

Speaker 1 ([00:01](#)):

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Morgan Scarboro ([00:16](#)):

The difficult part about this conversation is I can tell you that probably about 45 states are doing really well. They're just fine. But then people start to ask, "Well, what are the states that aren't doing so well?"

Nikki Dobay ([00:34](#)):

Hello and welcome to GeTtin' SALTy, a state and local tax policy podcast hosted by Greenberg Traurig. My name is Nikki Dobay, shareholder in the Sacramento, California, and Portland, Oregon offices. I am very pleased to be doing a multi-state duo podcast today. I have both Morgan Scarboro, VP of Tax Policy, and Ryan Maness, director and Tax Council of Tax Policy at Multistate Tax Associates, two of my favorite people to talk about state and local tax policy with. Thank you both for being here.

Morgan Scarboro ([01:09](#)):

Thanks for having us, Nikki.

Ryan Maness ([01:10](#)):

Thanks so much.

Nikki Dobay ([01:12](#)):

So we're going to have a little legislative roundup. By the time this podcast airs, we will be in June, and there will only be a handful of states left in session. Maybe one of you will say how many.

Ryan Maness ([01:26](#)):

Let's see. I actually just had this pulled up. By the beginning of June, there should be 15 states in session.

Nikki Dobay ([01:33](#)):

All right. Okay.

Morgan Scarboro ([01:34](#)):

And we'll be in single digits by the end of June.

Nikki Dobay ([01:37](#)):

All right.

Morgan Scarboro ([01:37](#)):

So we're getting there.

Nikki Dobay ([01:38](#)):

Okay. Okay, so you guys haven't slept since January 10th probably, because you are the amazing trackers, and we're going to just have a little bit of a catch-up on what happened this session. So I want

to start off by talking about where are we with the state's fiscal situation? So Morgan, when we started in January, we have started for the last 17 years. No, we haven't been doing it quite that long. We've been talking about the state revenues were going to start falling off. Did that happen, or where are we at?

Morgan Scarboro ([02:16](#)):

Well, I would to make an important distinction and say when we had that conversation, we said that revenues were going to normalize, which really means they were coming off of their COVID highs, but for the most part, states were not going to be in really dire fiscal conditions. They just couldn't sustain the peak levels that they've had over the last couple years, but they were still going to be in really good shape in compared to where they were in 2019, which was a pretty good year for states already, and that has been true. So we were right a little pat on the back there.

Nikki Dobay ([02:45](#)):

Perfect.

Morgan Scarboro ([02:46](#)):

The difficult part about this conversation is I can tell you that probably about 45 states are doing really well. They're just fine. But then people start to ask, "Well, what are the states that aren't doing so well?" And then you start to have to tell people, "Well, California might have some problems. New York might have some problems. Massachusetts might run into some trouble." So for a lot of folks, particularly in the business community, if you think about where they have a lot of operations, it's not as important to them when I tell them that Nebraska and South Dakota are doing great, but we just have trouble in these couple of small little other states.

Nikki Dobay ([03:27](#)):

These little guys. Yeah, yeah.

Morgan Scarboro ([03:29](#)):

Exactly. So California is sort of an interesting one. Originally, Governor Newsom came out and said they were going to be running about a \$38 billion deficit. His friends in the fiscal office said that was a plausible but optimistic scenario, and they thought probably they would be closer to \$73 billion. I think that deficit number has come down a little bit in the May revise, but still well above the 38 billion deficit that was originally forecasted. So California's got some trouble.

([04:01](#)):

They've got some plans to sort of try to work through that. It's a lot of, honestly, funny money stuff, moving some money around, pausing some planned spending. There's a new tax on managed care organizations, the potential suspension of NOLs and other credits. But they do have some potential trouble moving forward. I would say other states I'm keeping an eye on, New York, New Jersey, though they're trending in the right direction in New Jersey, Massachusetts. Those are all states I'm sort of keeping a closer eye on in terms of fiscal conditions. But again, for the most part, the vast majority of other states are doing fine even though revenue has normalized a little bit.

Nikki Dobay ([04:43](#)):

So when I see the state tax news each morning where this state's doing great, and this state's doing great, you're telling me that those are the states, no offense to anybody listening, that people don't generally care about too much.

Morgan Scarborough (04:57):

You said that about... You said that, not me.

Nikki Dobay (05:01):

That's not what I mean. We all really, really care. But it's these couple big ones that are having the problems. Ryan, do you have anything to... I mean, what about going forward? Is California going to be better soon?

Morgan Scarborough (05:13):

Well, they increased spending by almost 50% during COVID.

Nikki Dobay (05:17):

Oh, good, good.

Morgan Scarborough (05:18):

Unless you find some way, and I think they are working on trying to figure out how they can potentially reign some of that in. That's a tough thing to cover if you're not willing to do tax increases, which the governor's saying he's not. I think some would argue in the tax community whether suspending credits and doing other things like that is a tax increase or not. I think some would probably say yes to that, but that's a tough place to be unless you're willing to really take a hard look at your budget.

Nikki Dobay (05:43):

Ryan, other thoughts on the fisk?

Ryan Maness (05:46):

I mean, I really think that... Well, one thing to also keep in mind is while the fiscal conditions are one aspect of this, the other thing to look at is just how... Or sorry, conditions of the grant are one thing, but how the federal government's responses to COVID and those numbers dropping off are getting back to, again, what Morgan talked about in terms of normalizing this budget situation. So things are starting to wean off, but I definitely think that we're going to start seeing, again, increased wearing off of this effect moving forward, so into next year when, again, political conditions are going to be significantly different and make for a very chaotic brew.

Nikki Dobay (06:27):

So Ryan, great segue. What's happening on the political front, and we will get to the elections and I want your insights on elections at the end, but how did the politics shake out during the 2024 legislative sessions?

Ryan Maness (06:44):

So I think there are two important things to know about the politics of this. The first is because generally fiscal conditions have been pretty good in most states, that means that there's just less political will for

saying what's massively increased taxes, or let's do an aggressive shakeup. It's hard to make the case of we have a \$2 billion surplus, we should increase the sales tax rate by X percent. That's just a hard political calculus to make.

[\(07:20\)](#):

Additionally, in an election year, we found, we did some studies on this, I believe last year, that generally tax, enacted tax legislation drops by about a third during an election year. Just lawmakers are significantly less interested in debating taxes or enacting taxes when they know that they're going to be facing voters in the fall. And also, tax policy is complicated and takes a lot of time. So it just takes longer to get those bills worked out, which is more time in session and less time on the campaign trail.

Nikki Dobay [\(07:55\)](#):

All right, Ryan. So what you're saying is not a lot happened. Now, we also say this sometimes and then we later realize that wasn't true.

Ryan Maness [\(08:05\)](#):

So I wouldn't say that not a lot happened. That's always a dangerous thing to say. I'll put it this way. The proposals that were out there, that were the most aggressive, most of those did not become law. I mean, I would take, for example, if you look at the Minnesota omnibus where Democrats, they have a trifecta in the state government. Before the omnibus in Minnesota, they always are like a million bills and the question becomes what gets smooshed in together? That was a big question. What was going to end up being smooshed?

[\(08:40\)](#):

And there was a lot of talk about the famous space erosion study that was thought to be sort a gateway to further foreign taxation. There was new disclosure requirements that were out there, but through a number of political machinations, all of those major provisions, and even some smaller things that have been included in earlier versions of the omnibus were all eliminated prior to the final enacted bill. Similarly, in Virginia, obviously there was a lot of back and forth between Governor Youngkin and Democrats in the legislature over the possibility of are we going to expand the sales tax base, the digital services? Is there going to be a B2B exemption in there? A lot of harsh words on both sides. And then in the end, everyone said, "We got to get a budget across the finish line before things take a turn. We're just going to pass a very stripped down budget and sort of live to fight another day."

Nikki Dobay [\(09:35\)](#):

So two things I want to point out to listeners. There's two very technical terms in state and local tax policy. Ryan just referred to one of them, smooshed. That's a really technical term when it comes to legislation, and I always say things are squishy, which is another very technical term. So you're always learning new things when you're listening to the podcast. And I just want to recognize Ryan for using some of our technical terms. So not nothing happened. We know things happened. So Morgan, what were the big things on your radar that, again, I said you didn't sleep for four months, so keeping you up at night as you were reading the gazillion bills?

Morgan Scarboro [\(10:14\)](#):

I think Ryan really hit the nail on the head, and one thing that's interesting to me, the past couple... I would say maybe with COVID this happened a little bit less, but the past couple years I would say we've seen a lot of Republican infighting on tax policy, and infighting might be a dramatic word, but just

factions of the party not agreeing on where they wanted to go in tax policy, how aggressive they wanted to be, what all they wanted to do. This year I think was really marked by Democrats not being on the same page in a lot of states when it comes to tax. Those states that Ryan's talking about, Minnesota, they have a Democratic majority. In Virginia, I mean, granted the governor is a Republican, but there's a Democratic majority. In the legislature, we saw Maryland have a terrible back and forth about combined reporting this year and then potentially worldwide combined reporting. They have a Democratic majority.

[\(11:04\)](#):

I think in California you're seeing some cracks form on the NOL suspension piece where they clearly have a democratic majority. So you really are seeing this year, I think, a pretty progressive faction of Democrats try to push for pretty aggressive tax policy, and then more moderate Democrats stepping back and saying, "We don't know if we want to do that, and we also don't know if we need to do that right now given our pretty good fiscal condition. Is this really the time that we want to be doing something like that?"

[\(11:36\)](#):

So this year to me was really marked by what was proposed to consider, but what didn't happen. I mean, another great example is Vermont. They had a really aggressive proposal to tax guilty more aggressively than the federal government does by eliminating the deduction that the federal government provides and essentially tax the gross amount of guilty instead of the net amount and in turn increase their corporate income tax rate to one of the highest in the country. That didn't pan out.

[\(12:05\)](#):

So we saw a lot of things that were really concerning when they first came up, but ended up not passing for some reason or another. So that's been one really interesting, I think, place for us to watch this year. In terms of what did happen, it was just a little bit quieter. I mean, we saw some things happen, but it wasn't anything super groundbreaking. I mean, we saw again this year, Georgia, Idaho, and Utah cut their corporate income tax rates. That's a continuation of a trend. Over the last six years, we've seen 14 states cut their corporate income tax rate. Several of those states have done so more than once, but really to me, it's marked by what made us panic and sweat when we saw the bill language, but then ended up not actually passing in states.

Nikki Dobay [\(12:53\)](#):

So Morgan, on income tax trends, you mentioned the lowering of rates. I don't think we saw any new states go to single sales or market-based sourcing this year, which has been a trend. There's so few states left that could really make that jump. It's not surprising that we're seeing less of that, but correct me if I'm wrong on that one.

Morgan Scarboro [\(13:14\)](#):

No, I think that that's right, Nikki. We didn't see a lot of... I hesitate to say this because I don't want any of our policymaker friends to be upset with us, but I don't know that we saw a ton of technical tax policymaking this year. We saw a lot of things that garnered pretty big headlines, I would say. Maybe in Maryland where they were sort of considering some version of combined reporting, that gets a little bit more technical, but for the most part, we saw more flashy ideas sort of coming through. Like Ryan said, the corporate disclosure, the idea of requiring corporate taxpayers to disclose their private tax information, that's a very flashy headline. Vermont moving to one of the highest rates in the country. That's a very flashy headline. A lot of the technical stuff we did not see this year.

Ryan Maness ([14:01](#)):

I think the most technical bill that I can think of is probably the Tennessee franchise tax proposal that essentially coming out of concerns about litigation. Governor Lee came out early and just said, "This is what we're doing on taxes this year." It was not as much driven by politics as much as that a real policy wonk tax attorney concern.

Morgan Scarboro ([14:30](#)):

And I would argue, Ryan, even that became flashy in its own right because there was-

Ryan Maness ([14:33](#)):

Absolutely.

Morgan Scarboro ([14:35](#)):

I know I talked a lot about Democrat infighting, but there was a lot of Republican disagreement there. I mean, if you recall, they ended up actually including a disclosure piece in that bill because the news coverage is that there was concerns that the governor had financial interests in this. I have no idea if that is true, but that was the coverage, and it became this big to-do talk about that non-tax wonks we're talking about.

Nikki Dobay ([15:01](#)):

And Ryan on the indirect side or the transactional tax side, I mean, I feel like one of the biggest headlines was the California digital extraction fee tax thing data or digital advertising tax in disguise, that came very, very close to making it across the finish line of the Senate.

Ryan Maness ([15:24](#)):

Yeah, so I've been fascinated by what I've come to think of as the novel digital tax proposal, because obviously you have your traditional expansion like what Virginia was talking about, and you have all the new ideas that are out there. After Maryland passed their digital ad tax, and that was immediately mired in litigation, there were a few years when I think Massachusetts had a few introductions and they had held some hearings, but everyone... I sort of got the impression that most lawmakers said, "This juice is not worth the squeeze. We don't want to pass a controversial thing that'll be difficult to get enacted in the first place, and then we're going to have questions about whether or not we actually raised any revenue because we're going to get tied up in court."

([16:05](#)):

And I thought that it had put the end of the matter. And then this year, we really did see a number of states going back to this. When you talk about... I mean, again, one of the interesting things about this issue is you talk about in California having some political success there. I think even more surprising the fact that a digital ad tax came very close in Nebraska. I mean-

Nikki Dobay ([16:28](#)):

Seven minutes away or something.

Ryan Maness ([16:31](#)):

Incredibly close. So really showing there is that, again, the party seem to be realigning someone on these issues, and this is a thing that lawmakers across the aisle have some degree of interest in, and if they're looking to shore up taxes or do some sort of tax swap, this is an option that seems to be on the table on both sides.

[\(16:57\)](#):

Again, I think it's notable that nothing became a law this year, but things definitely got closer this year than they did in previous years. I would also say that a lot of the folks who have introduced these bills say, "Well, we think we've amended the language of these bills or changed them enough from the Maryland version. They wouldn't run into the same kind of litigation trouble." Obviously that's for the courts to figure out. I'm not expert enough to be able to weigh one way or another whether that's true, but I do think it's a bold strategy and it's a lot of time and effort to lay on line for that.

Nikki Dobay [\(17:38\)](#):

Well, where it really seems to be some juice that people are willing to squeeze is these targeted taxes on specific types of taxpayers that are perceived as bad for one reason or another, and again, across the aisle because you do see some interesting bedfellows when these proposals are coming up, and then the funding going to a dedicated source that is really hard to disagree with or fire back on. So I think that's something we're going to have to start to combat a lot more because I think that's easier for lawmakers than big reform ideas, or even the technical stuff that's a little less sexy, but really necessary. It's just easier to get your pet project through when you can point to a certain industry or a certain type of taxpayer and say, "Well, they're bad. They should pay more to fix this."

Ryan Maness [\(18:32\)](#):

I mean, something that I've been keeping an eye on for a couple years is it's interesting to see where some of these idea or some ideas start in actually at the municipal level, but a lot of west coast cities said-

Nikki Dobay [\(18:44\)](#):

What? No.

Ryan Maness [\(18:45\)](#):

I know. In recent years looking at your Portlands or Seattles, your San Franciscos that are essentially saying, "We're going to pass a head tax against large tech companies, and we're going to make that pill you just swallow by saying we're going to alleviate homelessness with this, or something." Or again, the fact that we were talking about in California, we're going to dedicate some amount of this to local journals and that a lot of people think is important. That being said, you have to also... Lawmakers, when they're doing this, there's always the question of, "Well, are we going to really pass a new digital advertising tax and dedicate a whole lot of that revenue with all the political drama and all the legal problems and then dedicate that all to not the general fund, but to this pet project?" That's a policy choice that lawmakers can certainly make, but that's a very specific choice.

Nikki Dobay [\(19:43\)](#):

And it also... Coming back to our discussion of where things are fiscally, one thing that I think was really frustrating about the California digital advertising tax saga I'll say is there is this huge deficit that needs to be fixed otherwise, yet they were coming up with a whole new bucket of money for one... Local

journalism is very important, so I don't want to be dismissive of what the goal was, but there are bigger pictures, and I wish that... I think we all do wish this on this call, when you're doing state and local tax policy, we would like the big picture to be considered and not these one-off discriminatory taxes that we all have to figure out how they work, whether or not they're constitutional, and let's look at the big picture people. Am I dreaming?

Ryan Maness ([20:37](#)):

I mean, it's a grand goal. I mean, from your lips to God's ears, Nikki.

Nikki Dobay ([20:39](#)):

All right.

Morgan Scarboro ([20:40](#)):

It feels like my dream world where when we have presidential candidates, they're actually anonymous, and they just release a series of white papers that you have to read to vote on. That feels like you're living in my dream universe.

Nikki Dobay ([20:54](#)):

All right. Okay. Well, we can live there together.

Ryan Maness ([20:57](#)):

It does sound nice.

Morgan Scarboro ([20:57](#)):

Perfect.

Nikki Dobay ([21:02](#)):

All right. We're going to wind down and then get into our surprise non-tax question, but where are the politics going? So we have this little election coming up in November. We won't talk about the part of your dream world that you just referenced on that election, Morgan.

Morgan Scarboro ([21:18](#)):

We're very far from that dream world right now.

Nikki Dobay ([21:22](#)):

Yes, yes. And that's why we do state tax policy. So what are you guys watching for this fall's election when it comes to state and local tax policy? We're trying to keep this podcast on the rails.

Morgan Scarboro ([21:37](#)):

So I think we can punt a little bit, and I think it can be fair because yes, obviously there's big elections happening at the federal level. The state level has the potential for the landscape to change pretty dramatically as well. So when we look, we have 11 states that have gubernatorial elections. What's fascinating is that eight of those states do not have an incumbent that is running for office. So you have

eight states at least where you're going to see a new governor come in and set their own new agenda for tax policy.

[\(22:08\)](#):

And then when you talk about the legislative side, we have 86 chambers in 44 states that are up for election. When you look at that realistically, only a few of those stand to actually change any partisan makeup. Only a few of those really have an opportunity to change whether they have a trifecta, whether they're in divided government. So there I think you need to keep a really close eye on Minnesota, Pennsylvania, Michigan, Arizona, and Wisconsin. So there is the potential, I think, for us to see a lot of change going into the next year.

[\(22:46\)](#):

What I think will stay constant is perhaps unfortunately these new unique discriminatory tax ideas that we've seen, because just like you said, Nikki, there are very bedfellows there. There are folks on both sides of the aisle that are sort of encouraging or supportive of these ideas who want to stick it to a certain industry that's become somewhat politically popular. I don't see that part of it going away. So that's what I think will be the constant is potentially some new leadership, some new faces. I don't think the idea of digital advertising taxes, the idea of taxing the collection or the collection of data, I don't think that's going away. Those are here to stay for at least a couple years. I think I've been saying this, as soon as one state figures out a way to do it that's practical in administration and that could pass constitutional muster, I think it's going to take off like crazy. I don't know if that exists, right?

Nikki Dobay [\(23:48\)](#):

Right.

Morgan Scarborough [\(23:49\)](#):

I would include that caveat. I don't know that that's possible, but if some state figures it out, I think we'll see that spread really quickly.

Ryan Maness [\(23:58\)](#):

I think it's absolutely right. I mean, I would also say, what I think... I would back up everything Morgan just said. I would stress that while the strict partisan makeup of a state, number of Republicans and Democrats might stay constant, the types of members who are joining from those parties makes a huge difference. So for example, there were just primaries and some elections going on in Texas where the more mainstay Republican speaker of the house faced very serious challenges from his right flank that he was able to stave off. But there were a number of other members of that chamber who are going to be replaced by, again, more further right members.

[\(24:43\)](#):

Or, I mean, again, the same thing can be true. I mean, one of the reasons why Maryland is in the political position it's in now is that several years ago, several more moderate Democrats retired or otherwise left the legislature, and that gave space for the younger progressives to gain a sufficient hold of the caucus to be able to, again, pushing through what they were looking to have. So even if you wake up in after election day and you say, "Oh, actually partisan makeup, I'm looking at the red, blue, and purple states and everything is generally where it was before." It's important to see very technical things. Who got committee assignments? Who is running what kinds of bills? That stuff really matters when the rubber hits the road. So that's going to be one of the things I'm going to be very interested to look at. You have to read beyond the headlines to see how that works out.

Nikki Dobay ([25:35](#)):

And one last, I think, this is a quick question, but having this many potentially new lawmakers, does it make our job easier? No, that's completely not true. I mean, it makes, I think, tax policy so much harder, and because now we have to educate a whole new group of people on who we are and what we do and why this stuff is really important. So from your perspective, I guess next year will be more exhausting.

Morgan Scarboro ([26:06](#)):

I don't know that it makes it easier or harder. I could see both sides. I think it makes advocacy way more important. It makes the idea that somebody is carrying your message, that somebody is making an introduction, talking about your priorities, really, really important. State legislators often don't have their own staff, and no one can be an expert in everything. So there is some reliance on outside sources to learn about complicated issues. You want to be sure you're part of that conversation. So I think it's just really critical to engage in your key states on your key issues, particularly when there are a lot of freshman legislators.

Ryan Maness ([26:44](#)):

And this is a bit of an aside, but I will just say while we're talking about advocacy and what states we're looking at, I always have to throw in the statement that even if a problematic bill comes up in a state that someone might not be as interested in, we shouldn't think that that is, oh, that's just Vermont or just Maryland. One thing we see is that, again, especially with new lawmakers, and lawmakers talk to each other and they read the headlines and they read what's going on, and if they see, oh, the delivery fee in Colorado was enacted and the sky didn't fall down as far as lawmakers are concerned. And then we saw a proposal come up in Minnesota, and we saw last year, Minnesota talked about taxing international receipts, and then we saw a much more significant push for that in Maryland and Vermont this year.

([27:36](#)):

So if we see any... Or instead if we see any state, if Nebraska passed a digital advertising tax, it wouldn't stay in Nebraska. So it's important to keep in a 50 state holistic view of these things and just say, "If this is a bill that really matters to us, even if it's in a jurisdiction that it may not matter, it may be worth becoming more engaged."

Nikki Dobay ([27:57](#)):

All right. So I don't know if everybody's totally depressed after this conversation, but I don't think so. But we are going to wrap it up and do something a little fun, surprise non-tax question. So I've been thinking about this today and I decided to go with this one. What is your favorite woodland creature? So we have a lot of chipmunks here in Bend, Oregon, and they're really fun to watch scurry around. And I have two dogs with high prey instincts, but they've never caught one and done anything bad to them. So for the children listening, because I know a lot do, but I'm pretty fond of woodland creatures generally, and you can really go wherever you want with that. I'm not putting you in a box with... I don't even know what technically a woodland creature is, but I like a mole. So I've tried to look at whose face is ready to go on this. So I might have to go with Ryan first. Ryan, your favorite woodland creature?

Ryan Maness ([28:57](#)):

My favorite woodland creature. I will say as someone who was... I love hiking in the woods. I will always be amazed when I could see a whitetail deer out in the woods. There are all sorts of questions about

what population, but seeing a deer walk completely silently through thicket that I'm tromping through is always amazing. And a herd of deer in a meadow is a cool thing to see on a sunny summer afternoon.

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

All right, Morgan, this one might have taken you by surprise.

Morgan Scarboro ([29:35](#)):

I don't know if this is really a woodland creature. I am fascinated by stick bugs. I think that they're the weirdest little bugs and they look like they belong in a fairytale book. And I would read a children's book about the life of stick bugs.

Nikki Dobay ([29:56](#)):

All right. I completely lost my audio again.

Morgan Scarboro ([29:57](#)):

[inaudible 00:29:58] I wish everyone could see it, it's so confused right now.

Nikki Dobay ([30:00](#)):

[inaudible 00:30:01] Morgan's answer is amazing, which I'm sure it is. So I'm going to wrap up.

Morgan Scarboro ([30:06](#)):

I also get a particular joy when I see cardinals and blue jays at the same time in the same place. That's not really woodland either, but that brings me a special brand of joy.

Nikki Dobay ([30:17](#)):

All right. That's awesome. Thank you both so much. This has been a very fun episode to do. I can't thank you enough. If you would like contact information for Ryan or Morgan or me, please do check out the show notes. Thank you both for being here. As always, we will be back, I'm sure later this year to chat more about these very fun state and local tax policy issues. And thank you to the listeners. I will be with you again soon on the next GeTtin' SALTy.