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Nikki Dobay: I am very pleased to welcome back Morgan Scarboro, vice president and chief operating officer and executive of MultiState Associates. Morgan, thank you so much for being here.

Morgan Scarboro: Hi, Nikki. Thank you for giving me a better and better title every [00:00:30] time I join. I do have to tell your listeners that that is not correct, but that's fine. I appreciate the honor, which with you have bestowed me.

Nikki Dobay: I know. In my mind, you should be running the world. 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.

Morgan, you are here. We are [00:01:00] here today to have a conversation about this little election that took place by the time of this airing a couple weeks ago. And there were some changes and we're going to talk about how that's going to impact a state tax policy. So do you want to give us the lay of the land, maybe what was going on going into the election and then what changed?

Morgan Scarboro: Yeah, just this little covered, barely noticed election cycle that just happened, very [00:01:30] quiet. This is not breaking news certainly anymore, but I did anticipate Democrats would make gains across the board. I frankly did not anticipate what we saw. There are a lot of conversations about, we've talked a lot about how polling was wrong in 2016 in particular. I would make the argument that we saw... The polling wasn't quite right this time either because I didn't see really any predictions that were this expansive. Really after 2010, Republicans controlled most state offices.

So [00:02:00] if you're talking about gubernatorial seats, AGs, legislative seats, really Republicans were in power as the majority in a large part of the country. We've seen almost after this election a reversal of that. Democrats flipped six gubernatorial seats, so you're now in a place where you're going to have 30 Democratic governors versus 20 Republican governors.

What this means in reality is that 75% of Americans now live in a state under democratic gubernatorial [00:02:30] control. 50% of Americans now live under a democratic trifecta where the democrats control the governor and both chambers of the legislature. So really, if you're not a state policy nerd, hard to overstate what a change or a shift this was prior to November.

And Democrats really won down the ballot at all levels of government. So nine states had a change in legislative control. Republicans lost super majorities in a

number of states. Democrats [00:03:00] gained super majorities in a number of states. Those dynamics are really interesting because it's a situation where the map doesn't necessarily flip, but the political dynamic under super majority versus not is extremely different. It's not a silver bullet because they're still infighting, but there's just a lot less incentive to compromise, period, if you're not under a super majority.

We saw Democrats gain trifectas in six states as well.

Nikki Dobay: Okay. Which states?

Morgan Scarboro: Arizona, [00:03:30] Michigan, Minnesota, Nevada, Pennsylvania, and Wisconsin. This, again, I want to stress, it's not a situation where then Democrats or if a Republican gains trifecta too, it's not really party dependent, just go in and get everything done that they want.

Nikki Dobay: Right.

Morgan Scarboro: I think in particular about where I live in Virginia where we have off cycle elections, so we elected a Democratic trifecta last year, or that was their first year was last year. And they came in and we almost [00:04:00] had a late budget for the first time in I don't know how many years because there's so much party infighting. You think about New York who had, what, nine or 10 budget extenders this year. So trifectas make it easier to govern, but the grass isn't always greener, I would say.

Nikki Dobay: Well, and I think we've been talking about this for several years, is that the historical way you'd think of Republicans and Democrats has been shifting, shifted, and there's more fractions within the [00:04:30] parties.

I want to be hopeful about this election that maybe we're seeing more of a coming back to a moderate place, but we've seen more fractions and extremes within the individual parties. So to your point, having a trifecta doesn't mean everybody's exactly on the same page because you can have such a spread within a single party from most progressive to moderate, to most conservative to moderate. And so it doesn't just make things kind of smooth sailing as you say. There's just different [00:05:00] fights that are happening.

Morgan Scarboro: Yes. I don't know that we have elected a lot more moderates this year-

Nikki Dobay: Okay.

Morgan Scarboro: Maybe I think you could make that argument in gubernatorial positions, depending on who you're talking to. The legislatures I think though are continuing to polarize. Not always, but in a number of states, I think you are going to see more progressive members of the legislature. You did see kind of an anti-freedom caucus backlash in a couple of states. So Idaho comes to mind

for me as a state where they did, [00:05:30] they elected Republicans certainly, but they drove out some more freedom caucus type members and brought in some more, what I would call traditional chamber Republicans. So maybe some moderation in those states, but it was really sort of a reversal of a previous trend.

Nikki Dobay: To clarify what I'm thinking, especially I would say on the West Coast, I feel like you saw some folks, they run as very progressive, but in their governing, they're being a little more tempered in the way in which their votes are ultimately [00:06:00] being used. So they're very much in some of these blue states, especially out West, to get elected, you have to run on a very progressive platform. I think there's no doubt about that. And in a state like Washington, we saw them pick up a super majority in the House. I am not blind to the politics of Washington, but maybe we can come back to some of the initiatives that were passed and talk about what those might [00:06:30] signal for purposes of governing the next few legislative cycles.

Morgan Scarboro: Yeah, it's interesting. This is not going to be a popular take with everyone, but from my perspective, even if you are very right-wing or very progressive when you're elected, in order to govern successfully, you have to moderate because you learn very quickly that you have to have compromise with members of your own party, members of the other party, depending on your situation. So I think in order to effectively pass legislation, you end up moderating. [00:07:00] I think that's why you see newer members come in on more one extreme side and then you see members who've been there a long time tend to be a little bit more moderate.

Nikki Dobay: So on the initiative front, we, I think according to you guys' reports, there was like 164 initiatives. I didn't look at the results for all of those, but there were several that I think the tax community was following very closely. The biggest one was Prop 40 in California, the billionaire's tax, and that went down.

[00:07:30] Now they say the fight's not over, so we'll see what happens in 2028. But there were a few other kind of mixed messages on the initiative front. So Washington's Millionaire's Tax State, California's high rate, that one, the voters voted to keep that in place. Some of the administrative ballots in California, I was a little surprised to see what seemed like taxpayer protections were rejected, but what are your thoughts on some of the ballot initiatives [00:08:00] or some of them that stick out to you?

Morgan Scarboro: I would say in terms of what sticks out, I was following closely Florida's property tax exemption, which did pass. I was a little surprised to see that it passed. Governor DeSantis is now saying he's going to call a special session before the end of the year to actually implement that and figure out how we're going to do it, for lack of a better description. So that was interesting to me. And then the other one was Colorado Amendment 87, which essentially doubled the income,

creates a graduated income tax structure and [00:08:30] really doubles the rate for a lot of folks in the business community and individuals as well.

So when you look at the measures overall, I don't know that there was a clear takeaway for legislators, because you see things like Washington and Colorado either extending or keeping these higher rates. You see California reject the wealth tax. Maybe that was just because it was so novel and untested, I don't know. But then you see Florida pass their property tax exemption, similar large exemptions failed [00:09:00] in other Midwestern states. So there's not to me an extremely clear message coming from voters at the ballot box on tax policy.

Nikki Dobay: Yeah, I think maybe the clearest we could say potentially look at is maybe California, that we want to tax high earners, but the wealth tax was a bridge too far.

Morgan Scarboro: Right. We want to tax in a way that we know works, that's not going to be litigated immediately, that's not going to have some of the adverse impacts that have been talked about just strictly via [00:09:30] the existing rate structure.

Nikki Dobay: Okay, what does the million-dollar question, what does this mean as we move into 2027?

Morgan Scarboro: 2027 is an opportunity for education.

Nikki Dobay: Okay. Why don't you talk about... Because these are kind of fascinating figures of how many new legislators and new revenue committee folks there are.

Morgan Scarboro: Yeah, so in terms of new legislators, I think we're up to [00:10:00] at least 700 new legislators in office. Maybe I think we might be past a thousand, just new legislators. What's most interesting to me though are the number of fiscal committee members and chairs who will be new. So by our count, about 300 fiscal committee members across the country have lost their election or moved to another chamber, or something like that. So they will not be in that position again.

And in fact, you see this concentrated with some chairs as well. One that [00:10:30] immediately comes to mind is probably having a big impact is not news, but in Minnesota, Senate tax chair, Ann Rest, retired. She has done a lot of work in moderating some of the ideas that came out of the Minnesota legislature in recent years. I think that that is an impact that's going to be felt very quickly.

In Oklahoma, 13 members lost or retired on their fiscal committees. In South Dakota, the House tax chair lost, the vice [00:11:00] chair lost, eight other members lost or are not returning, and Utah is losing leaders in both chambers. So the House chair and the Senate chair are not returning. That's a short list of

the 300 something, but just goes to illustrate how much change there will be in these committees.

One of the things, and we've probably talked about this before because it's sort of my cross to bear, I talk about it a lot, is that state legislators are often part-time legislators. They have full-time jobs outside of the legislature. [00:11:30] They typically don't have staff. The committee might have a little bit of staff, but usually unless you're in a leadership position, you do not have staff like you would see at the federal level. So it is impossible to be an expert in every issue that you're legislating on.

So I think in state politics in general, there is a much larger reliance on outside expertise, resources and guidance, because you don't have it internally and that's not a knock on anybody. Literally no one can be an expert in all of these issues. [00:12:00] So I think it is really incumbent on the business community in particular to do the education, provide resources, do the outreach early, establish trusted connections, talk about where you're feeling pain with administrative and compliance things in particular as you're building new relationships. It can't be overstated how important that is to be a trusted voice.

Nikki Dobay: Hopefully, and we won't know until January really who the new folks coming in are. Maybe [00:12:30] some of those things will be happening prior to the legislative session starting, but that doesn't give folks enough time to go to things like N State and Local Tax Task Force or Institute for State Policy Leaders, their SALT forum. It just doesn't give them the opportunity to learn those things. And then there's a very short window because many of these sessions, as we know, will be starting in the first couple weeks of January, even for state revenue departments to get in there and start [00:13:00] making them understand. And this is a complicated web, the state tax system we have and all the states are different, so it is really a big job. So education-

Morgan Scarboro: Leaning on your government affairs teams is really important here because to the extent that you have strong teams in the state, they probably have an idea who's going to be on these upcoming committees. It's unlikely that brand new freshman members, they might be on the committee, they're not going to be in committee leadership positions. So they do probably [00:13:30] already know the folks who are going to be in committee leadership. So making sure that you're working closely with your government relations team so that they understand what are the tax proposals that they need to immediately flag for you, what does that language look like?

Because if you are a government relations person, you're sort of similar in many cases to a legislator in that you might not be an issue specialist, particularly in tax because tax is an issue that impacts every company. So maybe you're a healthcare company, so you're super deep and expert on healthcare policy.

[00:14:00] Tax might not be your area of expertise. It impacts your company, sure, but it's not your priority. So making sure those folks understand to the extent that you can quantify things for them. So this proposal means this many dollars for us, that's really helpful. Making sure that they know keywords to listen out for, all that I think right now is crucial, to your point, before you have an opportunity to get in the room with some of these fiscal legislators.

Nikki Dobay: Well, and I think also to that point, as tax specialists and technical experts, [00:14:30] we follow these things very closely and we get into the nitty-gritty and weeds very quickly to make those determinations about what impacts they will have. That is just not something you can do with legislators. You need to be working with your government relations folks or people that know how to translate these concepts into words.

And this is not meant to say anything pejorative, but to help the legislators understand these concepts in very simple terms. To your point, they're very busy. [00:15:00] They're not just dealing with tax, they're dealing with all the issues. And so finding ways to break down those concepts and help them understand what they mean for their constituents as well as their state government.

Morgan Scarboro: What you're not saying, Nikki, that I will say is you have to be normal in these conversations.

Nikki Dobay: All right.

Morgan Scarboro: We have to be normal. We have to be good communicators about these policies. I joke often that half my job is just translation between a tax [00:15:30] consultant and the government relations person. And so to the extent that you don't have that translator or interpreter, you need to hire one.

Nikki Dobay: You need to find one. Yes. Coming in hot with 47 different code sections is not-

Morgan Scarboro: No. Nope. Shut it down. I don't care.

Nikki Dobay: I'm with you. I've told people, when I get invited to meetings, I'm like, "I will speak when I'm spoken to. You can kick me under the table if I've gone too deep." And I feel like I'm going to put myself [00:16:00] in the normal bucket just as an FYI. But I also know that when people start saying things that aren't correct, it's very hard as a technical tax person to keep your cool. And so it's necessary.

Morgan Scarboro: And you did a good presentation recently where you made an important point, which is also that it just depends on the audience. You can go in and nerd out often with the DOR folks. That's fine. That's where I want the nerds uniting and connecting. [00:16:30] I say nerds with love.

Nikki Dobay: All right, Morgan. So we've got our work cut out for us next year with educating incoming chairs and new legislators on all the exciting and fun issues we deal with in the state and local tax policy space. What states are on your watch list? You are an oracle of all information, state and local tax legislation and legislators.

Morgan Scarboro: No pressure.

Nikki Dobay: Yeah. So drop [00:17:00] some wisdom on us.

Morgan Scarboro: First, I will make a prediction broadly across the country that data center tax exemptions will be the most popular topic in 2027 when it comes to tax. Even if you are not a data center owner or operator, you should keep an eye on this because you should be confirming that you are excluded from the definition if you are not a data center. These are not new ideas. Data centers have been around for a long time, but the idea of punitive data center legislation is new. So the definitions are varying from state [00:17:30] to state. So make sure you have aligned early before sessions start with your team on the definition that you need to see in order to be exempted from that.

I would say that is my national prediction. My states to watch, not for data centers legislation in particular, but just for tax. Maryland, who I would say, sadly, because I know several of the legislators there and really like them, has one of the worst fiscal situations in the country.

I don't think that there is budget funny money [00:18:00] left to move around. From my understanding, the math didn't change, but they did elect a number of much more progressive legislators. So I would say Maryland, Pennsylvania, new [inaudible 00:18:13] trifecta has been trying to do combined reporting for many years.

Nikki Dobay: I saw that.

Morgan Scarboro: I don't know that they will stop at combined reporting now that they have a lot of pent-up democratic energy and excitement.

Nikki Dobay: Yeah. There was an article, I think, in one of the tax press outlets, I think it was yesterday before our email went down, and [00:18:30] there was a whole list of very progressive ideas that I would say whichever legislator was being quoted, I would use the phrase, "Chomping at the bit."

Morgan Scarboro: Yes. A lot of enthusiasm.

Nikki Dobay: Yes. Pent-up energy.

Morgan Scarboro: Minnesota, again, I think the departure of Senator Rest is going to be felt very quickly.

Nikki Dobay: Yeah. And we know there's some very progressive legislators that have been wanting to do things there, and they've done some things.

Morgan Scarboro: Right. But the stuff they have [00:19:00] done, I would say, has been even molded-

Nikki Dobay: Tempered, yeah.

Morgan Scarboro: And then Washington State, I think you've talked about this before, but there is a pretty large planned overhaul of the tax system. So even when it's a good change, I just get a little cheek... Like what's the final package going to look like?

Nikki Dobay: Yes, and some intel there. So first of all, Washington's been kind of on a tear of big changes. So in 2025, we saw them significantly expand their sales tax base, make [00:19:30] some changes to the advanced computing surcharge. 2026, just this year, it's kind of crazy. It wasn't even really 10 months ago. They adopted a personal income tax on a million dollars of household income at 9.9%. That survived a challenge at the ballot.

There's still a court case going on, but as part of that, they rolled back several of the services that were expanded and put into the sales tax. So assuming [00:20:00] the millionaire's tax stays in place, those services, as far as I know, will no longer be taxable under the sales tax. But there is definitely a movement afoot to get rid of the B&O tax, and they are looking at a Texas style margins tax.

My understanding is it's a representative, April Burke, that's exploring this. She does not want to do it at the breakneck speed that the prior proposals were done. So her goal is to have legislation introduced [00:20:30] this year and have some hearings on it. And she's actively engaging with businesses within Washington, outside of Washington. So she's trying to be very thoughtful about it, but she's one legislator, and so what ultimately ends up in a proposal could look very different at the end of the day.

Morgan Scarboro: I agree. And I should clarify, I know and like Representative Burke quite a bit. I find her to be collaborative with folks. And my concern is what you said, which is that she's one legislator.

Nikki Dobay: Yeah.

Morgan Scarboro: And [00:21:00] when these packages move through, they tend to get-

Nikki Dobay: They change.

Morgan Scarboro: Sometimes they can be unrecognizable from their introduced form. Not always, but it's a yellow flag to just say, watch the process very carefully.

Nikki Dobay: Yeah. I mean, I will say I think it's an opportunity for the business community to work on a proposal that will be better than the current B&O system, but there's always the devil you know versus the devil you don't. I will say one thing for listeners, [00:21:30] because if folks have been watching this proposal, there will be a new proposal coming out at some point, probably in the next few weeks, maybe December with the holidays.

In the initial proposal, there was a five-year phase out of the B&O phase-in of this margins tax. That was universally hated. So she is removing that in this next proposal. And so there will just be a longer implementation window similar to what they're doing with the millionaires tax. So hopefully that will kind of help people. There was a lot [00:22:00] of angst around that five-year phase-in, so we should be seeing that next round fairly soon.

But again, it's still very much a work in progress, and she's been talking with a lot of folks about what is needed to make a system function better, more efficiently, and work for taxpayers. All right. Any final thoughts, Morgan?

Morgan Scarboro: I don't think so. That was a lot of thoughts.

Nikki Dobay: That was a lot of thoughts. All right. Surprise non-tax question. I made one comment [00:22:30] that alluded to this. The day before the recording of this, there was a major issue with Microsoft emails, and so folks all over weren't getting their emails. And my question is, did this impact you? And if so, what did you do with your time not reading emails? I kind of know the answer to this and I feel a little bad for you.

Morgan Scarboro: Unfortunately, we use the Google Suite. So our email, you can always reach us here at MultiState. We are up and running.

Nikki Dobay: [00:23:00] Okay. Well, I would say not having email was a little stressful for me because I just was like, "Oh my gosh, what's going on? Am I missing things?" And then I realized I'm not saving lives. As important as I think I am, I didn't have any filings due, so that was a good thing. But I did... One of our colleagues was like, "I'm making a pot roast." I was like, "Okay." So I think there were a lot of people that were just like, "Okay, I'm going to go do something else. I don't have to deal with email."

Morgan Scarboro: It's actually [00:23:30] my dream that we turn the internet off one day a week, and this was one step closer.

Nikki Dobay: Okay. Well, I thought, okay, if this goes on two days, this is like the next pandemic because we're just going to shelter in place. We don't know what's going to happen.

Morgan Scarboro: Not us at MultiState.

Nikki Dobay: No, you guys are ready.

Morgan Scarboro: You can always reach us.

Nikki Dobay: You guys are saving lives. Well, and I will say, happily the airports, the airlines don't need email it seems, because they were fine.

Morgan Scarboro: I want the airlines to be on some special secret. I don't want-

Nikki Dobay: [00:24:00] That's what everybody was like. I feel like they should be in a different system. I was like, well, it's not like anybody's, I don't think, what are you emailing the pilot information?

Morgan Scarboro: Right.

Nikki Dobay: All right. Well, Morgan, thank you as always for an amazing conversation. I'm sure we'll be back in a few months to see how the education process is going and commiserate perhaps on how many bills you'll be reading in January and all of that stuff. And thank you to the listeners for tuning in.

Information [00:24:30] for Morgan and I will be in the show notes, and I will be back in a few weeks on the next GeTtin' SALTy.