

Speaker 1 ([00:00](#)):

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Bradley Scott ([00:16](#)):

Well, so you bring up an interesting point. We have the deputized. Actually, I feel like we've been conscripted. I don't have authority, I just have responsibility.

Nikki Dobay ([00:24](#)):

Right.

([00:24](#)):

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'm very pleased today to be joined by Brad Scott. He has joined me on a podcast before, but is new to GeTtin' Salty. Brad is the Director of Finance at Halstead Beads. Brad, Thank you so much for joining me.

Bradley Scott ([00:55](#)):

Thanks for having me back.

Nikki Dobay ([00:57](#)):

So Brad, I started something new since we were on a podcast together last, where I ask my guests how they got into state and local tax, but I kind of know how that story happened to you, but do you want to let our listeners know?

Bradley Scott ([01:12](#)):

Sure. I was conscripted. About six years ago, the Supreme Court ruled on Wayfair, and we were and still are, a small business that wholesales jewelry components across the country and globally. Up until that date, I had no knowledge about interstate sales tax or really, sales tax beyond what I paid here locally as a consumer myself. But Wayfair allowed for states to reach across their borders and to other states and demand that businesses collect sales tax on remote sales that were being shipped back to wherever state they're going to. So we went from understanding sales tax more or less as a consumer like anybody you'd pass on the street, to having to understand 12,000 different taxing jurisdictions within about 100 days. Over the last six years, I've done my best to understand administratively what that means, but because of 90 emails I sent out back in April of 2019, I've also started to become familiar with the legal landscape both before and after Wayfair. As a result, I understand it, I guess, kind of at a basic level, but hopefully it's a functional level.

Nikki Dobay ([02:26](#)):

I would say you understand it better than most, and that will get us right into the conversation. So you have become essentially an expert in having to deal with sales tax as a business owner. You've also been very involved in multiple advocacy efforts in this area.

([02:49](#)):

So as you mentioned, Wayfair was decided in June of 2018, we're coming up on the six-year anniversary next month. So I thought it would be great to get back together and talk about, have things changed? Are they better? Are they worse? Where are we at with this sea change that is the post-Wayfair sales tax world? So where would you like to kick that broad conversation off?

Bradley Scott ([03:21](#)):

Well, I think for the parents out there, the very first day you bring a baby home, you're in shell-shock, you're excited but you're not really familiar with what's about to come. Over the first several months you start to appreciate there is very little that you actually know and you start to learn things. As the years go on, you realize you're continually learning and then you're never actually going to really fully understand the job, but you bury the fear because it doesn't serve you any good. I would say that sales tax is not that dissimilar. It's one of those things where I feel like I've got a handle on it and then next month something changes and I'm right back to where I was when I began. However, because I've become accustomed to that, I don't know that gray noise in the background is just more of the same instead of new.

[\(04:12\)](#):

So I would say that, are things better today? Some states have made things better, some states have not. But as far as how we respond to it, I think we've got a steady handle on it. Advice that we received several years ago was, put some money aside just in case you're audited because you're going to end up going, there's no way not to. Just be prepared to have that savings account, that emergency fund, if you will, ready to cover your losses when they come.

Nikki Dobay ([04:42](#)):

So before the podcast we were chatting, you were talking about your son, and I said, what's scarier, a 16-year-old or sales tax? You said sales tax by far. So I think we've started off with a good analogy, and talk about some of the advocacy efforts you've been working on. You all filed suit against Louisiana, and that's something that the state and local tax community was definitely watching. You probably have some different perspectives from being inside of that litigation. So to the extent you can share, what was that experience like and did the lawsuit accomplish something with respect to getting Louisiana to be easier to comply with? I'll use the word easier loosely, because I know Louisiana is a bit of a beast.

Bradley Scott ([05:39](#)):

Well, to begin with, when we were first approached about being the plaintiff in a lawsuit, we declined. We're a small business, I've never been involved in a lawsuit until this, none of the rest of my family has been involved in lawsuits prior to this. Frankly, the idea of going into a courtroom for anything other than to maybe get my driver's license just seems terrifying.

[\(06:02\)](#):

I would say that when the lawsuit first came out, we received a number of emails and phone calls from people within Louisiana specifically. Some were thanking us for the lawsuit because they were complaining about their own local situation, and others were much more derogatory. The attention that we received from it, by and large, we were insulated from it just because we're not a very public-facing company, unless you go to our website it's difficult to get a hold of me specifically, although I'm always happy to talk to somebody. But the lawsuit itself, when we first decided to go for it, there was a lot of trepidation that we endured prior to saying go. Once we agreed to do it, we were still pretty nervous. I would say even to this day, periodically I'll get snide comments from people that, oh, you're the guys that lost in Louisiana. So I don't really view what happened in Louisiana as a loss, per se.

Nikki Dobay (06:56):

Right, yeah.

Bradley Scott (06:58):

But I also, I don't view it as a win. Louisiana effectively mooted our case by removing the 200 transaction count threshold, and because we don't ever, we've never really gotten close to \$100,000 in sales into Louisiana in gross receipts, then we didn't have jurisdiction or we didn't have not jurisdiction,

Nikki Dobay (07:19):

Standing.

Bradley Scott (07:19):

But standing. Thank you, standing. So I would say that that elimination of the 200 transaction count threshold was, it's kind of nipping around at the edges of the problem. But I think even at this point in time, if we were to approach the \$100,000 threshold for gross receipts, we would still very seriously consider ceasing sales into the state until the next calendar year.

(07:43):

So do I think it solved the problem? No, I think it quieted us down, but I think the overarching problem, and I've said this before, our issues don't end at the borders of a town or a city or a parish or a county or even the state. They extend across the entire country. I think that's where the greater case that we have lies, is that there's just this enormous undue burden from a compliance demand perspective that we weren't really able to address in our lawsuit against Louisiana. I don't even know that we would've been able to, if we were not dismissed on Tax Injunction Act grounds, I don't know that... Well, I think the merits of our case would've stood on their own, but I don't know that it would've fully addressed the undue burden problem that we face across the entire country.

Nikki Dobay (08:31):

Right, because Louisiana is a difficult state with their system. There are a handful of very difficult states when it comes to dealing with their systems. Even the states that aren't as difficult, you still have a lot of administrative things to deal with, and it is kind of death by 1,000 cuts when you put all of that whole system together. There's really no way, legally, to challenge the overarching system and the burdens. That's, I think, what makes this so, so challenging. Maybe challenging isn't the word, maybe frustrating and annoying and super obnoxious. That is a very difficult reality to think about.

Bradley Scott (09:17):

We're a small business. I think about barriers to entry for even starting a business up. We've been in business for 50 years, and I would say that we've got a different barrier to entry that we face right now as a result of the Tax Injunction Act, and that is a barrier to entry for due process. We really do not have a way to petition all of the states or the federal government for change, mostly because of financial reasons in the states, we just can't afford that many lawsuits, and because of the Tax Injunction Act at the federal level. So we really have no recourse other than to advocate on our behalf with legislators, but that's not always very successful because they've got a lot of different things on their plate. Frankly, Wayfair, as big a deal as it is within our world, it's not that big a deal in the overarching scheme of politics.

Nikki Dobay ([10:07](#)):

Yeah, and so you have undertaken various efforts in that realm. Is Congress any more focused on this now than there was that post-Wayfair blip where there was a hearing and they were talking about this a little bit and we had another GAO study. Are there any discussions going on at the federal level on greater simplification?

Bradley Scott ([10:32](#)):

Not really, no. I mean, I'm there periodically and I hear a lot of sympathetic responses from legislative offices. I don't get to meet with the members themselves, I meet with their staff. I think the crux of the conversations that I typically have are two different things. The first is, we're not hearing about this from our constituents, so it's not that big a problem. The second is, if this really was that big a problem, there would be a lawsuit. Hearing that over and over and over again was one of the causes for us to actually accept or agree to get into the lawsuit. But the fact of the matter is, it is a quiet thing and a lot of small businesses don't know that they can go talk to their legislators or frankly, the way it really feels to me is, what's the point? They're not going to do anything anyways.

Nikki Dobay ([11:22](#)):

Right, and so at the state level, in your mind, what is still needed for purposes of greater simplification? Are there efforts there? Are you still working in Arizona on this?

Bradley Scott ([11:36](#)):

I am. I think the problem at the state level is, at the federal level, members have staff so they can talk to people, they get a lot of help. I mean, it's like running a company. You don't have to be in charge of everything, you can have various people on your staff take over areas. At the state level, especially in Arizona, I don't know about the other states, but in Arizona, members are able to tap into a resource, but that resource is communal, it's not for each office. So unless you are able to effectively lobby, be on site every single day and go make the case to multiple legislators, you're relying on one or two, perhaps, legislators that are very spread thin.

([12:20](#)):

What I have found is that when I get to DC, I can find people that are familiar with Wayfair. At the state level, it's not so much that they're familiar with Wayfair, they're familiar with the revenue that Wayfair has generated for them. So you end up with the conversation around, what are the losses to the state going to be if we change this? I'm a small business, I don't have access to those sorts of research papers. I don't know what the results would be. I tend to think that they would be better for the states if things were easier and they could get greater compliance, but I have no way to articulate that argument with anything other than my own opinion.

Nikki Dobay ([12:56](#)):

That's a great point because one result from Wayfair was, we've never seen the states move so quickly in one direction, and that is all of the sales tax states within a three-year period adopted economic nexus, statutory provisions, marketplace provisions, and they all just moved in that line. Now, did they move uniformly and adopt all the same legislation? No, and there was a lot of hesitancy. The advocacy work that I do, there have been requests for them to reopen this legislation and make changes to particularly the marketplace laws, and they have been very hesitant. From the state administrator's perspective, they keep saying, well, we need to just wait and see, from our perspective, this is working

out real great. But to your point, it's the small businesses that are really struggling to comply, and they struggle for the time and resources to raise these issues and elevate these issues.

[\(14:02\)](#):

So, what are the top things that states could do to simplify? I mean, I think that getting rid of the 200 transactions, which several states have gone down that path, that seems to be one helpful thing. What other things can they do and should we be asking the states, administrators and legislators to be thinking about in this area?

Bradley Scott [\(14:26\)](#):

Well, I think I always look at this from a cost benefit ratio. So what's the return on investment to the overall economy? If I talk about the return on investment to Halstead, it's negative. If I talk about the return on investment to the State Department of Revenue, it's enormous, but they're completely out of balance. I mean, you're looking at two very different extremes.

[\(14:46\)](#):

So, how do we get the greatest bang for our buck, in terms of minimal things that could make improvements? I think there are eight states right now that have a single statewide tax rate. So, Massachusetts or Maryland, for example, they've got one rate that [inaudible 00:15:02], that's pretty easy. But let's look at another state that I think is actually a leader in this forefront and that's Texas, because Texas has allowed for local jurisdictions to maintain their own autonomy. They can control their own local tax base, their own local sales tax rates. But Texas allows remote sellers to make an election. They can either collect at the localized individual tax rates across the entire state, and I think there's something like 1,400 or 1,600 different jurisdictions, or they can collect a single weighted average rate for the entire state. Now, from an administrative standpoint for a small business, one rate is far easier to accommodate than 1,400 or 1,600. So I think Texas has done something pretty remarkable.

[\(15:46\)](#):

Going beyond that, currently we have to communicate with all 45 different tax states if we reach threshold in all of them. I say 45, we live in Arizona, so we have a physical presence but if you live in Oregon or Montana or New Hampshire, then there's still 45 states out there, and then you've got Washington, and then there's also the Alaskan Municipal League. So what ends up happening is you end up with this communication stream that's beyond acceptable. It's difficult to understand what all of them are doing when they're all running in different directions. So there needs to be some sort of centralized clearing house, if you will, where we can reach out to as businesses for updated information for resources, but also for overall communications, remittances, reportings, and filings, that I do believe would cut down on a lot of unnecessary communications.

[\(16:39\)](#):

So in our instance, that would cut down the number of states that we have to work with to 44 or from 44 to one, but think about the Department of Revenue down in Phoenix. They have to work with every single business across the country, whether they know the business exists or the business knows that they exist. There's just a lot of missing communication there, and it's just too much. I think if that central clearinghouse was put into practice, then the states could communicate to that central entity, the businesses could communicate to that central entity, and now you've got a singular filter that's basically managing all of those communications.

[\(17:16\)](#):

Another thing that would actually cut down, I think on regulatory inflation pressures. Right now, we're a wholesaler. We do a little bit of retail sales, but we collected \$1,100 in sales tax last year, or last month or rather. I don't know that we're their target demographic for collections because that \$1,100 is going to 15 states or something like that. But a lot of the times we have reached a threshold for states with gross receipts, not with retail sales.

[\(17:50\)](#):

So what does that mean? If I'm a manufacturer or I'm a wholesaler, or I'm a middleman distributor, and I never had and still don't have a sales tax collection obligation, but now because of the nature of the tax regimes across the country, I have to manage exemption certificates. There are 45 different exemption certificates, there's no standard uniform one, and with those, we have to ensure that the exemption certificates are in good standing. So if we've got a customer, let's say in Indiana that sends us an exemption certificate and it's not good, then Indiana is going to come to us and say, well, you should have collected sales tax on this, so pay us. When in reality, it's the provider of the exemption certificate that should have responsibility for that assessment.

[\(18:36\)](#):

Going beyond that, there are a lot of inconsistencies when you look across the various states as to the definitions of what's taxable, how it's taxable. The age-old example of, is a candy bar food or is it candy? Well, it depends on if it's got flour in it. Unfortunately we don't sell that, so I don't know all the details about it, but there are a lot of inconsistencies there. So those are a couple of the highlights.

[\(19:01\)](#):

Some of the more administratively difficult scenarios that we face potentially are the likelihood of being audited by all 45 states every single year. Now, the likelihood of that I don't think is high, but still, if we had to face an audit, one audit every year, that's pretty tough. If we had to face two or three every year, that's even tougher. I do think that going back to that central clearinghouse model, if the central clearinghouse had auditing authority, and if the state petitioned to the central clearinghouse and said, we want to audit Halstead, then the central clearinghouse could say, okay, how many other states want to audit Halstead? We'll audit them, we'll audit for all of these states at the same time. It's not going to reduce my workload if I get one audit a year, but it would reduce my workload if I get 30 audits in one year. It would make the states, they'd give them a lot more visibility as to how well a company is performing. Those are a couple, the list goes on and on.

Nikki Dobay [\(19:55\)](#):

Right. Well, I want to come back to this idea of, if you make the system simpler, you'll get greater compliance. I completely agree with you that that will result in greater revenues for the states overall because I mean, even if you're just thinking about this, if you can take one administrative piece of this off the table, then you could have more time to maybe look at those exemption certificates a little closer and if one looks weird, then push your buyer to pay sales tax or give you a better certificate. So there's just all sorts of ways that if the states simplify the system, you will have more time to actually probably do a better job overall.

[\(20:42\)](#):

The other piece of this that is very frustrating from the advocacy perspective and work that I do, is the states don't really understand that you are doing, they've basically deputized you to become the collector. You've taken on all this responsibility for them, and they've just kind of wash their hands of it and said, okay, now you go do it. Yeah, if you screwed up, we're going to audit you and assess you and impose penalties. I don't think the policy makers and legislators fully grasp the burden that creates and

that they really need to do a lot more to partner with businesses and small businesses to make this system workable.

Bradley Scott ([21:29](#)):

Well, so you bring up an interesting point. We have been deputized. Actually, I feel like we've been conscripted. I don't have any authority, I just have responsibility. But I think if you were to go into any department of revenue or into any state or even federal legislator's office and demand from them instantaneously, information relating to any of 12,000 different taxing jurisdictions, they couldn't do it. Yet that is what we're expected to do

Nikki Dobay ([21:57](#)):

In 45 states, yeah. I mean, everywhere.

Bradley Scott ([22:00](#)):

In 45 states. So let's step out of business for a moment, and let's think about a couple of other industries. Let's think about doctors, for example. What if you're working in an emergency room in New York City, and because you're in New York City, there is the potential for a patient to come in from any state or country across the globe. What if you had to administer medical care to them according to the bylaws of the state from which they originated, as opposed to those from your own home state? It couldn't be done. Or, if you're an attorney. I mean, you're a tax attorney. What if to be able to practice, you were obligated to be able to pass the bar in all 50 states before you were allowed to even accept a single customer. Just because the possibility that you have a client that has some relationship with somebody else in another state that may become pertinent to you in the future exists.

([22:55](#)):

So the idea there is, well, they walk into your office, therefore you're on physical solid ground, but with business, for some reason, the entire script is flipped. By stepping into my website or by sending me a postcard, for some reason, what we've said is that I have now entered into your home as opposed to you entering into my space. Okay, that's the law of the land and I get that that's never going away, but understanding that it's far easier for an attorney to say, well, then we need standardized laws across the entire country, or a doctor to say, we need standardized expectations of care across the country. The same is true for business, and yet we don't get it. We won't get it until there is some sort of cohesion amongst the states or mandate from the top down, which isn't going to happen because of preemption. So as a result, we're left scratching our heads, but again, it comes back to the undue burden. We've not been able to argue that, the merits of that particular angle.

Nikki Dobay ([23:58](#)):

I would even take that a step further and say the doctor or the lawyer, what you're talking about is just them doing the thing that they were trained to do, but across different state lines or jurisdictions with different rules. But what I think the policymakers and the tax administrators really don't get, and I do say this a lot to them, you didn't go out to become a sales tax expert. You run a company that sells beads. The clients that I work with, they run businesses to do A, B or C. A, B or C have nothing to do with sales tax. That's just not what the business was formed... There's now a handful of businesses that were formed to collect and file sales tax returns, thanks to Wayfair, but that's not what the vast majority of businesses are trying to do.

([24:55](#)):

So it's an even bigger burden and a greater stretch to just say, and now every small business or business that meets these thresholds, they're going to have to become experts in the sales tax system because the states do hold you to perfection, they want perfect. I also spend a lot of time telling clients, you can't be perfect. You would never sleep. You would have to hire a team of how many people to get this exactly, exactly perfectly right. Yet the states somehow think that that is the standard that businesses should be held to.

Bradley Scott ([25:35](#)):

When I first heard about a state and local tax department, I was floored because I work on this, I work on a number of other things too, but I hired a lady to manage our exemption certificates. So our department is effectively two people who spend part of their time on sales tax administration and part of their time on other things as well. So yeah, perfection is impossible, especially when the expectation is penny parity. If I charge too much, I've got to return it. If I don't charge enough, I've got to make up for the loss. Those put real challenges on our shoulders.

([26:12](#)):

It's far easier me to make up a few missing cents from something that I didn't collect, but if I've collected too much, the idea that I can suffer from a key time lawsuit, I don't know if I'm saying that correctly or not because of a couple of pennies. What that means is I effectively, if I over collect from a customer for a penny or two, I then have to spend 64 cents plus the time to do the research and write a check and mail it across the state or country or whatever it is, for a penny or two. That penny or two might be the result of a rounding error, it could be the result of whatever sales tax software I'm using pulling the wrong codes and just saying, well, this customer lives in this county when if they're on the other side of the street, they're in a different county. I mean, there's a lot of different permutations that can affect that number. We don't want to overcharge, it's far better for us to undercharge and make it up, but it puts us in a really difficult spot.

Nikki Dobay ([27:05](#)):

Well, Brad, this has been a great conversation, but I think going back to my original question. Six years later, I'm not sure we're in a better place than we were the six months following Wayfair, maybe just you're a little shell-shocked.

Bradley Scott ([27:25](#)):

Legislators have a tendency to respond to crisis. The major businesses, they have the resources, and frankly, they've got 50 state physical presence in most instances and so this isn't a big deal for them. But small businesses and a lot of medium-sized businesses, if they're not managing this correctly, face real existential threats. The truth of the matter is, if you're driving down the street and Susie's Cues Barbecue closes, one day it's open, the next day it's gone. Until legislators accept the fact that this is slowly killing businesses, and maybe not even slowly, but it is going to kill businesses. It may not kill us completely, but it kills our potential for growth because we're limited due to regulatory burdens. I would love to say that we could do \$10 million in sales next year or 15 or 20, but the reality is, we're pretty consistent with about \$6 to \$7 million in sales a year. With a \$6 to \$7 million revenue, what are our profits left over to pay for additional administrative costs? They're not great. I can hire maybe one more person, but I would be far better off hiring somebody to help with our marketing or helping with fulfillment or something like that, than to just respond to the demands of different departments of revenue.

([28:43](#)):

So, is it getting better? I think unfortunately, it's going to take a lot of real world pain from small business owners that are willing to then reach out to their legislators and say, why didn't you help me? Why didn't you fix this? Why didn't you defend me as your constituent? You were too busy looking at other small businesses on other side of state lines as resource centers as opposed to recognizing that I voted for you. My children go to school with your children, and now my children might need food assistance because my business shut down because this is bad policy.

[\(29:18\)](#):

I think potentially the thing that frustrates me the most. President Biden has made a very big deal in the last couple of years about antitrust, and I applaud that, I really do. We have a monopolization problem, and as you increase the barriers to entry, the barriers to growth, frankly, the barriers to success and the ability for Americans to chase the American dream through being self-reliant. As we crush those situations with additional burdens, all we're really doing is giving greater market share to the big businesses that can already administer this.

Nikki Dobay [\(29:55\)](#):

All right. Well, we didn't end on a very uplifting note, but we'll keep working on it because greater simplification, again, I just do wish the states, and I think this also helps all businesses, I truly believe would result in greater compliance, greater revenues for the states. I just really wish they would get that message and understand like, yes, it's going to take a little work on their ends, the side of the states, and there's going to be resources needed to build a clearinghouse or create these greater simplification efforts and streamlining, but it would be well worth it because this patchwork system we have right now, from my perspective, it's limping along, but it could be a lot better. At some point it's going to really be broken.

Bradley Scott [\(30:46\)](#):

Yeah. Well, 10 years ago, if somebody had said, let's say I'm talking to my nephew and he's in college 10 years ago, he's actually graduating next month, but let's say he's graduating and he's saying, Uncle Brad, I want to start my own business. 10 years ago I'd have said, do it. Great idea. If he came back to me and said that today, I'd say you might want to reconsider, because Wayfair, as much as we talk about sales tax, that was a crowbar used to open up Pandora's box because it's no longer just sales tax, it's income tax, it's gross receipts tax, it's consumer protection, consumer privacy, and it's not just domestic, it's coming from international sources as well. We're having to become experts in effectively laws, rules and regulations from any jurisdiction across the globe that decides we need to be experts in their rules, laws, rules and regulations.

Nikki Dobay [\(31:37\)](#):

So did you tell him to become a tax lawyer? No, just kidding.

Bradley Scott [\(31:41\)](#):

No, he is selling melons right now. He's working for a melon distribution company. It's kind of cool to see. So their Christmas is 4th of July.

Nikki Dobay [\(31:53\)](#):

I love it. Well, we've got to do a quick surprise non-tax question. You just gave me an idea. Do you have any fun summer plans or 4th of July plans coming up? My husband and I've been desperately trying to

go on a vacation, so I think we found a week where it actually works and we're going to try to go to Mexico, but then do some other fun trips, maybe go to Louisville and do some bourbon tasting. But what do you have on your schedule for, as we're getting through spring into summer, and I guess it gets really hot in Arizona, so.

Bradley Scott ([32:27](#)):

We're up in the mountains, so it's not too, too bad.

Nikki Dobay ([32:31](#)):

Okay, all right, all right.

Bradley Scott ([32:32](#)):

Actually, we don't have anything planned for the summer because we decided to go all out for Christmas.

Nikki Dobay ([32:37](#)):

All right, so what are you doing?

Bradley Scott ([32:39](#)):

We are going to Austria. We're taking our son over for two weeks.

Nikki Dobay ([32:42](#)):

Awesome.

Bradley Scott ([32:43](#)):

We're going to go to Vienna, to Salzburg, and then we're going to go skiing in a resort town called Ischgl. So while we're there, he wants to take chocolate making lessons. I mean, Austria is famous for music, so we're going to go see music and then we're going to ski. So the summer's low-key because Christmas is going to be off the hook.

Nikki Dobay ([33:04](#)):

Awesome, awesome. Well, Brad, thank you so much for the conversation and for keeping up the good fight and working on these issues. I know they're not easy. Thank you for the listeners, if you have any questions or comments, please leave them in the show notes, contact information for Brad and I will also be in the show notes. I look forward to joining you again on the next GeTtin' SALTy.