often what I do when I'm trying to come up with something good. So today we're going to talk about boring facts about ourselves. So I won't ask you for the most boring thing. We are both tax policy wonks, so some people might think that's super boring. But as I was trying to think about what is a really boring fact, [00:31:00] kind of the best thing that's coming to mind or the thing that's coming to mind is how much I like brown rice, which I think a lot of people would think is pretty darn boring. So I'm sure there's lots of other boring things that I do, but that's the one I'm going to stick with for today's surprise non-tax question. So how about you, Jeff, a really boring thing you do?
- Jeff Newgard: Well, much like I've said already in this podcast, I think that terms can be very relative. Boring could be exciting to the eye [00:31:30] of the beholder. Outside of tax policy, my other nerdy passion is astrophotography. And so I-
- Nikki Dobay: I'm not sure that's boring, but do go on.

GeTtin' SALTy Podcast – Episode 72

Jeff Newgard: If you go and ask some of the people that watch me spend an entire night out in the backyard going and trying to get a telescope to work, I think that they would disagree.

Nikki Dobay: Okay.

Jeff Newgard: But I can't really think of anything that's particularly boring. I don't have time for boring with how busy this legislature keeps me.

Nikki Dobay: I know. I know. And you have a child [00:32:00] and two dogs and a great wife. So, I know. We don't really have boring lives and all this stuff is not boring at all, but I thought it was a pretty fun question. So thanks for indulging me.

All right. Thank you again for catching us up. We'll be back after this crazy election to find out what is going to happen on the transportation funding front. So that'll be exciting. People should be paying attention for that.

And thank you to the listeners for joining us today. If you have any questions or comments, [00:32:30] please leave those in the show notes. Jeff and I's contact information will also be in the show notes. And I look forward to being with you again soon on the next GeTtin' SALTy.