

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

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Nikki Dobay ([00:15](#)):

Texas residents are expressing concern to their legislators about property tax. So is this an issue we're going to see some movement on next year?

Catalina Tax Baron ([00:25](#)):

A hundred percent. I'm as sure as my name is Catalina Tax Baron.

Nikki Dobay ([00:28](#)):

Oh, my god.

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That's putting it out there.

([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 excited today to be joined by a fellow Greenberg attorney, Catalina Tax Baron. Cat, thank you so much for being on the podcast today.

Catalina Tax Baron ([00:58](#)):

Thank you so much for having me. My first time with my official new middle name that I legally took.

Nikki Dobay ([01:05](#)):

That is absolutely right. So we are excited about the awesome name you have and excited for you to be here in our Houston, Texas office, Greenberg's Houston office. Today we are going to have a conversation all about Texas because there is just a lot going on right now in Texas. So we thought it would be great to have you on and talk about all the things that you have been working on and following and what might be happening next year in the legislative session. So, where would you like to start this conversation all about Texas?

Catalina Tax Baron ([01:45](#)):

Well, first I'm so excited to have a podcast dedicated entirely to Texas. I think that it's such an important state. There's so much going on tax-wise, and it's a very exciting time for me as a state and local tax practitioner. So it's been great. I think the past month, Nikki, I've been to Austin three times just based on everything that's been happening. So I don't know, do you have any preference? I like almost all subjects the same.

Nikki Dobay ([02:14](#)):

All right. Well, I think probably the hottest topic that a lot of folks and a lot of our clients have been following is data processing. And Texas has a sordid history, I'll say. Probably some would disagree with that characterization. But, Texas' data processing provisions have been in since the '80s. So really, Texas was essentially a forerunner in what a lot of the other states are really looking at and digging into now about how to tax digital goods or products. Texas did this a long time ago before a lot of this stuff was around, and I think there's definitely a group of folks that would say, "Well, we should look at what was in place in the 1980s and determine the definition of data processing based on what was around then." And it seems like the comptroller is taking a very different approach. So what is going on with this data processing stuff right now?

Catalina Tax Baron ([03:16](#)):

So I think that's right. I mean, there are some people who would've maybe even not liked how it was before the proposed changes came out because it was already such a broad tax to begin with. But then on September 13, I believe it was, of this year, in the Texas Register, the comptroller published proposed amendments to its data processing rule. And those proposed amendments are substantial. They change a lot of things.

([03:43](#)):

Among those things, they remove the essence of the transaction test and replace it with an ancillary requirement. They also expand specific examples of what will constitute data processing, now including some marketplace facilitator activities. And they changed the sourcing rules in a way that's conflicting and, to use the words of some of the testimony during Friday's hearing, inconsistent in terms of the local sourcing rules are different than the state, which will give a lot of confusion in practice. There's a lot of lack of clarity too as to what these changes mean. I know that's been a concern of the business industry overall. So it was definitely a substantial change that some believe, myself included, should perhaps have been done legislatively due to this just basically being an expansion of what the statute meant to do.

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

Yeah, I think we've seen over the last several years the comptroller on audit taking a lot of these positions. So I suppose on one hand you could say, well, it's good to see them putting their positions into a regulation because now we can have robust public debate and try to get some additional clarity on that. But to your point that some of these changes and the positions they've been taking on audit are so different and do seem to far exceed the scope of the legislative intent, that really it seems like this is an issue that's ripe for the legislature to opine on because this very much seems like policymaking and not administration.

Catalina Tax Baron ([05:35](#)):

Mm-hmm. It was interesting, during the December 6th hearing, which I'm sure we'll get into, they did have course representatives from the legal industry and from business, but they also had small business representatives, which are those people who have their own small businesses and companies and sell things via a marketplace. They kept referring to these changes as a new tax, which I thought was very interesting because ultimately, in effect, that's what it's going to be for a lot of these small businesses. So it was very powerful, I thought, to have their input during the hearing.

Nikki Dobay ([06:11](#)):

Well, that's exactly right, and you noted that there is some confusion with the sourcing rules. In a lot of the conversations I've had, it does seem that the proper sourcing of this will be to Texas businesses that are selling on the marketplaces because you're not going to look through to the ultimate customer. So it's not as if I buy a package on a marketplace and it gets delivered in Texas, this gets sourced there. The sourcing follows the seller, and so it will be the businesses of Texas that are ultimately impacted by this. So I think that having those small businesses speak out would be very powerful. So were there any other kind of surprises for you or things that stand out from the hearing last Friday?

Catalina Tax Baron (07:05):

I got to say, this was a dream come true for me, this entire month, because this is what I dreamed of as a young girl from Costa Rica. I felt like I had to pinch myself.

Nikki Dobay (07:15):

I just want to stop and put a pin on that. So as a young girl, you dreamed about going to regulatory hearings at the Texas Comptroller. Okay, Cat, your dreams were much different than many other children all around the world, and I hope it wasn't in December you were having these dreams because most people were just dreaming of Santa.

Catalina Tax Baron (07:39):

No, December was only Santa, but every other month, no.

Nikki Dobay (07:42):

Okay. Okay, good. We clarified that.

Catalina Tax Baron (07:44):

No. What I mean is, it's crazy to be in this room and there's people that I read about all the time in all these activities, people that really make decisions that really impact the business community in Texas, in the United States, and then as a result, in my home country. So I take it very seriously and I don't take it for granted, but what I liked the most was a very collaborative environment between people who have very conflicting interests, but ultimately the same one, which is the well-being of Texas and its people. There was very little tension, and all the testimony kept repeating the fact that our goal is to work together and of course to defend Texas entrepreneurship and Texas business and really the Texas population. But that message of collaboration I thought was really powerful also from the testimony provided.

(08:40):

The comptroller did not take questions, and they did not provide any commentary other than saying that they will respond in the new year. So that was interesting too because it was one-sided in the sense that it was only the testimony of people who were primarily against the changes or wanted some changes to the changes.

Nikki Dobay (09:02):

Right, right.

Catalina Tax Baron (09:02):

Even the people from the controller's office seemed receptive. I don't know if that will carry to their response, but that was definitely the environment. So that was surprising. I thought that it was going to be much more confrontational in nature, and I liked that was a positive surprise.

Nikki Dobay ([09:19](#)):

Yeah, definitely.

Catalina Tax Baron ([09:20](#)):

Another positive surprise was the nature of the testimony. It was not repetitive, which I thought there would be a lot more repetition. There were concrete examples given, like exactly what you said about sourcing, in the sense that, just like you said, the new indirect benefit rule will make sourcing come to Texas for a lot of these small business owners from a state perspective, but not from a local perspective. So it's even more disastrous.

Nikki Dobay ([09:51](#)):

Yeah, yeah.

Catalina Tax Baron ([09:52](#)):

So I thought the examples were strong, were concrete/ there were proposed solutions beyond the scope of just a legislative change. There was some specific proposals and suggestions to the comptroller. I don't know how willing they will be to take them, but that was a positive surprise. And it was also interesting to learn about how this rule affects different types of industries that maybe I hadn't thought of.

Nikki Dobay ([10:19](#)):

I'm glad to hear that the hearing was not contentious and collaborative, I think because it does seem like the temperature has really risen on this issue when it comes to the comptroller versus the business community. And I think there wasn't a lot of fanfare when this rule was published back in September. So I think a lot of the business community felt like they weren't being consulted and collaborated with. So there were comments that I heard from the Comptroller's Office that at this point they were kind of tired of hearing from business. And this is kind of a shut, they've closed the door on this.

([10:59](#)):

But I'll continue to be hopeful based on your experience at the meeting, at the hearing, that maybe some of these comments will be taken into consideration. But I think the big question is, will the legislature do anything? So maybe we'll circle back around to that in a little bit, because I know one of the other big issues that is been bubbling, and probably maybe on the verge of bubbling over, in Texas is the research and development credit. So talk a little bit about what the heck has been going on with the R&D credit and where those tensions are right now.

Catalina Tax Baron ([11:38](#)):

Definitely. What an exciting time. We have the holidays and then we come back to this again, because the R&D is also one where we have to wait and see what the legislature does. So the Texas' Research & Development credit is said to expire in 2026. It was not drafted as a permanent credit, which is, in my opinion, harmful because it leads to less investment and less reliance on if you don't know that

something's going to stick, why would you invest heavily on it? So if it's going to be extended or either permanently or for another term, the legislature must do so in the 2025 term.

Nikki Dobay ([12:20](#)):

Okay.

Catalina Tax Baron ([12:20](#)):

So that's another thing we're waiting for. It does follow some of the federal R&D credit, but there are some important differences, a lot of which the comptroller and their office has taken a really strong opinion on. In terms of the Texas R&D credit, internal use software is not considered research and development. In our company, transactions are subject to a limited approach, which doesn't matter at a federal level due to combined reporting. There are stringent, in my opinion, that's not the term the Comptroller's Office uses, documentation requirements that must be contemporaneous. And there can be no overlap with the manufacturing exemption or the resale exemption. So those are some of the big differences.

([13:04](#)):

There are several audits and several administrative hearings that are currently ongoing on this. So according to representatives from the Comptroller's Office, there are approximately 115 R&D credit cases in administrative hearings, and with a 13 on the sales tax side and 98 on the franchise tax side split, and a little less but around 350 cases in audit. So the Texas comptroller representatives keep saying that they really are looking to see which cases they're willing to settle. It seems like they want to clean this up a little bit, but I think everyone is just curious as to where the legislature is going to go with this.

Nikki Dobay ([13:48](#)):

Yeah, I mean this is an issue because Texas has always been a state that you have to follow because it's Texas and it's big, but I always love when there's people like you that are really following it in the weeds because there's so much to follow. This is an issue where, again, for the last several years you've been hearing Texas R&D credits are just kind of in a holding pattern, and everybody's in limbo as to whether or not they'll get their credit. So while it's great that Texas has this credit, and hopefully they extend it to provide that ongoing certainty, if the comptroller is going to administer it in such a, and I'll use your term, stringent way, how helpful is it? So it sounds like, again, I'll be hopeful, I'll be the hopeful one, it sounds like maybe even the comptroller realizes they've got to kind of budge a little bit on this issue. So we might see some of these cases break through and see some taxpayers actually get their credits approved. Is that what I'm hearing?

Catalina Tax Baron ([14:50](#)):

I mean, that was the message I received to the controller's hearing this fall. And again, I'm also a very positive person, so I don't know if that's just me making assumptions. They did say some things that were slightly concerning, that they were trying to mainstream the audit process, which sometimes means that they're just going to deny the credit at the audit level more broadly. But it is a very important credit, especially for a state with diversification of industries. There is just so much more than it can be done here if this credit is expanded. And I do think that it would be harmful to Texas to either continue applying this, like you said, in such a narrow scoped way or to not extend it at all. So as a generally pro taxpayer, tax policy type of person, I think that the credit should be more broadly interpreted and of course permanently extended. And the result will be, I think, beneficial for Texas

economy, and there will be more reinvestment, and the Comptroller's Office will maybe see a revenue upside that way.

Nikki Dobay ([16:06](#)):

Mm-hmm. Yeah. It's always a head scratcher to me where a state has an R&D credit but doesn't just link it to the IRS' rules. But Texas is definitely known for having these concepts that exist in the internal revenue code, but not following what the IRS actually does, cost goods sold, this R&D credit. But we also see other states rejecting what the IRS does. And I'd like to say maybe during the legislative session, we could see greater alignment with the federal code, but my sense is that's probably not going to happen in Texas. So I think we'll just keep our fingers crossed that we get this extension and maybe a little more comptroller cooperation on this one as it moves forward.

Catalina Tax Baron ([17:00](#)):

I don't know what this means, but they said they were going to give significant weight to IRS conclusions in terms of the R&D credit. So long, though, as the IRS has fully vetted the credit. So we, I believe, are still not sure what this means or how this will play out, but that's generally the message they said, I mean, to be determined for exciting new year that's coming.

Nikki Dobay ([17:28](#)):

All right. So R&D, still one to watch. All right, another one, we're seeing this in a lot of states, over the last several years, property values have gone up. So oh, my gosh, people's property taxes are going up, and that's very troubling for them. The property tax is doing what it's supposed to do, it goes up when the value goes up. But it sounds like Texas has this issue, and Texas residents are expressing concern to their legislators about property tax. So is this an issue we're going to see some movement on next year?

Catalina Tax Baron ([18:08](#)):

A hundred percent. I'm as sure as my name is Catalina Tax Baron.

Nikki Dobay ([18:12](#)):

Oh, my god.

Catalina Tax Baron ([18:12](#)):

You're going to see-

Nikki Dobay ([18:14](#)):

That's putting it out there.

Catalina Tax Baron ([18:16](#)):

When I show up to these meetings, I always think that the hottest topics are going to be data processing, R&D. Property tax wins every time. There is so much attention given to property tax. And when I say that I'm a SALT attorney in Texas, people think that 99% of my work is property tax. It's so interesting because it is definitely a hot ticket item for 2025. So this year there was a change where Texas set forth what they call their 20% circuit breaker, which we see in other states, but it's applied a little bit curiously in the Lone Star State, they like doing things their own way.

Nikki Dobay ([18:56](#)):

You guys do like to go your own way.

Catalina Tax Baron ([18:58](#)):

Yes, we do.

Nikki Dobay ([18:58](#)):

Yes.

Catalina Tax Baron ([18:59](#)):

Yes, we do. So the circuit breaker applies a 20% taxable value cap on real property, but only so long as that property is valued at \$5 million or less. It can't be homestead property, can't be agricultural special property. But the weird thing is, and this was a big topic of conversation during some of the Austin meetings, is that it's not on a land basis. It's by an individual parcel by parcel basis.

Nikki Dobay ([19:29](#)):

Okay.

Catalina Tax Baron ([19:30](#)):

So you could have to adjoining parcels with the same owners where one applies or qualifies for the circuit breaker and the other doesn't. You can also have two very similar properties where one is valued at 4.8 and the other at 5.2, but they're very similar, and one applies and one doesn't. So property value cap is very stringent. So that part is interesting as well. The Comptroller's Office representatives, or the message we're receiving from appraisers, is that there is also some discrepancy and some misunderstanding as to how often property can be valued.

Nikki Dobay ([20:12](#)):

Okay.

Catalina Tax Baron ([20:15](#)):

As I understand it, the Texas Constitution requires valuation of property at least, well, every three years, but there's confusion as to whether that means no more than every three years or at least every three years. So some appraisers have really been trying to push the fact that they can value property whenever they want, so long as it's at least every three years. Some of the Texas population and taxpayers and property owners think that it means never unless it's only every three years. So that's also some interesting drama.

Nikki Dobay ([20:52](#)):

All right. So I guess this circuit breaker, is that done by regulation? Was that done by statute? Is that in the constitution?

Catalina Tax Baron ([21:00](#)):

It is not in the constitution.

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

Okay.

Catalina Tax Baron ([21:03](#)):

It was definitely legislation.

Nikki Dobay ([21:04](#)):

All right. It sounds like, and we'll get to the legislative session, but it sounds like there may be additional property tax work done in 2025.

Catalina Tax Baron ([21:14](#)):

Yes. I think there was a lot more property tax legislation proposed in 2024, and there's more that will come in 2025, not only limited to the circuit breaker, but to other proposals. I mean, there are people who want to do a tax swap. There will be probably tax swap proposals and get rid of the property tax altogether. I personally don't think this is such a great idea because the property tax ultimately is just easy to handle and manage easy. It's not easy, but it's the easiest at the very-

Nikki Dobay ([21:48](#)):

Right, right.

Catalina Tax Baron ([21:50](#)):

And I just feel like I don't know if those proposals will pass, but it's definitely a topic of conversation. We know that the governor also is a proponent for either lowering the property tax or changing how it applies. So there does seem to be buzz that there will be a lot of tax swap proposals pertaining to property tax in 2025.

Nikki Dobay ([22:14](#)):

All right, all right. I think you have one last topic that you want to cover before we talk about some of those revenue projections and start looking in our crystal ball. So oil and gas, what's the buzz there?

Catalina Tax Baron ([22:27](#)):

There's always buzz with the oil and gas tax, but what's interesting is that it's buzz that doesn't get a lot of news. I don't know why, because it's so interesting and it's huge industry.

Nikki Dobay ([22:36](#)):

Well, it's a very nuanced tax. We only get so much news anyways.

Catalina Tax Baron ([22:40](#)):

That's true. That's true. Well, what's interesting is that the Texas Comptroller's Office has said, the representatives, that during the year, the income they receive from oil and gas tax has become a little bit more flat. The revenue, pardon, of oil and gas tax has become flattened by the fact that the industry is held by such few players. So they figured out ways to extract oil and more efficient in gas, more efficient in-

Nikki Dobay ([23:09](#)):

No pun intended.

Catalina Tax Baron ([23:11](#)):

Yeah. And that has led to less wells, which sometimes leads to less revenue. So this year, the comptroller updated their rule 3.324 definitions, which are pretty much a lot of the definitions related to the oil and gas industry. They said that it was meant for clarification again, and that they were mainly trying to streamline the definitions and provide examples. But of course, the industry did not see it this way. The industry saw it as an expansion. It is my understanding, these rules had not been updated for a really long time. So the comptroller representatives, as I understand, the comptroller was responsive and receptive to those commentaries and is working with the business industry to try to make the definitions more fair or more appealing. But it has said that it will do some sort of change, like it won't forgo and take it out to how it was, but that's to be seen. It also has said that it intends on changing the wastewater exemption and the manufacturing equipment interpretation. So more exciting stuff to come in 2025. Isn't this just such a fun state?

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

It's such a fun state. I'll just tell you something that's happening on my side of the podcast, is my very hungry dogs have woken up and I'm getting Rosie and Frankie eyes, so we may have to do our projections quickly.

Catalina Tax Baron ([24:42](#)):

I don't want to make Rosie and Frankie mad.

Nikki Dobay ([24:45](#)):

I know. So Cat, it seems like we're going to have to come back in January and have a whole podcast on just what is going to happen during the 2025 Texas legislative session because it's seems like it's going to be a lot.

Catalina Tax Baron ([25:00](#)):

A lot. It's going to be a lot. But how exciting, right? This is every attorney's dream come true. This is just the best time ever. 2025, come at me, I'm ready.

Nikki Dobay ([25:13](#)):

All right. Well, any kind of last-minute thoughts about what we should expect for the rest of the year? Or are we just going to come back in January and get into the details of what the legislature is going to be doing?

Catalina Tax Baron ([25:30](#)):

I think we're done for 2024. I think we can enjoy the holidays. This is just my guess. I don't know. But I think we can rest.

Nikki Dobay ([25:38](#)):

Okay.

Catalina Tax Baron ([25:38](#)):

We can prepare, because 2025 is going to be a crazy legislative season for Texas. Of course, Nikki and I will keep track and will inform, because I know Texas is top of Nikki's list and it's of course my number one state, my favorite. I mean, January can't come soon enough.

Nikki Dobay ([25:57](#)):

All right. All right. Well, Cat, thank you so much for getting us up to speed on what's been going on in Texas. I have to ask you a surprise non-tax question before we go. So I've been thinking about this one because we are coming into the holidays, and happily, you weren't dreaming about regulatory hearings during December. But what I'm curious about is, do you have a favorite place to be during the holidays or some traditions that you get really excited about? For me, we tend to just kind of be home bodies during the holidays. And we haven't had a tree for the last few years because we were moving, which was a whole other thing, and getting puppies. But we got a tree yesterday, and then we remembered, "Oh, my getting a tree." But we're going to get into the spirit and do some fun cooking and have a good time here in Bend this year. But what about you? Is there a place you love to be during the holidays?

Catalina Tax Baron ([26:57](#)):

Nikki, every Christmas, no matter what, I try to be home in Costa Rica. I still call it home. It's my second home, home away from home.

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

Yeah.

Catalina Tax Baron ([27:05](#)):

So I get to go to Costa Rica. I get to eat everything. I'm not a great cook, so I need to eat what other people feed me, and I am fed a lot. So I associate the holidays with food that I don't have to make. And with Costa Rica, a lot of Spanish, a lot of dancing, and just the best time ever, loud, loudness and the best time ever with a lot of mariachi music. Just so excited. I'll send you some videos. Maybe you guys can come over next year.

Nikki Dobay ([27:41](#)):

All right. Well, that sounds awesome, and I am hoping you're going to be heading that way in the near future to have all those fun celebrations. We'll just be preparing on the side for all the craziness to come in 2025. But Cat, thank you so much for joining me and chatting about Texas. And thank you to the listeners for joining us today. If you have any questions or comments, please do leave them in the show notes. I will be back. We're going to be wrapping up next week with our final show of the year where we have a really special surprise, and then we will be taking a couple weeks off preparing for that craziness in 2025. But I'll be with you again very soon on the next GeTtin' SALTY.