

GeTtin' SALTy Podcast – Episode 73

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 so pleased today to have back on the podcast, Representative April Berg from the 44th District in Washington. Rep. Berg, thank you so much for being back.

April Berg ([00:25](#)):

Thanks for having me back.

Nikki Dobay ([00:27](#)):

So, it's no secret that there was a lot of action during the very quick 60-day Washington legislative session. And for those that were following along, you played a pretty key role in many tax issues that made it across the finish line. So, congratulations.

April Berg ([00:47](#)):

Thank you. Thank you. It was a long, short session, is what I like to tell people.

Nikki Dobay ([00:51](#)):

Yeah. It was a very long short session. So, why don't you kind of just take us back to as much as you can remember or want to remember and fill us in on what happened down, well, I guess from my perspective, up in Olympia.

April Berg ([01:10](#)):

Yeah. And from my perspective, down in Olympias. So, thanks for having me back on. And yeah, it was not only a short session, but it was a historic session to kind of... I don't want to bury the lead, but we have an income tax now in the State of Washington, which is incredible. People are-

Nikki Dobay ([01:27](#)):

Talking about it.

April Berg ([01:28](#)):

They're talking about it. You don't go into any legislative session thinking that you're going to make history. You think you're going to make policy. You hope that you're going to make good policy. You might come off with a bill that you go, wow, that turned out better than I thought. But we really made history in our state this year. We were one of the handful of states, about nine states that don't have an income tax. That was not anything to be proud of. We've talked in this show about what good tax policy looks like. So, it's low rate, broad base. It's hard to have a broad base when you don't have all the legs of the stool. So, we were missing that really important leg that put us at 49th in terms of regressivity across the nation in taxation.

([02:09](#)):

So, that meant the folks that make the most in our state were paying the least in taxes, which is just unfair. That's what we mean by regressivity. So, we needed to fix that. This year there was a sense of urgency, because of HR1 that came out of the feds. And as you know and your listeners know, Washington State's a donor state, so we give more than we get when it comes to the federal

government. So, when we start getting less and less and less, it is a hair on fire emergency. And it really made us look before the session started, how do we fix this regressive tax code and how do we take care of all Washingtonians? And yeah, go ahead.

Nikki Dobay ([02:46](#)):

Well, so take us through that. It was a pretty whirlwind session as we've been discussing. And just on the policy front, you guys landed on the proposal. And it solidified pretty quickly and you got it across the finish line in that very short time.

April Berg ([03:05](#)):

Yeah. No. I think one of the first things we had to do was say, "Is this thing legal?" When I came in as a legislator in 2021, the thought was we don't have an income tax because we can't. We have a uniformity clause in our constitution. That's it. Pack your bags, go home. There's nothing to see here. Let's figure out these different ways to try and make our tax code more fair. So, the first year I came in, we actually passed our capital gains excise tax, which was held up at the courts, held up by the ballot. It's an excise tax, so you're paying a little bit on your gain when you sell something.

([03:36](#)):

The question became, well, wait a minute, is an income tax actually not legal? And as we started looking into it, we said, "Okay, our constitution says that all property has to be taxed uniformly." Got it. And we do that. We have all properties taxed uniformly. Whatever you think of that, good or bad, that's what we do. The question then becomes, is income property? And the courts did deal with that question about 100 years ago.

Nikki Dobay ([04:03](#)):

Yep. It's been a very long time.

April Berg ([04:05](#)):

It's been a very long time. And so, that was the Colton case. And when that case came about, it didn't come about just because. It actually came about because there was a ballot measure to have an income tax in our state and that ballot measure passed. And a lot of wealthy folks, again, it's 100 years ago, not super happy about that, including a lot of the Supreme Court justices in the state at the time.

Nikki Dobay ([04:30](#)):

They were like, "Hey, wait a minute. Hey, what do you mean?"

April Berg ([04:34](#)):

Taxes are great for he, not the. And so, when that case went to court, the justices at that time said, "Well, income's property." And so, regardless of what the people said and what the people want, we need to tax it uniformly. That means you could do a flat tax, which isn't fair. So, let's wash your hands of it and go home. And that had kind of been just the accepted law for these 100 years and it hasn't been challenged. And so, I'm not suggesting that it should be challenged. I'm just suggesting that income is not property. And as such, we are able to tax it in a way. But I will say what we've done in this legislature, we have taxed it in a way uniformly. Your first milli is free, Nikki. I mean, I know everybody's worried about their first million, as one does. So, your first million is free. And then after that, all of the dollars after that first million is taxed at 9.9% uniformly.

Nikki Dobay ([05:33](#)):

Well, and it is interesting. I'll just say talking to folks outside of Washington about this, they're very skeptical about how this all went down. And they said, "Well, their constitution prohibits it." And I too have had the same conversation you just walked us through, which is, no, the constitution has a uniformity clause and that's been interpreted to quit income with property and that's case law. And we see courts reverse cases. So, if it is challenged, that will be a question for the court to determine and we'll see where they go. But I think based on what did happen in the capital gains tax case, if I were a betting person, which I'm not, I-

April Berg ([06:19](#)):

It's probably good. Just saying.

Nikki Dobay ([06:21](#)):

Yeah. So, I think we're turning over a new leaf for sure.

April Berg ([06:27](#)):

Yeah. And I'm not a betting person. And so, what I will say as a policymaker, we've been laser focused on the policy. It's good policy. We believe it is legal policy. And just as anything else, litigation. Litigation is American's apple pie, so I have no doubt that someone may at some point take us to court on it. But I do think that we have grounds to stand on and they're good grounds, they're solid grounds. And just like with cap gains, I think we're going to be successful.

Nikki Dobay ([06:54](#)):

So, people listening have kind of the full picture. This won't go into effect until 2028, 2029?

April Berg ([07:03](#)):

Kind of a little bit of both. So, 2028 will be the first year that you'll be looking at for your taxable income. And then '29 is when you'll actually pay it. So, that April date in '29 is when you'll actually be remitting payments. And the unique thing, there's lots of unique things about this and unique being good. This is a prepayment situation. This is not a withholding situation. So, you will be looking at your previous year's income and making a prepayment plan based on that. And so, which I think is going to be a lot easier, especially because we're talking about it's a \$1 million standard deduction. So, when I say your first million's free, if you are earning under a million dollars per year, you do not have to have a relationship or even a situationship with our Department of Revenue. And for some of your listeners, you know exactly what I mean.

Nikki Dobay ([07:51](#)):

I sure so.

April Berg ([07:53](#)):

It's like I don't have to have anything, lose my number, friend. So, it's that first millie, as Little Wayne, that millie, it's free. And so, you do not have to fill out a form, say that I make less than a million dollars, I promise I make less than a million dollars, here's all this information to prove I make less than... Nope, that does not have to happen. It is simply prepayment.

Nikki Dobay ([08:14](#)):

And that, I think comparing this to say the billionaire's tax that's being proposed in California, there is a requirement that everybody that files a tax return. Now they're filing tax returns already, but they have to attest that they're under that threshold. And so, in Washington where you aren't generally filing a tax return, I think that makes a lot of sense. And you're not creating a new burden. And it sounds like you've been very thoughtful not to also put that withholding burden on businesses.

April Berg ([08:47](#)):

On employers. Exactly. It's both the taxpayer and the employers. We're trying to lessen the administrative burden. And also, the thing that a lot of folks don't talk about, but I do want to make a plug for, that bill was not just about taxing. It was also about what taxes are paying for. And so, one of the best things is that if you are a small business now, that threshold is now higher to where you will not be paying a B&O tax, which was amazing. And I believe the threshold now will be 300,000. The other thing that's wonderful is that you will see a sales tax exemption on the majority of items in your grocery cart.

([09:26](#)):

So, as you're pushing your grocery cart through the store, everything right now, all your groceries, all your actual food groceries are tax-free. Your feminine hygiene products are tax-free. Now your personal hygiene products, you're going through that aisle for your shampoo, your suntan lotion, all of that's tax-free now. Your diapers will now be tax-free. And as you get to the back of the store, if your store is like mine in the back, you've got the pharmacy. Now all of your over the counter medicine is tax-free. So, when you go to the checkout counter, that's sometimes a 10% discount.

Nikki Dobay ([09:57](#)):

And the bill also incorporated some cleanup fixes, changes to a little bill that passed in 2025. 2026 was not the only historic session.

April Berg ([10:10](#)):

Oh, my word. Yes.

Nikki Dobay ([10:11](#)):

So, there were a few things that were repealed from that bill or will be repealed and then some fixes for the nonprofits and the schools, I believe.

April Berg ([10:22](#)):

Yeah. And so, 5814 was that good little bill that just kept on giving, like a bad cold that turns into COVID. I don't know, maybe that's too soon. But I'll tell you, it was a bill that had a lot of unintended consequences that we were able to remedy in the millionaires' tax. And I will say for the things around our schools, our nonprofits, some of the real detrimental unintended consequences, we were able to put a severability clause in there. So, as this bill progresses over the next few years to implementation, if there's any hiccups along the way, those items will actually be able to stand on their own two feet. So, really proud of that work. This bill was not just historic tax policy, it was good tax policy. And Nikki, you know, you've been doing this a long time. It's hard to get good tax policy.

Nikki Dobay ([11:09](#)):

And in 60 days, it's really hard. And of course, we know not everybody's happy with the fixes. There's still things that I think folks think need some work. We're going to see what happens in the court with the advertising piece of 5814. So, maybe that'll be an issue back on the table at some point.

April Berg ([11:35](#)):

Yeah. It absolutely could be. Can I tell you one of the funniest moments?

Nikki Dobay ([11:38](#)):

Yes, please.

April Berg ([11:39](#)):

I have to share one of the funniest moments in this bill. So, I believe I'm manifesting that we are bringing home our beloved Sonics. Our beloved supersonics are coming home and they got dragged into this tax debate. And in two ways, one, at one point there was an amendment. So, we had 81 amendments in the House. We spent 24 hours of straight debate on the House floor on this bill, and one of the amendments would've given the NBA commissioners purview over our tax policy.

Nikki Dobay ([12:05](#)):

Wow.

April Berg ([12:06](#)):

And we could not pass any new taxes until the Sonics came back.

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

And you passed that one, right?

April Berg ([12:14](#)):

No. We were like, as much as our diehard hoopers were like, "Is this a thing?" I just said, "No, this is not a thing. We're not giving NBA commissioners purview over our tax policy." But the other thing that came out during that 24 hour historic debate, they said, "The songs are going to come here because we have an income tax." And first I'm going, "Wait, 41 other states have an income tax. Weird." And then it occurred to me when our team, thank you Howard Schultz, when he did the deed and he sold our team to Oklahoma, Oklahoma had an income tax. So, I said, "By God, it didn't stop them from leaving, so I'm not sure it's going to have any effect on them coming back." But I just thought that was the silliest argument. But I tell you, after 24 hours of debate, you're a little bit loopy and I thought, who brought the NBA in here?

Nikki Dobay ([13:03](#)):

I know. I mean, I would say after 24 hours, you might pass an amendment like that. Things get strange.

April Berg ([13:10](#)):

Things get strange. When our House cafeteria opened at 7:00 AM that morning as we're still debating, I think our cafeteria personnel said they made 35 hot breakfasts, which was absolutely another record

that was broken. We were starving. We were absolutely starving. So, anyway, that's just a little funny aside.

Nikki Dobay ([13:32](#)):

So, there was another little bill that you passed that I know you're pretty darn proud of.

April Berg ([13:37](#)):

Yes. Penny for your thoughts?

Nikki Dobay ([13:40](#)):

Yes, perhaps. So, what happened with that one?

April Berg ([13:44](#)):

Well, that one passed and weirdly enough, not with as much fanfare. But I think it was equally as important. We talked about millionaires and now we're talking about pennies, but you and I know that the federal government decided to eliminate the penny, stop minting that actual coin. And so, every state now has to decide how to handle that. And it's interesting, when this bill passed, I got some feedback online from folks who weren't happy. They said, "This is the problem with government. It's just common sense to round. How can you have to have a bill around?" So, this bill is a comprehensive bill around the elimination of currency, and that's a big deal. It's a penny, but actually it's a big deal. So, our county assessors, when they make change, if they're going to make it in the customer's favor, that could be seen as a gift of public funds. As our business is big and small round, either in the customer's favor or not in the customer's favor, that could affect their B&O taxation.

([14:37](#)):

You had things like, do you run the electronic gift cards before and after cash transactions? So, there were just a lot of questions that the bill actually handled, dealt with, very comprehensive. And I'm just going to go out on a limb and say it's the most comprehensive bill with the currency elimination in the country. So, prove me wrong.

Nikki Dobay ([14:57](#)):

All right. Prove us wrong. You heard it here. Well, Rep. Berg, I really want to thank you. I know we're under a few time constraints today, so we're going to have to bypass this prize non-tax question. And so, the last thing I'm going to ask you, which I think I know the answer to, but this was a historic session. A lot happened, a lot more than we've discussed today, and we could spend hours talking about it. But is this the last of the tax policy debate that Washington will have or are there more discussions to be had in the future?

April Berg ([15:32](#)):

Yeah. This is not the last of it. I will say when you are dealing with a regressive tax code like the one we have in our state, it's not an easy one session fixe. I mean, clearly the millionaire's tax wasn't an easy bill, but there's more to be said there. So, the other piece of our regressive tax code has to do with our businesses. And we have a business and occupation tax. We're the only state in the union that has this type of tax. And I think I've said on this show, I've said in community many times, we need to fix that tax. The B&O tax is as regressive to businesses as income tax is to individuals, and we need to figure out a solution in that space.

(16:07):

So, I'm committed to coming back next year with a margins tax proposition, proposal and happy to be working with my colleagues, with businesses, with CPAs, everyone across the state to figure out how do we get this right for our business community next session. I'm a big believer. I was here when the Seahawks went to the Super Bowl twice in a row. I would've made a little different call with all my football knowledge on that last play, but I am a big believer that we can have a two-peat, we can have a repeat. So, I think it's time for us to really commit to our businesses like we have to individuals in our state. And not to say the millionaires' tax didn't do anything for businesses. It was a historic, the largest small business tax break that we've ever had in our state was in the millionaires' tax, but I think we can actually do better. And I'm hoping to talk about margins tax next year and happy to be hopefully running that bill.

Nikki Dobay (17:01):

Well, I couldn't agree more with all of those last thoughts. So, I'm so pleased to hear that, and really look forward to the conversations that I think we will be having in stakeholder meetings and things like that. So, thank you so much for all of the work that you do on these tax issues. We definitely appreciate having someone like you in the legislature, thinking about and talking about these issues. So, I know you'll be back soon and we will get that surprise non-tax question. But for now, thank you so much. Thank you to the listeners. If you have any questions or comments, please leave those in the show notes and I will be back with you soon on the next GeTtin' SALTy.