Nikki Dobay (00:01):

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 once again joined by one of the listeners' favorites, Morgan Scarboro. Morgan, I think I'm going off the top of my head here. I think your title is VP of Tax Policy at MultiState Associates. Did I get it right?

Morgan Scarboro (00:29):

Just VP. I really stretched that as far as I could, so.

Nikki Dobay (<u>00:32</u>):

Okay, all right.

Morgan Scarboro (00:33):

I am going to add listener favorite to my email signature now though, so thank you for saying that.

Nikki Dobay (00:38):

All right. All right, my pleasure. Well, Morgan and I are here, it's the beginning of September. We've got some elections coming up and Morgan's going to catch us up on what's going on at the state level. We're not going to talk national politics, I promise Morgan, but you are going to help us kind of get a sense of where things are in the different states because we have a lot of elections coming up.

(01:03):

So first question just to level set is, where are the state elections? How many legislatures are up for grabs, Governors, that kind of thing?

Morgan Scarboro (01:14):

Yeah, that's a great question. I am going to start from sort of a thought experiment and dive into it from there. So, buckle up everybody.

Nikki Dobay (<u>01:22</u>):

All right. I love it.

Morgan Scarboro (01:23):

When we start looking at state trifectas, I think this gives us sort of a good overview of what the partisan makeup is at the state level. Right now-

Nikki Dobay (<u>01:31</u>):

And why don't you explain a trifecta, just for any new listeners out there.

Morgan Scarboro (01:36):

Absolutely. A trifecta is just where a single party controls the governor's mansion and both chambers of the legislature. So, pretty solid control. It's not always foolproof. We've seen quite a bit of infighting even this year, in terms of parties at the state level, but it certainly lends a lot of authority to that party. It gives them a lot more leeway to make the changes that they'd like to make.

(<u>01:59</u>):

So right now, pre-election, we're sitting at 19 Democratic trifectas and 22 Republican trifectas in nine states with a divided government. So if we do this sort of experiment where we consider, what would happen if the Democrats had their best possible night? Right? They defended every chamber where they have a slim majority, they won seats, they won a couple governor's mansions, their best possible outcomes. Even if you look at that, they would only gain two new trifectas.

(02:33):

And if you look at Republicans, what would happen if they had their best, number one, most wonderful thing they could think of happen on election night? It's the same thing. They would only gain two new trifectas. So it's kind of a fun thing to think about, what would happen if there was a red wave? What would happen if there was a blue wave at the state level? But ultimately because we're at this place where we have 19 Democratic, 22 Republican trifectas, it doesn't make a huge difference, in terms of trifecta makeup.

Nikki Dobay (<u>03:04</u>):

Wow. Spoiler alert, nothing's going to happen.

Morgan Scarboro (03:09):

That is not what I said.

Nikki Dobay (03:09):

Okay.

Morgan Scarboro (03:10):

That is not what I said at all. There is a really interesting thing to watch. I think one of the most interesting categories this year to watch on the state level is gubernatorial elections. So we have 11 gubernatorial seats that are up for election this year. Eight of them are currently held by Republicans and three of them are currently held by Democrats, and most of these will most likely stay under the same partisan control. The polling is showing that they're pretty solidly or leaning one way or another, sitting where they already are. New Hampshire is rated as a toss-up right now, and North Carolina is rated as leans blue, which is a little bit less safe, not quite a toss-up, but could be slim polling margins there.

(03:53):

What I think is fascinating though is that eight of these seats have no incumbent running. So in at least eight of these places we're going to see a new face in the governor's office. And of course, it could be somebody who served as lieutenant governor or some other function in the state, but this is interesting to me because we have seen governors really control, or not control, but have a lot of influence on tax policy, particularly this year. So if I'm thinking back this year, we had Governor Pillen in Nebraska, who where listeners will recall, I'm sure Nikki had an episode on this and I listened to it for sure, Nikki.

Nikki Dobay (<u>04:34</u>):

You were probably on it, so.

Morgan Scarboro (04:38):

Where the governor in Nebraska really wanted to do something about what he was concerned about, in terms of property tax collections and rising valuations for homeowners, etc.

(04:48):

So he proposed a really large sales tax swap in order to buy down property taxes, essentially. The sales tax swap, the problem was that it applied to many professional services like accounting services, like legal services, things that we really don't want to tax. I mean, if you talk to economists on either side of the aisle, it doesn't really matter where you're sitting. Economists will tell you the sales tax should apply to final transactions only. You shouldn't be building it into these sort of interim purchases. So this was pretty controversial. It was a huge plan, it was a lot of money. Literally, probably almost every service you could think of was thrown in there. That did not move forward, but it was probably only at the governor's urging that they ended up passing a supplemental property tax bill that was a little bit smaller. It was funded via cuts and some other sort of changes to spending. But if it weren't for the governor there really I think pushing the legislature, we would not have even seen that action at all.

(05:46):

If you look at the same thing, Colorado just wrapped up a special session. Their situation was a little bit unique, in that they have or had two ballot measures that were certified that would've drastically cut property taxes in the state. Colorado already made some cuts earlier this year and last year, and they were concerned about what it would look like to have some really drastic cuts. So the governor worked with folks on the other side of the aisle to say, "Okay, let's do a compromise here. Let's do something smaller than what's going to be on the ballot, but bigger than what we've already done." Again, driven largely by the governor.

(06:21):

The last one I think of that comes to mind immediately. Governor Newsom in California, pretty famously drives the tax policy conversation in California. This year he took a lot of steps to shore up the budget in California. He took a unique interpretation of this and he said that they were imposing no new taxes. I think that many of us would perhaps disagree with how he interpreted this.

Nikki Dobay (<u>06:48</u>):

Well, what he did say was he would not sign any legislation with broad-based tax increases. I'll say he was true to his word there, there were no, what we think of as sweeping broad-based tax changes. There were some big tax increases.

Morgan Scarboro (07:10):

Right, there were expensive tax increases, I would say.

Nikki Dobay (07:11):

Narrowly targeted. That was always how I tried to say, well, he's going to get around that statement by just, we had an advertising tax on the table and we'll get to what happened with that, but, and then the issue with apportionment. It's a pretty narrow issue for a small subset of taxpayers, but big dollars.

Morgan Scarboro (07:31):

And so I think that the governor's races are a really interesting place to watch. I will be really curious to see who sort of wins out in those states. And just to take a look and see, were they campaigning on tax issues? Campaigning on the property tax is extremely popular right now.

Nikki Dobay (07:47):

And do you know if Nebraska and Colorado's governors will potentially be back next year?

Morgan Scarboro (07:54):

Yeah, Nikki. So Colorado and Nebraska, the governors will be back in both states. And I don't think that Governor Pillen is necessarily done in Nebraska. He has made it clear that he wants more property tax reform. So I think we'll see this conversation come up again for sure in at least one of those places.

Nikki Dobay (<u>08:11</u>):

Right, yeah. I was a little worried about that, that we're going to be in a loop. I feel like we're in a property tax loop, property tax cut loop right now. So until, I don't want to wish this upon anything, but until something changes with the housing market, I think we're going to be hearing a lot from governors and others in the legislature on property tax.

Morgan Scarboro (08:35):

Right, but the challenge with the property taxes, it's so transparent that it really drives people nuts, right?

Nikki Dobay (08:40):

Mm-hmm.

Morgan Scarboro (08:42):

I probably spent an ungodly amount of money in sales tax based on the amount of packages I receive at my door every single week last year, but I couldn't tell you what that number is. I could tell you what my property tax bill is almost down to the penny and that drives people nuts. But the challenge is, it's a really hard tax to reform because there's so much local aspects to it. There's so many, how are you going to fund schools in that case? What's the swap going to be?

(09:08):

We talked to legislatures, I was at a meeting earlier this year and asking the question, "Has anybody figured out what to do? How to fix this in a way that is workable for their state, workable for the localities, and that satisfies residents and constituents." It was crickets. I mean, folks have ideas they have explored, they've tried to make some smaller changes to improve the situation, but it's not a tax area where people are jumping up and down saying, "I have the answer and I know how to fix this."

Nikki Dobay (09:37):

I think unfortunately the property tax does exactly what it's supposed to. It taxes wealth and it taxes accumulated wealth on essentially a real time basis. And that's what it's supposed to do so it's really hard to change it to do something else when that's the entire goal. And to your point, so much of the locals' economies are based on the property tax. What is the state supposed to do? How do you plug that hole?

(<u>10:06</u>):

And what I've always been curious about is, I wasn't following this so closely in Nebraska to know the answer, but how do you get over that local control hurdle? Because once you take the property tax funds away and plug them with a state sourcing revenue mechanism, the locals lose all their control and the legislature can really change things as they see fit. So, it seems like a political nightmare to me if I'm a governor, but god bless.

Morgan Scarboro (10:39):

That's the only thing keeping Nikki running for governor, she doesn't want to deal with the property tax question.

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Nikki Dobay (<u>10:46</u>):
That's right.
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Morgan Scarboro (10:46):

And then one more thing I think that's interesting to talk about is just sort of what we're seeing in terms of legislative chambers. We may see again, some new faces, but a huge shift in overall party control is not super likely when we talk about legislatures this year. 42 states have legislative elections and only one of those states are rated as a toss-up, which is Alaska. And they have sort of an interesting coalition model anyway.

(11:09):

There are two states though that I am keeping an eye on, and those are Arizona and Minnesota. So last election in Arizona, Democrats came up short by only one legislator in each chamber. So I know Democrats are for sure working to flip chambers in Arizona. And then in Minnesota, the last election, the Senate flipped to democratic control, which gave Democrats full control of both chambers. And so Republicans are certainly working to flip that back to Republican control and put them back in a divided government situation. That one is very interesting. We've seen Minnesota have pretty aggressive tax policy proposals over the last couple years. So if Republicans flip that Senate back, I think we will certainly see a change in the way that Minnesota is approaching tax policy. Whether it's just that they can't get anything passed, that they pass more moderate packages. I don't know what the answer is exactly, but I think that will look drastically different, which again, Minnesota has been-

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Nikki Dobay (12:10):

Busy.

Morgan Scarboro (12:11):
... creative-

Nikki Dobay (12:12):

Yes.

Morgan Scarboro (12:12):
... in some of their proposals that they've put out over the last couple years.

Nikki Dobay (12:16):
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So Morgan, one thing that I think has been a theme the last couple years when we've had these discussions about politics and elections is that the politics are shifting a bit. And you used to be able to identify Republicans as this way on tax policy and Democrats is this way in tax policy. Are you seeing any, when you're having these conversations with legislators, are you seeing any shifts back, more of the same there? Where are you seeing that trend right now?

Morgan Scarboro (12:49):

I think it depends on who you talk to, and what cop out of an answer, but I will explain why I say that. I have found that when I talk to legislative leadership, they tend to be more traditional in their sort of thinking about policy. And not in any, like I mean that just as you see Republicans who are in Senate finance or ways and means positions, they tend to be more typical traditional, what I would say Chamber of Commerce Republicans. And then on the same side, when you talk to Democrats in those positions, they tend to not be the most progressive on fiscal issues. They're just sort of more traditional Democrats.

(13:30):

When you talk to politicians as a whole, that's when I think you see a little bit more of those extremes and some of the more swapping of roles. There are certainly exceptions to this. I am going to just drop this little bomb and then walk away from it because it's not my area of expertise, but when I look at the conversation around tariffs in particular that's playing out. I know you promised we wouldn't talk about federal elections, so I'll keep it brief. But when you look at the conversation about tariffs, that's really interesting to watch a Republican candidate sort of talk about the need for tariffs. And I see some folks in the think tanks who might be more center-right just sort of banging their heads against the wall saying, "This is a tax." That's an interesting shift. But I think on the state level you can delineate for the most part, between legislative leadership roles and folks who might be not quite in those roles yet.

Nikki Dobay (14:24):

Okay. All right. One last question, and I'm not sure if this information is even really out there right now, but revenues. Last time we spoke, the states were still doing pretty well. I think we stopped saying that the sky was going to fall and we were just returning to the norms. Any sense of where the states are generally on revenues? So as we think about going into 2025, because... Well, maybe we should end with most states have kind of wound down at this point. We're going to have our elections, there's a few states that are in play. We'll see Illinois come back for its veto session. A couple states might do a few things, but so far I think we can sleep the rest of the year, right?

Morgan Scarboro (15:09):

Well, yes, I think so. I mean, there are elections going on and a pretty major federal one, but if you can manage to tune that out, more power to you and you can just sort of knock out. Yeah, the rest of the year, I don't know, unless we see a governor call another special session that we're going to see a bunch of tax stuff. We will start to see pre files, which is always an interesting place to be, sort of get an idea of where legislators' heads are at going into the next legislative season. But in terms of actionable stuff, I don't think we're going to see a ton.

(15:37):

Your question on revenue, I'm so happy you asked, set me up perfectly to talk about stuff.

Nikki Dobay (<u>15:41</u>):
Perfect.

Morgan Scarboro (<u>15:41</u>):
We just did at MultiState and I didn't even prompt Nikki to do this. [inaudible 00:15:45].

Nikki Dobay (<u>15:45</u>):
See, I'm really good at my job.

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Morgan Scarboro (15:47):
You just read my mind, I love it.
Nikki Dobay (<u>15:48</u>):
I know.
Morgan Scarboro (15:50):
We every year for the past couple of years, have been looking at all of the most recent revenue
forecasts, sort of news reports, looking at what legislators are saying, rainy day fund balances, etc, and
taking all of that into account to categorize states as whether they are fiscally stable, conditional, or
they're facing fiscal challenges ahead. The great news is most states are fiscally stable, but to that point,
there is that, those states that I think will face some challenges are states that are really meaningful
when you talk about tax policy.
Nikki Dobay (16:26):
Oh, let me see if I can guess.
Morgan Scarboro (16:28):
Yeah, let's do it. That would be fun.
Nikki Dobay (16:29):
Okay, this will be fun.
Morgan Scarboro (16:30):
Give me four.
Nikki Dobay (16:31):
Oh, okay. California.
Morgan Scarboro (16:34):
Yes.
Nikki Dobay (16:34):
New York.
Morgan Scarboro (16:36):
Yes.
Nikki Dobay (<u>16:36</u>):
New Jersey
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Morgan Scarboro (16:37):

Conditional, so you get half a point.

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Nikki Dobay (<u>16:39</u>):
Okay. Illinois.
Morgan Scarboro (16:41):
They're actually stable.
Nikki Dobay (16:42):
Okay.
Morgan Scarboro (16:43):
I know.
Nikki Dobay (<u>16:44</u>):
What are the other big states? Let me look at my map. Texas?
Morgan Scarboro (16:50):
Come on Nikki, you're going to get people [inaudible 00:16:52]-
Nikki Dobay (16:52):
All right, now I'm just guessing.
Morgan Scarboro (16:54):
... suggested that.
Nikki Dobay (<u>16:54</u>):
All right, tell the people.
Morgan Scarboro (16:56):
My other two that I'm watching closely are Colorado and Maryland.
Nikki Dobay (16:59):
Okay, okay.
Morgan Scarboro (17:00):
Maryland in particular, we've been talking about this for years. They have a very large education
commission that's a multi-billion dollar commitment to public education spending and no firm revenue
source for it.
Nikki Dobay (17:12):
Wait a minute, are you saying, Morgan, that the digital advertising tax isn't adequately funding
education?
Morgan Scarboro (<u>17:20</u>):
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You said it, not me.

Nikki Dobay (17:23):

Yeah. Well, I think for the listeners that have not been paying attention to this, all of that money is tied up in litigation currently, and I will say with not a super close end in sight. So we're going to get a decision out of the tax court this fall. My sense is it will be taxpayer favorable and the state isn't going to give up so the litigation will continue. So they need some more money for education is what you're saying?

Morgan Scarboro (17:50):

Yes, and I'm not sure what they're going to do. The conversation in Maryland for years has been, do we do combined reporting? Do we do mandatory combined reporting? We've seen variations of that. Do we do worldwide, do we not? What does combined reporting look like in Maryland? They didn't pass anything but combined reporting, as we all know, sort of results in winners and losers, right?

Nikki Dobay (<u>18:09</u>):

Right, right.

Morgan Scarboro (18:11):

It's not a huge revenue bump for states. So I don't know what the supplemental or alternative proposal is for that, but I have a feeling we might find out over the next couple years.

(<u>18:23</u>):

The other one that I would watch, this we do not, we have not listed the state as challenging yet. I think it's conditional, and there's some interesting political gossip. And now that I've built up this clickbait, I'll tell you, it's Louisiana. Louisiana has two temporary taxes that are scheduled to sunset at the end of fiscal year 2025, which if there is no replacement revenue or commiserate spending cuts, will be pretty significant for the state in terms of revenue. They were discussing a constitutional convention to address this.

Nikki Dobay (<u>18:56</u>):

Right, right.

Morgan Scarboro (<u>18:56</u>):

They ended up not doing that. So there will almost certainly be efforts to take this up next year and seeing if Louisiana takes action or not. That's a state I would say in the medium term to watch, in terms of financial difficulties.

Nikki Dobay (19:09):

Yeah, they were supposed to have a special session back at the end of July, early August, and it seems like nothing really ever came about there.

(19:18):

All right, well the last thing, I think we've covered a lot of ground here, is ballot initiatives. I think when we came into this year, there were a lot of ballot initiatives. There were, I don't know, two or three very significant ballot initiatives in California. Those have all been either sidelined or significantly kind of

narrowed to a whisk of what they once were. Colorado, you mentioned those ballot initiatives that would've made significant property tax changes. Those were legislated away.

(19:47):

The ones that I'm watching are Oregon and Washington. Washington, the ballot initiative to repeal their capital gains tax has survived challenges, so that will be on the ballot. I'll be curious to see how that one goes. I think Washingtonians are not super pumped about it, so we could see that piece go away. It's raising a lot of money though, so we'll watch that one. And then of course Oregon, we've got Measure 118, which really the campaign has just kicked off. So I'm happy I don't have a TV in Oregon. We can't impact anything but when we have a ballot initiative like this, this is when you see those types of advertising. I was at a party over the weekend telling everybody to vote no, so will continue to do my job.

Morgan Scarboro (20:37):

Did that make you popular at the party to talk to everyone about tax policy?

Nikki Dobay (20:41):

With some people. It was a little weird, I'm not going to lie.

Morgan Scarboro (20:45):

With the people you care about, they really liked it.

Nikki Dobay (<u>20:47</u>):

Right. There was one guy that like, it's a gross receipts tax, it's really bad. And I was like, my job is done here, this guy knows what's going on. So yeah, so that's the big one. Are there any other ballot initiatives on your radar?

Morgan Scarboro (21:00):

No, I mean, Oregon's certainly the one that I'm watching most closely, but if you look at the overall list, there are a number of tax issues on the ballot like there always are. Mostly they're smaller but if you look at the overall theme, it's property tax city. I mean, there are so many about what, can we make this exclusion? Can we do this? In Illinois there's an advisory question saying, "Should we level an additional personal income tax and use that revenue to address property taxes?" I mean, that is totally the theme of the ballot if you look at them all together. [inaudible 00:21:33]-

Nikki Dobay (21:33):

I like the advisory tax question angle.

Morgan Scarboro (21:35):

So that way they could pass whatever they want and be like, the people told us to do it.

Nikki Dobay (21:39):

Right, and they can just ignore it if they don't like it.

Morgan Scarboro (21:42):

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Yeah, exactly.
Nikki Dobay (21:42):
So they're like, that's a horrible idea, electorate.
Morgan Scarboro (21:46):
Why would you guys vote for this?
Nikki Dobay (21:48):
Right, right.
Morgan Scarboro (21:48):
Exactly. I have a question for you, Nikki, which is, if you're a betting woman, what do you think, does the
measure pass in Oregon?
Nikki Dobay (21:55):
Well, you know I'm not. I think there's a good chance it goes down. I mean, if history will repeat itself,
we're kind of very close to where we were in 2016. I think the campaign is they have a shorter window,
but they have a lot of lessons they've already been through. They've got a great PR firm, the PR firm that
beat Measure 97 in place. Those people are really good at what they do. They didn't send me to media
training, which is a great idea because nobody wants to hear from the tax people. So they have great
messages.
(22:30):
And I think also one thing that's really important for the business community to know, just the national
business community. The proponents of this do see Oregon as a testing ground. So this is not a little like,
we're just going to do this in Oregon and go home. If they do this in Oregon, it's going to spread. So I
think if you have not reached out to the campaign, I would really advise you to do that because all you
can do right now is support that campaign.
Morgan Scarboro (22:59):
To all the listeners, Nikki did not mean it when she said nobody wants to hear from the tax people.
Nikki Dobay (23:04):
I mean-
Morgan Scarboro (23:05):
She misspoke when she said that. Don't worry, everyone. Everyone wants to hear from us.
Nikki Dobay (23:09):
Okay, all right. I know my place in this situation.
Morgan Scarboro (23:14):
Not me, I have no self-awareness about this policy area.
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Nikki Dobay (23:16):

Right. Happily, Morgan is way on the other side of the country.

(23:20):

All right, Morgan, well thank you as always for a riveting conversation on state tax policy, elections, revenues, the whole potpourri. But I've got to ask you a surprise non-tax question. And this is a really loosey-goosey question because I just want you to have fun with it.

Morgan Scarboro (23:39):

Oh, I'm scared, but excited.

Nikki Dobay (23:40):

So I'll answer first. So, we both grew up in rural areas and our parents told us things sometimes that may or may not have been true. They might've had sayings that weren't real sayings. I asked Per last night if some of the sayings my stepdad said were appropriate to say on the air, and he said no. So I cannot repeat any of those, but the one thing that I always thought was totally made up, and much to my surprise, my father didn't make it up, was the word tchotchke was used all the time in our house. And we were convinced our father had made that up, but it turns out it's a real word and he was using it appropriately. But growing up, we were convinced that he was just making up words. So tchotchke is my word. Again, this is really loosey-goosey so take this anywhere you want to. What from your childhood was either made up that you found out later or you found out later it was crazy but true.

Morgan Scarboro (24:42):

I have two. One that I know is made up and one that I am not sure.

Nikki Dobay (24:48):

Okay.

Morgan Scarboro (24:48):

The first is, my family used to say if something was really difficult, they would say, "It's harder than weighing frogs." To me that makes perfect sense. It would be extremely difficult to weigh frogs if they're jumping around. And I said that once when I first moved to DC, I said that to my boss at the time and he was like, "What did you just say?" And I was like, "Oh, you're just a Yankee. You wouldn't get it. You're not from the south." And then I sit down and I'm like, nervously Googling it and there are zero results. So at that point I did call my mom and force her to tell me, are any of these things real or should I stop saying them? The one that-

Nikki Dobay (25:27):

Did she give you an answer to that?

Morgan Scarboro (25:28):

She said, "Of course it's real. What do you mean?" It's like, well, she has a point, it does make great sense and I still use it to this day.

Nikki Dobay (<u>25:35</u>):

And I love it. Morgan Scarboro (25:37): The other one is that when someone's acting crazy in my family, we love to call people a yay honk. And I don't know if that is a real word, but again, it's one that I do like to say. And I have tried to type it in my text to say, "Oh, that person's a total yay honk." And no results come up on the spelling if you can believe it. Nikki Dobay (26:01): We use the word hoon yak in that. Morgan Scarboro (26:03): Oh, I've never heard that. Nikki Dobay (26:04): So, see. Morgan Scarboro (26:05): I like that too. Nikki Dobay (26:07): All right, well, I think we've both learned something today as-Morgan Scarboro (26:10): Yeah, I'll be incorporating that. (26:11): ... have the listeners. Nikki Dobay (26:13): And remember, if you're trying to, I don't know, do top property tax reform, it's harder than weighing frogs. Okay? Morgan Scarboro (26:20): And if you don't get it done, you might look like a hoon yak. (26:23):

Or yay honk, depending on your flavor.

Nikki Dobay (26:28):

All right. Well Morgan, as always, a pleasure. And it's very early on the west coast here and Morgan makes me exciting even then. So, thank you to the listeners for tuning in. Information about Morgan and I will be in the show notes and stay tuned for the next GeTtin' SALTy.