Announcer (00:00):

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Nikki Dobay (00:14):

There was a little election earlier this month and the results were good.

(00:25):

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, California offices. I'm so pleased today to have back Representative April Berg of the 44th District in the state of Washington. Thank you so much for being back on the podcast.

Representative April Berg (00:47):

Thanks so much for having me. It's great to see you.

Nikki Dobay (00:50):

Any thoughts on the Washington primary and getting past that hurdle in this election year cycle?

Representative April Berg (00:57):

Yeah, well, it was a really good night just this past Tuesday and my results were great. I think, I'm a House Democrat, Democrats across the state did pretty well. Super excited, especially because we had a lot of complicated tax conversations. And normally when conversations around taxes and new taxes arise right before an election, sometimes the results aren't what we want to see. This time it looks like the people of this great evergreen state are with us. They're happy with our tax policies, and they said yes to me coming back to serving hopefully another two years. This was just the primary, so I do have to couch this with we still have to focus on the general, but it was a good night in the primary.

Nikki Dobay (01:36):

Good. That reminds me of Morgan Scarborough, who joins us often from MultiState. When she's on, she has said, "We see a lot of tax proposals at election years, but usually not a lot of action." And you guys kind of did the opposite. I mean, there weren't that many proposals, but there was a heck of a lot of actions.

Representative April Berg (01:56):

There was. It was a once in a hundred-year tax bill that came through not just the Senate, but also the House. And if any of your listeners are out there really tax nerds, then you would've followed us for 24 straight hours of debate on our House floor over our millionaire's tax. So it was good to see the voters come out and support folks who were supportive of that tax and that effort. It was an exhausting effort.

Nikki Dobay (02:21):

Yes, yes.

Representative April Berg (02:23):

So I'm happy it all worked out.

Nikki Dobay (02:24):

Good. Well, I think we might touch on the millionaire's tax a little bit, but today we really wanted to spend some time talking about a proposal that you released this spring, which would be a B&O tax replacement. And so can you take the listeners through your thought process to why you released that proposal and why you want to have this conversation about a potential elimination of the B&O and replacement with something else?

Representative April Berg (02:55):

Yeah, thanks for that. And thanks for giving me the time to share the thinking behind it. Part of it does have to do with the millionaires' tax. In Washington state, we have one of the most regressive tax codes in the nation. So we're like number 49. We used to be number 50, and now we went up a notch. And when we talk about regressive taxes, it's not just on our individuals, it's also on our businesses. So this year we made strides in making our tax policy a little more progressive for individuals, although the millionaires' tax does affect some entities, it's not an entity tax.

(03:29):

So a promise that I made as Chair of House Finance to a lot of our business partners is that we will also look at the regressive nature of the B&O tax. Luckily, we had already done a lot of work in this area. We had the tax structure work group in 2019 come out with some recommendations, and those recommendations hit in about 2023. We had a bill and I took that work, that really good, really hard work, really expensive work. I think it was a million dollar work group, and did a proposal based on that.

Nikki Dobay (04:02):

So this proposal that you have put out, I know a lot of people are maybe hyper-focused on the framework as it is currently in place. And I think you've tried to be very clear in your comments that I've heard you make on this is that this is a starting point. This is the start of a conversation about making the business side less regressive and dealing with the B&O. And I'll just say for the listeners, I think they know I'm not a fan of the B&O. It's had a great run.

Representative April Berg (04:36):

Shocking.

Nikki Dobay (04:37):

It's been around since 1933, 1935, going on over 90 years. That's pretty good. It's like the art of tidying up. We just need to thank it, I thank you for all your work.

Representative April Berg (04:51):

Put it on its way.

Nikki Dobay (04:52):

Put it on its way. Your thoughts on the process over the next months, years, what does that look like in these conversations?

Representative April Berg (05:02):

Yeah. Well, I think I just want to tell your listeners a little bit about the history because you mentioned 1933 and the age, right?

Nikki Dobay (05:08):

Yes.

Representative April Berg (05:09):

The B&O is not like a fine wine. It did not age well. It did not sit on the shelf and age well.

Nikki Dobay (05:14):

No.

Representative April Berg (05:15):

But the reason why we have B&O, and it's business and occupation tax, which is a tax on gross receipts. And I wanted to spell that out because no other state has it. It's very unique, but again, like a unique fine wine, it is not. So one of the reasons we have it is because we did have a vote of the people back in the ... I think it was 1933, and they voted to have a graduated income tax.

(05:41):

Now, then it went to court and the courts ruled, because we do have uniformity in our constitution, the courts at that point ruled that income was property. And that is not something that is in our constitution. That is not something that is widely agreed upon. And frankly, other states do not treat income as property. So that is just kind of stick a pin in that piece. In the meantime, the budget, and this is back in 1933, had to figure it out. Okay, how are we going to do taxes in the states and literally keep the lights on? The business and occupation tax was created, and it was a way to generate more revenue to backfill for this defeat at the Supreme Court again in 1933. So that's kind of the history of it. It's always been thoroughly unfair, to your point.

Nikki Dobay (06:26):

Well, and to put a finer point on the history, I mean, if we're thinking about 1933, what was happening in 1933? The Depression. And when you go back and look at the tax history, state tax history in the US, gross receipts taxes were still in fashion during that time because it was the only way the states could make money. Because if you had an income tax and nobody had income-

Representative April Berg (06:52):

Had income, exactly.

Nikki Dobay (06:54):

You weren't going to make any money. And so I don't know that Washington was a significant outlier when it adopted the B&O, but what we do know is through the '60s, '70s, '80s, and '90s, all states got rid of their gross receipts taxes. There was a bit of a resurgence starting in 2005 in a few other states. But if Washington would've followed the trend of all the other states, the B&O would've gone away at some point, probably 30, 40 years ago.

Representative April Berg (07:24):

Yeah. And for good reason. For a lot in our business community, it's very hard if you're in a low margin business to have a gross receipts tax. And of course we have a lot of preferential rates as a result, acknowledging the differences in businesses. So I like to say that the B&O tax is like a well-fitting suit, very [inaudible 00:07:44]. And so depending on your size, your height, we have a suit for you.

Nikki Dobay (07:48):

Suit for you. Yes. And that's the other head-scratcher I've always had about the B&O is you hear so much about the court case and the uniformity clause, but the B&O is not uniform.

Representative April Berg (08:02):

It's not uniform.

Nikki Dobay (08:04):

And I mean, there was a point when I was a much more junior state tax lawyer, and I think I raised my hand to one of the partners I was working with, and I was like, "But this isn't uniform?" And he's like, "No, every category is uniform." I'm like, "But there's 175 categories."

Representative April Berg (08:21):

Yeah, there's like 180 categories. And you're right, within those categories, but at this point, it is being a little bit too cute by half, if you will, to say that it's uniform, but yet it has about 180 different preferences. It's time for a redo, which brings us to this.

Nikki Dobay (08:36):

Yes. So tell us about your thought process with this.

Representative April Berg (08:39):

Yeah, so my thought process is that this is the first in probably numerous drafts. So we are in the interim right now. It's August. I think I released this probably end of June-ish, somewhere in that timeframe. And the thought is to really have a well-stakeholdered process around a bill that will hopefully bring us to more progressive taxation for our business community. Lots of folks have lots of thoughts, and that's the way it should be. We have a diverse, amazing economy in our state. I love our business community and technology, aerospace, ag and rural communities. I mean, we just have this amazing economy in our state that's so diverse. As a result, it's going to take a minute to say, what's the best way to go from one tax policy around businesses to another?

(09:28):

So the thought was this is the first salvo, if you will, opening shot. A lot of folks are giving me amazing feedback. I've got nice punch lists of things to either figure out why we're doing it, do it better, how it works in a certain industry. The goal is not to penalize or surprise our business partners. To go back to that history of the tax structure work group, there was a bill in both the House and Senate presented on margins tax. It was because the group had ended, bipartisan, bicameral, agreed that margins would be a better way to tax our businesses. The last piece of what that bill did was it had to be revenue neutral. I will say it's a difficult feat to have a revenue neutral bill when you're changing a tax code.

(10:12):

So as a result, the rate in those bills was a little bit too high for our business community to stomach. And it went through my committee, went through the Senate Ways and Means, and not one human, did not one person who could fog a mirror testify in favor of that bill. Yeah, it was not the way you wanted to end a multi-year work group to have this be the outcome, but it also led to what we have today because I took that work, really, really good work. I'm so grateful to Senator Frame and all the folks who worked on that work group. Really good stuff that we took and really baked into the margins proposal that I put out about a month ago.

Nikki Dobay (10:52):

Yeah, I remember when that earlier margins proposal was going through. Frankly, there was a lot of excitement because it was addressing some of the big issues that I do think the work group heard ad nauseum, which was intercompany receipts and the way in which those get taxed under the B&O tax and really with Washington as a significant outlier on that front. And so a lot of excitement that there was going to be a combined filing, which would eliminate that. Obviously working through some of the technical issues. But once those rates came out, it was like, nope, this is not workable.

(11:33):

So I think where the rates have been set in this proposal have created a lot more conversations where folks are now digging into the specifics of the policies to figure out more than nuances. So I think we got over that first hurdle of we just can't stomach the rate at all. And I will say, at least from my perspective, I'm just having a lot of really productive conversations with clients, with other Washington taxpayers about this proposal. And by and large, the response is quite favorable. And I think one of the things that folks are excited about is this making Washington's taxes more easy to comply with.

Representative April Berg (12:17):

Yeah, they get a burden that's way lower in this proposal than what we have with B&O.

Nikki Dobay (12:22):

Yeah. And I think that's one thing that folks struggle with very much under the B&O, going back to your comments about it being such a bespoke tax. It just can also create a lot of challenges on audit.

Representative April Berg (12:36):

Absolutely. Compliance, right? And from our standpoint, enforcement. And we want to make sure folks are doing the right thing. It's just hard to do audit and compliance in a real meaningful way when you've got this very diverse beast.

Nikki Dobay (12:49):

Right. So again, by and large, getting very positive feedback. And I know folks are really eager to come together and work with you and a broader group of legislators on evolving the policy to get it to a point that works for business and for Washington.

Representative April Berg (13:05):

Yeah. No, and I think just these conversations have been really good because I think given the legislative process, if you drop a bill and expect to have robust conversations, and I'm putting conversations in air quotes, during the committee process, you're going to get your feelings hurt because testifiers have 90 seconds to testify. Things go very quick. There should be, whatever bill comes, especially for a fiscal committee, just a lot of stakeholdering, even if that's a year or more of stakeholdering.

(13:33):

So I'm excited. I think we will have something to drop this year to have a hearing on, but I've been really frank with people that this might be a multi-year effort. The income tax was a multi-month effort. I have numerous gray hairs and probably cut a couple of years off of my life trying to make that happen. Not recommended. I think I've talked to you about just tax policy. We should build the policy that then generates a number. And I think that sometimes when we do things, if the order of operations aren't correct, we end up doing things quick and fast and breaking things we don't want to break. So millionaires tax is amazing. We did it. It was quick and fast, but that is not a blueprint for how to do big tax policy in our state.

Nikki Dobay (14:16):

And I think we want to turn to that, but I do want to just really say thank you on behalf of the business community and at the very least the clients and taxpayers I work with, because they are very eager to have this conversation. There's been a lot of changes in Washington over the last couple of years on the tax front, and people are still trying to absorb that. But the B&O is such a pain point that having this conversation about whether it's still the right tax is just so important. And we'll see what comes with those conversations. But I think having the courage to start them is a pretty big thing. So thank you.

Representative April Berg (14:56):

Well, next time I'm on, we can deep dive into the bill.

Nikki Dobay (15:00):

Okay.

Representative April Berg (15:01):

And so this is part one. But yeah, we'll definitely get into it so that folks know what we're looking at.

Nikki Dobay (15:06):

Awesome. And then before we wrap up, as I mentioned, there were a few big policies over the last couple of years. Any other kind of tax issues you just want to flag for listeners or talk about in this forum?

Representative April Berg (15:22):

Yeah, no, I think the biggest thing that we're going to be looking at next year is just implementation. To your point, we've done a lot of big tax policies. Some stuff is going to sunset. I know we're going to have some trailer bills on things, but I think the focus is really on implementation and getting it right. And I don't see any big tax policies coming down. I think we'll have little tweaks and little things, but no big hundred-year bill, no big new and novel. Sales tax and services to me was that big new and novel year, not the best.

(15:54):

So I'm hoping that we can have a year, and we are going to be looking at some serious budget challenges super upfront. So that does not mean that we're completely out of the woods, but I think we're just going to have to reframe our thinking around fiscal stability. I think that I'm very clear with folks. I am a very happy, optimistic legislator, policymaker. I think that even during hard times, we can still see the light at the end of the tunnel. And so when folks say, I've heard this, "Oh, we're broke. Oh my God, we have no money." We have an $80 billion budget. We have money and we have choices. We have decisions we need to make. And I do think we can care for community. I think that we can live up to our values. I think we can implement the tax policies we've passed. And I can think we can do that within the confines of an 80 billion budget and not feel like we're broke. So I think we just need to have those conversations.

Nikki Dobay (16:47):

And thinking about the big items that were passed over the last two years, there's plenty of things, to your point, to just work through the implementation of those to make sure that the implementation gets you to a place where it's raising the revenue that you expected. And in some cases it could be more revenue, but just understanding that. And it's always hard to know how those policies are going to play out when everything's theoretical. And so now, especially I think with some of the items that happened in 2025, we've now had a few years understanding where those are at, knowing some will sunset, but what can be done to maybe fill some of those gaps in the interim with some of those items.

Representative April Berg (17:30):

Absolutely. '25 is a great example because we passed a lot of stuff that we ended up really having to walk back for the right reason. It's one thing to pass a policy that has some unintended consequences. It's another thing to double down, and I will not. So we've definitely rolled back some of the stuff that just was not either implementable or just not the right policy. But we do have to continue to ask questions, and that's why tax policy takes time. A lot of our bills and finance end up being bills from years ago that all of a sudden hits an entity, an organization, a taxpayer that we didn't intend. So then we have to go back and retool it. Again, I think that's good work. I think we should be doing that work, but it'd be great to catch it on the upswing before it hits that taxpayer.

Nikki Dobay (18:12):

I've actually been going back and listening to all these old legislative hearings in Oregon when they adopted their corporate activity tax. And one of the comments that came out, because there was a lot of fear from many of the members about, "Well, we're going to adopt this and we aren't going to know how to implement it." And there was a comment by a more senior legislator on the committee at the time that just said, "Do you know that we have a corporate income tax bill every year? Every year we have to tweak something at corporate income." This is not like we just put something into law and then it just works. You constantly have to tweak it.

Representative April Berg (18:51):

And now with the millionaires tax, I think that'll bring us into a new way of formity and all sorts of different questions. And that will be frankly every year questions. And that's a good thing. That's what we're here to do. That's what we're supposed to be doing.

Nikki Dobay (19:03):

And I just want to put on the record for this podcast that 45 other states have income taxes. It's going to be okay.

Representative April Berg (19:12):

Yes, it's okay. It's going to be fine.

Nikki Dobay (19:13):

It's going to work out. You guys are going to find your way. But yes, you do have to monitor and keep it-

Representative April Berg (19:21):

Each and every year, yeah.

Nikki Dobay (19:22):

Change the oil and do all those things.

Representative April Berg (19:25):

Well, I cannot wait until House Finance is the boringest committee in the legislature. It feels like we've been punching above our weight the last few years in terms of attention. And so I'm just looking forward to those years where people go, "What's that committee do again? I've never been there. I've never paid attention to a bill coming out of House Finance."

Nikki Dobay (19:44):

I think that's hopeful thinking.

Representative April Berg (19:46):

I tell you, I've listened to some pretty boring bills and I think if we ... I've had hog fuel, we've done fish excise tax. That's always good. I'm telling you, I can see those days coming where that's all we're handling, just the really tweaking things here and there. So maybe I'm being a little bit too optimistic.

Nikki Dobay (20:06):

All right. Yeah, that might be a little ways down the road, but we'll think about those days. Well, I can't let you go without a surprise non-tax question. And what I thought was, it's going to be funny, I think for a few reasons, but we'll get into that. So are you a boat person? You like to go and ride around on a boat? And actually, this doesn't go back to an earlier conversation we were having when it came to me. So I'll answer first. I love being on a boat. I think it's really fun, but I would never own a boat.

Representative April Berg (20:39):

100%.

Nikki Dobay (20:40):

My dad, we had a boat growing up. And when we went on the boat, we had to clean the boat before we went, we cleaned everything. And I don't know if that was just a mechanism for him to occupy us-

Representative April Berg (20:50):

Just get you guys to clean.

Nikki Dobay (20:51):

Yes. But I learned my lesson that boats are a lot of work, but they're fabulous to be on. So now we're SUP people, stand-up paddleboarders, which is much less work. You just blow it up and then deflate it. And I haven't cleaned anything yet, so that's exciting. But are you a boat person?

Representative April Berg (21:11):

So I'd love to have a friend with a boat person, and I love the water. So growing up in Chicago with Lake Michigan right there, and then being a little landlocked for university in Corvallis, that wasn't fun. Well, it was fun, but not fun to be landlocked. And then moving to the Puget Sound was just amazing. So I am definitely a sit on the beach, watch the boats, be on a friend's boat. But I could say if the boat was stationary, I could see some more benefits. I just don't want to be in charge of navigation. We might end up crossing a parallel we shouldn't or something.

Nikki Dobay (21:46):

Yeah, I don't really want to drive the boat either.

Representative April Berg (21:49):

Yeah. But boats, again, having a friend with a boat, maybe that needs to be my retirement goal.

Nikki Dobay (21:56):

I like that. A friend with a boat. Okay. Okay.

Representative April Berg (21:57):

Yeah.

Nikki Dobay (21:58):

Well, thank you so much for the conversation today, and we look forward to working with you going forward on this and so many more things in Washington, and congratulations on the election. And thank you to the listeners for joining us today. We will be with you again in a few weeks on the next GeTtin' SALTy.