Speaker 1 (00:00):

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Morgan Scarborough (00:15):

We did sort of see this resurgence of the idea of single sales factor. Obviously, single sales is popular, it's not a new idea, so to see so many comeback was interesting.

Nikki Dobay (00:27):

Hello and welcome to GeTtin' SALTy, a state and local tax policy podcast hosted by Greenburg Traurig. My name is Nikki Dobay, shareholder in the Sacramento, California, and Portland, Oregon offices. I am, once again, so happy to be joined by Morgan Scarborough, vice president of tax policy at Multi-State Associates. Morgan is here today to help us get caught up on all things state and local legislative happenings since we first spoke several months back. So this is kind of a mid-year update on what's been happening. So Morgan, thank you so much for joining me.

Morgan Scarborough (01:11):

Thanks so much for having me, Nikki. And I'll add, we're also joined by our new kitten here. His name is Mr. Biscuit, so if you hear any rogue meowing, that's what that is. So sorry to the listener.

Nikki Dobay (01:22):

Well, we are going to have some audio challenges today because there's construction going on in my building and I have nowhere else to put Rosie either. So she may make an appearance on this podcast as well.

Morgan Scarborough (01:36):

This is real life.

Nikki Dobay (01:37):

This is real life. This is how we live. So Morgan, let's get into, you didn't sleep for four months because you were busy reading tax legislation, state tax legislation at all hours of the day. You had a moment to catch up, I think. May usually there's a little bit of a downturn. Maybe you've rested in June. So how many, get us up to speed on how many states are still in session and what states we still need to be concerned about and watching?

Morgan Scarborough (02:18):

Yeah, so we've had a breather. Most states are out of session, like you said, at the end of May. So we've had some time to catch our breath, which is nice. I was looking today and a fun fact here is that, so we primarily track issues related to the business community when it comes to tax policy at Multi-State. So not including all of the individual issues that might have been going on this year, we tracked, so we read and summarized nearly 6,000 pieces of state and local tax policy legislation that is related to the business community this year. So even though, looking back, and I know that we'll talk about this, it doesn't feel like there were very many transformative tax packages, a couple here and there. It was kind of a quiet year despite the fact that we had all of this legislation that was being considered.

(03:06):

So I think that's just sort of interesting to keep in mind. I would also sort of note that we are on the downhill here. 38 states are out of session. We've got three states that are in special sessions, so Maine, Oklahoma, and Texas. Texas is sort of the never ending story right now. If you haven't been following, the Texas property tax side is probably the biggest property tax conversation going on in the country right now. The house and the Senate in Texas are really at odds about what type of property tax relief they want to do. The state has a multi-billion dollar surplus and they know that they want to do some sort of property tax relief in the state, but they cannot come to an agreement about what that's going to look like. If that's going to look like capping rates, if that's going to look like an increased homestead exemption, there's really a lot of conflict there, I'm sure made easier by the fact that there are some serious political challenges going on in Texas right now, including the impeachment of an administrative official.

(04:07):

So I think that's an interesting place to watch. The governor has said that he will call the legislature back into special session as many times as it takes essentially until they can come to some sort of compromise in Texas. So again, the three in special session, Maine, Oklahoma, and Texas. And then we have nine states in regular session, and those are mostly just your year round sessions that we know to be long legislatures. It's not that they're out there doing a bunch of wild and crazy tax things in July. They're just a longer session.

Nikki Dobay (04:36):

So Morgan, so far this year, let's talk about some of the big trends that we're seeing and not get super in the weeds as to what states have done. And I think your point earlier about there's been a ton of bills, but it seemed somewhat quiet. But where are we seeing some action when it comes to kind of big trends?

Morgan Scarborough (04:59):

So one trend that was really strong the last couple years and continued somewhat into this year is this idea of cutting rates, cutting tax rates. So Arkansas and Utah both continued on that trend and reduced their corporate income tax rates this year. By a pretty small amount in Utah, but Utah has sort of been building on this trend over time. And really if you look at the past five years, we've seen a record number of states cut their corporate income tax. So really seeing that continue in. Of course, there's always a detractor there.

(05:31):

So New York sort of went the other way. They did renew their corporate income surcharge this year. I don't know that that was necessarily a surprise to folks, particularly if you look at budget considerations across the country. Most states are really, we'll talk about this a little bit later, but most states are in a good spot. New York and California notably are predicting some trouble in the out years. So there was a lot of conversations about just what the rate should be. So not a super technical idea here, but has been really popular over the last couple years.

Nikki Dobay (06:02):

Yeah. And I think this is a topic, I think we'll hit on it a little more later on in this episode, but I think this is what we're probably going to be talking a lot more about in the future. Because I think one thing we've all been wondering is what happens if there is a downturn and all these states have cut their rates? So we'll put a pin in that one for now and just stay optimistic that that was a good idea. So Morgan, what about some other trends? Have we seen anything? For several years in a row, well, I mean, this is now going back at least a decade, if not more, but sourcing, so movement to single sales and market sourcing, other issues related to the sourcing of sales and things like that. Are there things happening in that area that we're seeing? Is that trend continuing?

Morgan Scarborough (06:56):

Yeah, we did see a number of changes to apportionment factors this year. So Montana adopted single sales factor, Tennessee adopted single sales factor. Massachusetts is really considering it in the legislature. So we did sort of see this resurgence of the idea of single sales factor. Obviously single sales is popular, it's not a new idea, but it was somewhat unusual for so many states to come back at one time and consider this because I almost think of it as a bell curve, right? The number of states who would've considered it have already gone that path, so to see so many come back and reconsider was interesting.

Nikki Dobay (07:32):

All right. So Morgan, what are some of the other trends or are there any other kind of big, broad trends you've been seeing in all your tracking?

Morgan Scarborough (07:43):

Yeah, totally. Two things come to mind. First is this idea of tax credit reform being more widespread among different types of legislators. And I think, Nikki, you and I actually have talked about this before. But we're seeing this move. Democrats have always been interested in certain types of tax credit reform. Democrats have taken this idea that we're doing corporate giveaways and we shouldn't be doing that and we should look at the tax code to make sure that we have fair treatment for everybody. And historically, Republicans have been more supportive of using tax credits and incentives to bolster the economy, to attract folks to their state, to attract new jobs to their state. So there's been a divide there in the past. Generally speaking, what we've seen though is with this rise of a more populous style of Republican, some Republicans wanting to take another look at the expenditures in their tax code.

(08:43):

I'm thinking specifically this year, Florida passed a bill, HB 5, that sort of restructured a lot of its tax credits, eliminated a number of credits. And then also Georgia, following its session, announced that they were really going to do a comprehensive look at all of their credits in the state, including the film tax credit, which has been really successful in Georgia in terms of attracting folks to film in Georgia. So that's interesting to me and it gets a little bit dicey relatively quickly. So oftentimes what will happen is a legislator will pull a list of every single expenditure in their state and say, these are all loopholes.

(09:25):

All of these are loopholes, and we need folks to justify why they need this or something like that without acknowledging the fact that a lot of quote expenditures are there and they're designed to make the tax code work as it should, right? There's widespread agreement that the tax code should tax average profitability over time. So we provide a net operating loss deduction. Things like that get wrapped up in that conversation and things start to go south. So that's a trend I would keep an eye on.

Nikki Dobay (09:58):

Do you think some of that, I mean, a couple things I'd like to unpack, because you've been really following this trend closely of the change in landscape among the parties. So traditionally Democrats did this, now we see them kind of doing something else, and similarly, I think probably even more so on the Republican side. So there's kind of that piece of this. But I also think to your point about these things are all meant to work together. What seems to be something that's happening in many of the states I've been watching is they really dive in, they're laser focused on one issue, and aren't looking at the broader picture. So you lose the forest because they're so focused on certain trees being really bad, but it's kind of a system that has to be viewed in a global sense.

Morgan Scarborough (10:59):

Yeah, I agree. And it can also be construed as they want to achieve one goal. And in a lot of red states, and I'm not picking on Republicans here, the Republican party's approach to tax policy though is more interesting right now though because of the way that it's changing. The Democratic approach to tax policy, sure, the progressive approach to tax policy might be different than your moderate Democrat in your state, but it has stayed relatively predictable. The way that Republicans are approaching tax policy right now is a change and it's motivated by the way that a lot of Republicans view big business.

(11:38):

And a statistic I find fascinating is that when you asked Republicans, when you polled Republicans a couple years ago and asked them how positive their perspective was on big business and its role in society, previously, the approval rating was almost double that than what a Democrat would give or the general Democratic consensus. Now, in 2023, the Republican approval of big business and the Democratic approval of big business is almost identical. The Republican approval is higher by one percentage point. So that's what's motivating that. And I just wanted to throw that caveat out there that I'm not picking on anybody. It's just interesting to watch this evolution in one party.

Nikki Dobay (12:21):

And I think that's really important and maybe not so important for the work that we do right now, because as we discussed, the states still are generally in a very good financial position. But that could shift.

Morgan Scarborough (12:42):

Definitely. And I think, going back to what you were saying, in a Republican state, oftentimes the goal that legislators might get hyper fixated on is that they want to eliminate the income tax. That's a really popular one with Republican legislators. And what they will hear is, if you start taxing services, if you expand your tax base, you can backfill all of this revenue and you can eliminate the income tax. Great. If you are a legislator that wants to run on the platform of taxing education, taxing healthcare and taxing housing, good luck in your campaign.

(13:22):

Those are the big services that will give you the revenue that you need to actually eliminate the income tax. Taxing small personal services is a different argument, but it's not going to give you the revenue that you need. So that's when that conversation, I think, becomes tricky and becomes really important for tax policy people to pay very, very close attention. When you hear that your state is going to be reviewing expenditures, is going to be looking at taxing services, those are things to me that are a yellow flag to say, I should really be tuned into this conversation.

Nikki Dobay (13:58):

All right. Yellow flag, but not red yet.

Morgan Scarborough (14:00):

Exactly. It's a yellow flag. It says, please pay attention to what's going on.

Nikki Dobay (14:05):

Okay. Was there another trend you wanted to talk about?

Morgan Scarborough (14:09):

Yeah, the last thing that I think is going to make a big impact going into next year is state revenue collections. So I've been a total broken record on this. I've been talking about state revenue collections since 2020, but we've all known that since revenue collection skyrocketed in 2020 and really have continued through the early part of this year, there has been consensus that was an unsustainable level of revenue. Everybody sort of acknowledged that. The vast majority of legislators were saying we need to spend this surplus money on one time activities because we know that this is sort of one time money coming into our state.

(14:47):

And all those states are still really in positive revenue situations moving forward into next year. There is evidence that revenue is starting to moderate a little bit and look a little bit closer to what it was in 2019, which pre 2020 was still a really great year to be a state budget person. States were still taking in a lot of money if you were comparing that to the previous years and not to the COVID era. So I think one thing to watch out for is, if revenues are declining in your state, just being really cautious in the way that we talk about that to say, okay, revenue might be declining, but it's declining to a level that's comparable to what it was in 2019. The sky is certainly not falling. We're just getting back to a normal level of revenue.

Nikki Dobay (15:34):

Well, and what I hope didn't happen in all these years where we were seeing these record breaking revenues coming in is that budgets just expanded so much that the sky could be falling. My sense is there's several states that have had kind of relief valves. I'm thinking of the kicker in Oregon. I know California has something that requires certain money to be set aside, rainy day funds. So I'm hopeful that the states, many of the states were very responsible during this time. But my sense is there's probably going to be a few outliers where maybe they weren't so responsible. And we have seen budgets balloon to kind of epic proportions. And so, there will be some difficulties.

Morgan Scarborough (16:30):

Definitely. And I'm not going to name names on this podcast.

Nikki Dobay (16:33):

Okay.

Morgan Scarborough (16:35):

There are some states that I think could be in a more difficult place, but one thing that I think is helpful to remember is that post 2008, state budget officers sort of got together and said, okay, we need to be more prepared when it comes to the next recession. We didn't have enough savings. I mean, state and local governments really took a hit in 2008. What can we do better for next time? And they got together and they came up and they said, okay, if we have somewhere between, I think it was like six to 9% of our expenditures saved, we'll be great. That will be the gold standard. The median state right now has 12% of its expenditures saved in its rainy day fund. So rainy day funds are historically well funded. So in the event that there is some sort of economic slowdown or downturn or anything like that, there is a little bit of wiggle room there for the vast majority of states to weather some short-lived downturn.

Nikki Dobay (17:31):

All right. So I feel like that's pretty rosy for you. I'm not trying to call you a Debbie Downer, but sometimes you give us some real news.

Morgan Scarborough (17:45):

Well, can I give you the bad news with it? Please?

Nikki Dobay (17:48):

This is why I have you on.

Morgan Scarborough (17:50):

I think the bad news for folks who are tax policy watchers in the business community is that a perceived downturn or a perceived revenue reduction is enough for many legislators to advance a tax increase that they've been interested in doing, whether it's for revenue reasons or not. Maybe the tax increase is for philosophical reasons for them. Maybe it's a campaign talking point for them. The perception of a revenue downturn is enough to justify something like that much easier than it has been the last couple years. It's been extremely difficult to justify any sort of tax increase when almost every state was in a multi-billion dollar surplus. That piece is now removed.

Nikki Dobay (18:36):

That's the Morgan I know and love.

Morgan Scarborough (18:42):

This is the one you were looking for for the podcast.

Nikki Dobay (18:42):

This is the Morgan that I invited to be on today.

Morgan Scarborough (18:45):

A ray of sunshine.

Nikki Dobay (18:47):

That's right, that's right. All right, Morgan, one last trend I just want to get your real quick thoughts on is the remote work issue. And there's been a huge evolution with that. Pre-pandemic, it was mobile workforce, pandemic, it was remote work, staying in place. Now we're kind of on the other side of the pandemic and we're getting back into the mobile workforce land. I know there's a lot of talk about this issue. I feel like the pandemic really solidified the challenges in this space and made the states pay attention. And there's been several bills and there's a competing MTC draft and cost draft on model legislation. We haven't seen a ton of movement this year, but this is one I think that is kind of brewing as well.

Morgan Scarborough (19:44):

Absolutely. I think that's a great point. The mobile workforce solution, which if you haven't heard about mobile workforce, it's this idea that if you are a non-resident employee and you travel to another state, in a number of states, you are technically required to file an income tax or have taxes withheld by your employer on the first day that you're in that state. And that's really just not a workable solution for anybody. It's difficult for DORs, it's impossible for the business community to comply with, Departments of Tax. Very, very challenging. And for the most part is a very, very small fiscal note in states. And most states it amounts to a rounding error essentially if they were to increase this threshold up from one day to something closer to 30 or 60 days. So previously, this effort has really been most prominent at the federal level. Given the current federal temperature, I think it's a little bit more difficult to talk about this at the federal level.

(20:43):

But what's interesting is that state legislators have taken a sort of organic interest in this issue. And there's a shift in the way that they see this issue because previously it was just this sort of boring technical tax issue to a lot of people. Now, I think there's a really strong argument to be made that this is actually an economic development tool for people. We're now remote and hybrid workers in a way that is not even comparable to where we were a couple years ago. At Multi-State, if I wanted to go work in Idaho for three weeks, I could do that. That's not a problem. So state legislators are increasingly approaching this as we should be removing barriers to people who want to come spend time in our local communities who maybe aren't paying the income tax but are paying sales tax, are renting a place to stay, they're eating out in our local restaurants, things like that.

(21:36):

That's a powerful economic development tool. So we at Multi-State are sort of advancing the mobile workforce coalition. We're taking a really concentrated approach in trying to get states to increase their threshold or make compliance easier at the state level in a number of select states. If this is an issue for you or your company or your department, you're tired of trying to track where everybody is, please feel free to shoot me an email. I think this has a really good shot just given sort of the way that revenue's lining up and the way legislators are looking at this issue. It's a good time to tackle this one. I feel like an influencer, and I should say hashtag sponsored, but it's not. Just really think this is the right time to tackle this issue.

Nikki Dobay (22:19):

I think that is so right on. And it's also administrative issues are near and dear to my heart these days. And it's like the administrative burden this puts on businesses is enormous if they are trying to track this stuff in every state. And I would equally say the administrative burden on the states to try to track all this down is equally great. So I think this is a win-win. And to your point, I think it's finally being recognized that this could actually be an economic development tool. And it doesn't have to be that we're just letting these scoff laws get away with something, because at some point you just have to say, enough's enough. Let's come up with a reasonable solution and we can all get on with our lives.

Morgan Scarborough (23:12):

Totally agree.

Nikki Dobay (23:14):

All right, so let's do some state specific speed rounds, because I like to keep things moving and grooving and we have to get to the surprise non-tax question because this is always the most fun we have.

Morgan Scarborough ([23:28](#)):

Of course. The most nerveracking part of this podcast.

Nikki Dobay ([23:30](#)):

Right. So maybe I'll just start with your favorite state this session.

Morgan Scarborough ([23:39](#)):

Favorite is a stretch. I'm going to modify that and say the most interesting state to watch, I think, from my perspective this year, and this might upset some people, was Minnesota. Minnesota had a huge omnibus tax bill where they really were trying to collect a lot of new revenue from taxpayers. And the original thought that was introduced in the bill was that they would do worldwide combined reporting. They ended up stripping that out and instead, to fill a lot of that revenue gap, they are taxing a material portion of GILTI. It ends up being about 50% of GILTI.

([24:16](#)):

They're creating a new tax on net investment income and reducing the ceiling for net operating loss deduction. But it was just a really fascinating conversation to watch it play out, particularly the foreign income pieces. And to see a state go back and double down and make its treatment of GILTI worse, honestly, was unique. Most other states have already dealt with their treatment of GILTI or have made steps to improve their treatment of GILTI. Thinking of New Jersey who just passed a big bill. So that was the most newsworthy this year to me was Minnesota.

Nikki Dobay ([24:55](#)):

And then speaking of New Jersey to that point, yeah, a couple big bills there. So they did have their budget bill, and I know you were following that closely at Multi-State.

Morgan Scarborough ([25:07](#)):

Yeah, New Jersey had their budget bill and they also had a really unique, and I think very helpful, collaboration between the division of tax and the stakeholder sort of community. They brought in a lot of folks to workshop these ideas where they basically got together and said, we want to really improve many of the administrative sort of issues we were talking about earlier, the administrative issues in the tax code, and how could we work together as a division and as folks in the business community and policymakers and sort of everybody who needs to be involved in this conversation? How can we work together to come up with a good compromise here? And they just passed this bill, governor Murphy just signed it on this last Monday.

([25:50](#)):

They made a couple changes treating GILTI as exempt dividend income, allowed the pooling of NOLs among certain groups, set some sort of bright line thresholds to determine where receipts were derived if they were in New Jersey. Things that are sort of, I don't want to say boring technical tax issues because obviously, Nikki, you and I love this stuff, but they're not making any national news headlines. So it really was the goal of, how can we make compliance and administration in New Jersey easier. And that is so important for stakeholders and the department of tax or division or wherever you are in that state to be able to have conversations like that and come to a compromise, I think, is really, really a great model for other states.

Nikki Dobay (26:37):

I love that point. And I was actually on a MTC work group call this morning, and this is the one, we won't get into the weeds, but it's on digital products and they've got a big spreadsheet that talks about what all the states are doing in this area on the sales tax side. And a comment was made by one of the state folks of a how enlightening this spreadsheet is because they only look at their state's laws, they only think about their state's laws. And it was kind of fascinating to me that a state person said this was one of the first times they've ever thought about how multi-state businesses have to go about this. So even though the administrative stuff is not sexy and it's pretty boring much of the time, it is so important to make it so that these businesses can comply. So kudos to New Jersey in recognizing that and taking steps to improve the administration.

Morgan Scarborough (27:42):

I think there's this perception among people who are not necessarily in tax policy advocacy or in the government relations space where there's this idea that companies are just going around saying, we don't want to pay any tax or we just want to reduce our tax burden, et cetera, et cetera. That's really not what the conversation is. The conversation the overwhelming majority of the time is we want to comply and we want to work with you to figure out how to make compliance easier and frankly feasible on our end.

Nikki Dobay (28:13):

Yes, I couldn't agree more. But before we go down the rabbit hole of administration, any other states that you want to chat about real briefly?

Morgan Scarborough (28:27):

The only other one that I thought was interesting was the New Mexico omnibus bill this year. They included a move as well to single sales factor in that, and that was heavily line item vetoed to the point where I think that there was some conversation about what were the limitations of the line item power there. But that's an interesting one because, so again, the governor line item vetoed single sales factor and then some other new tax credits and deductions for certain types of renewable energy. And it'll just be interesting to see if that comes back next year and if there's more conversation about potentially why that happened. It was a pretty broad use of the line item power in New Mexico.

Nikki Dobay (29:09):

Yeah. The other state I would mention is Ohio. They passed a pretty robust budget bill that made some significant changes to their commercial activity tax and also moved the state on lowering rates on the personal income tax side. So that's another big one. And then let's talk about things that didn't happen.

Morgan Scarborough (29:32):

So what didn't happen this year? I think, again, I hate to be a broken record, you're going to stop inviting me on this podcast, but this idea of the taxation of data and digital advertising continues to be really interesting. This was, again, a year where there wasn't a lot of movement on this idea of taxing data, but I really think that it's coming. So given the revenue moderation that we talked about and the fact that there is this non-tax, but very concentrated focus on the role of data and AI in our society, and I know that those two things are separate but can be wrapped up in the same conversation, particularly like the state legislative level.

(30:18):

Very often there's this want to understand how data and AI are playing a role in our society, what the role should be, things like that. So I think that it's ripe for opportunity next year for this idea of the taxation of data to come back. I think the way that it's been written and has been presented has been bad policy. It's been borderline unworkable. Extremely broad, extremely punitive, but nobody asked me and it continues to be popular. So I think that that idea, those discussions will continue coming in 2024.

Nikki Dobay (30:55):

Yeah, I agree with you on that one. I think the Maryland saga continues on, but I think the states are going to grow impatient with perhaps that model and start thinking about other ways. What we really don't love is when the states get creative, so definitely-

Morgan Scarborough (31:14):

Find new creative tax ideas.

Nikki Dobay (31:17):

Right, right. That is definitely what we don't like. So, awesome, Morgan. Well, I promise I will invite you back, even if you are a broken record.

Morgan Scarborough (31:27):

Thank you.

Nikki Dobay (31:28):

And the bearer of bad news in many situations. But thank you so much for getting us updated, and yes, we will be back in a few months to see what else happened and what we need to really be concerned about as we move into 2024. I can't believe it's already July. But I can't let you go without a surprise non-tax question. I know it's your favorite part. And so we've been running into each other on the road, and so I thought I would ask today how you're feeling about really work travel ramping back up and how that's going?

(32:09):

And so, just any general thoughts on that? My thoughts are getting that part of my brain back is slow. I feel like maybe all of the pandemic our brains just got slower, but this is one where it's like, I'm forgetting things. I actually left to go on one trip and didn't realize I was going to have to go on a work trip, so didn't bring any work clothes with me. So now I have to go shopping. Oh darn. I mean, I love traveling and it's super fun to see all my friends, but just getting back in that routine of what's supposed to go in your bag and how that's all supposed to work does feel like that muscle really needs a lot of work. So, how is your reentry going with work travel?

Morgan Scarborough (32:59):

I agree with you. I think it's really fun to see people again. A, wearing high heels is so painful. It's like I've never done it in my life because I really haven't done so over the last three years. So that's an adjustment period. And B, I'm going to a lot of really nice hotels and wonderful resorts this summer that I'm excited to see. A lot of southeast travel or desert travel. And I am just saying, if anyone has a conference that they're looking for a speaker, maybe like Maine in August, Vermont, somewhere in the northeast, I would be available for that.

Nikki Dobay (33:37):

So you're starting to get picky about your location. Wow.

Morgan Scarborough (33:41):

I'm going. I'm excited to see the people. I'm excited to chat about some fun topics, see the resorts. It's going to be a warm summer.

Nikki Dobay (33:48):

Yeah, I also think it's going to be a little bit of time before we stop going to some of the same places because of all of the cancellations and postponements during COVID. So it will be refreshing in like 2025 when we are going to new locations again. So looking forward to that. Well Morgan, thank you so much as always. We have to thank Mr. Whiskers, Mr. Pickles.

Morgan Scarborough (34:17):

Mr. Leroy Biscuits.

Nikki Dobay (34:17):

Mr. Leroy Biscuits. Okay. Thank you Mr. Biscuits for your debut on the podcast. We very much enjoyed it. Thank you to Rosie for being cool throughout this podcast and not getting too agitated with me today. But most of all, thank you for the listeners. Please do check out the show notes for Morgan and my contact information. If you have any comments or questions, please feel free to email either of us. And I will be with you in just a few weeks on GeTtin' SALTy.