

GeTtin' SALTy Podcast – Episode 49

Announcer ([00:01](#)):

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Jeff Newgard ([00:17](#)):

At the end of the day, we are a small state. We are a small state that thinks that it's wearing big pants.

Nikki Dobay ([00:27](#)):

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. We are going to talk about conformity today, and I am very pleased to have two. I'm going to say experts on this issue. Joining me is, this one's always a mouthful, San Francisco GT shareholder Shail Shah, who will be giving us a California perspective on conformity. Shail, thank you for being here.

Shail Shah ([01:01](#)):

Great to be here again, Nikki.

Nikki Dobay ([01:04](#)):

And then we have a fired up, Jeff Newgard. Jeff is President, and CEO, I'm making up all these titles, Jeff, of Peak Policy, which does a lot of great work in Oregon. And Oregon is really kind of out on a limb this legislative session and looking at a big change to their conformity. So what the heck are we talking about when we talk about conformity?

([01:26](#)):

So for many of you listening, this is going to bring up a little bit of PTSD. After the Tax Cuts and Jobs Act was passed back in 2017, most state and local tax professionals' holidays were ruined by having to determine how every state conformed to the federal Internal Revenue Code. Shail, you got to have a nice, easy-peasy holiday that year, didn't you?

Shail Shah ([01:53](#)):

Yeah, I didn't really have to look much at TCGA since California conforms as of January 1st, 2015. So we're 10 years behind the times from the Feds.

Nikki Dobay ([02:03](#)):

All right, so our California friends were having a lovely holiday. They're just sipping martinis or a lovely cabernet, whatever your beverage of choice. The rest of us, were losing our minds because we were trying to figure out how the states conformed because the states, as you know, are all different on this issue and there's a lot of moving pieces here.

([02:25](#)):

Now, let's fast-forward, we maybe have some TCGA things expiring at the end of this year. There's a lot of uncertainty at the federal level. And so Jeff, what's Oregon's brilliant idea on this front?

Jeff Newgard ([02:41](#)):

Well, thanks again for having me, Nikki. So here in Oregon, there's actually a bill that's scheduled on the House floor today, and for those listening in the future, today is March 24th. So in about an hour from the time that we're recording this, the Oregon House is going to have a floor vote on House Bill 2092. And just from a process perspective in Oregon, Oregon is a rolling conformity state as it relates to federal taxable income. There are quite a few statutes outside of that definition of federal taxable income where Oregon has a static conformity. If you go and look up Oregon on Bloomberg BNA, or I think it's Thomson Reuters, it'll show that Oregon is a static conformity state. It's actually just a misinterpretation of the way that the statutes and the forms are structured. Oregon is a rolling conformity state as it relates to federal taxable income, and more or less has been that way since 1990.

[\(03:35\)](#):

House Bill 2092 proposes to go and enact a one-year, and I'm going to say this with air quotes, "freeze" on Oregon's current conformity, essentially moving to static conformity until the end of 2025. So for the 2025 tax year locking in the Tax Cuts and Jobs Act as it currently is. The motivation from those pushing for this is to go and make sure that if the Tax Cuts and Jobs Act expires, and Congress doesn't do anything really in this calendar year or waits until sometime next year to go and address the expirations, Oregon lawmakers are actively discussing locking in TCJA rules regardless of whatever the IRS is going to enforce for this tax year.

[\(04:24\)](#):

Looking at Tax Cuts and Jobs Act, the provisions really don't expire until December 31st of this year. So there's not that much that's up in play for what could happen for the current tax year. I think that the real motivation is one in two part. One's policy, one's political, one is on the policy side, much like 2017, are there going to be any retroactive tax policy changes that affect the 2025 tax year? And I'm sure we'll get into how the tax year 2017 applied in Oregon.

[\(04:57\)](#):

But the second part of this really is political. Since 2018, the 2018 short session here in Oregon, which addressed the 2017 tax year, Oregon lawmakers had to go and discuss TCJA conformity and a really hyper-political issue at the time was the section 199A deduction for pass-through businesses. Some lawmakers, especially Democrats, saw the 199A deduction as the state conformed as the state losing, I believe it was in the realm of \$250 million and for Oregon's I think \$250 million. And in the context of the state's \$30, \$32 billion general fund budget, it was a sizable piece, but Democrats had to go and muster the votes to go and take this for the average lawmaker, a very wonky vote on a tax issue that was then messaged as them being against small businesses.

[\(05:56\)](#):

And then there's just been this cascading interest from some people and interest groups in the capitol of switching away from the rolling reconnect to avoid those hard votes. They would rather go and have hard votes to conform to things that raise revenue rather than to have to go and disconnect from essentially tax relief. And so this is a very fraught conversation in the Capitol right now. And while it's discussed as being temporary, anybody that follows politics and certainly tax policy knows that there's very rarely any such thing as temporary.

Nikki Dobay [\(06:36\)](#):

Shail, are there any discussions in California to change its approach? California is a static conformity state. It's been pretty steady Eddie, right? It's all good, right?

Shail Shah ([06:47](#)):

There's been discussions every year about changing California's conformity date to whatever the year at issue to conform to the Internal Revenue Code. And every year, the can gets kicked down the road. Now, late last year was the first time there's been a concerted effort to get California to conform to Internal Revenue Code as of right now, as of 1/1/2025.

([07:13](#)):

And so the Revenue Taxation Committee has started exploring looking at conformity, and it is a heavy lift and it's one of those things where, as every year goes by and as there are federal, as TCJA happens, as there's changes to the Internal Revenue Code, that lift becomes heavier. Right now there is no bill in place. There's just been a fair amount of analysis. There's a working group that are looking to see the revenue impact to conformity and then specifically what to disconform to. And so it is still an ongoing discussion here in California. Realistically, it's probably going to take some time for that to pull through, but it's needed because again, we're 10 years behind and who remembers what the Internal Revenue Code said 10 years ago? Because quite frankly, I don't.

Nikki Dobay ([08:06](#)):

You're supposed to have that copy in your office just-

Shail Shah ([08:10](#)):

Yeah, [inaudible 00:08:11].

Nikki Dobay ([08:10](#)):

But I mean, Jeff, does any of this resonate with the policy makers in Oregon that this isn't some panacea? Anything there, they don't want to take a play out of California's playbook or not?

Jeff Newgard ([08:27](#)):

I don't want to give the lawyers in the room a nightmare right now, but there's a political issue that directly relates to policy here in that the politics aren't having any conversations about the policy. And our legislature, and I think legislatures around the country, the revenue committees really are aware that the nitty-gritty work of tax system occurs. I've seen bills where literally the bill removed a comma, made no other substantive change to policy, and the committee still spent half an hour or so having a conversation about what the underlining policy of that bill was.

([09:05](#)):

With House Bill 2092, this bill to go and move towards static conformity, there were, I believe either four or five hearings and work sessions. And every time that a policy related to the Tax Cuts and Jobs Act was brought up, lawmakers or staff were more or less pushed away from having that conversation.

([09:28](#)):

And so with something like the Tax Cuts and Jobs Act, and by my count there were 115 unique provisions in that federal law, or at least 115 provisions in that federal law that in some way, shape, or form interact with Oregon's income tax to go and have a bill in the legislature to just go and lock that in without regard to what does the policy mean, what does it mean from a practical basis?

([09:56](#)):

And there's been several lawmakers that I've talked to that I've asked, "At what point do we need to be having conversations about making sure that Oregon's Department of Revenue is staffed like the California FTB?" And I say that with a smirk on my face, but it's also a serious question at the same time that if Oregon ends up locking itself into static conformity and becomes like California who's stuck back in 2015, I'm willing to bet that Oregon would have some very large fights over whatever provisions would raise Oregon revenue. That seems to be the trend here.

[\(10:33\)](#):

But from an administrative side, from a compliance side and for the politics, what does it mean for the state's business tax climate, which has deteriorated in the last 10 to 15 years? It's been very fascinating to me that efforts to bring those conversations up, or even just conversation starters, you can't really gain any traction. Republicans are eager to go and talk about that, but in terms of those conversations in public venues, it's been quiet and that's what I'm expecting to hear a decent amount on the floor today about.

Nikki Dobay [\(11:07\)](#):

Shail, when we think about, and Jeff just stay calm while I say this, California is a huge state. I think it has been largely successful in being able to have static conformity. We're conformed 10 years ago because it's such a big state and everybody has to deal with it and they've kind of learned how to deal with it. I mean, I'm sure you have a lot of conversations with taxpayers that, "Well, this isn't how it works at the federal level. California's different." And so we're always making modifications for California purposes. They have a very robust tax code.

[\(11:45\)](#):

But Oregon is a smaller state, and so you would expect that it would want to be a bit more aligned with the Internal Revenue Code so that it could piggyback off of all of the administrative eases and other things that would provide. So I guess I'll start with Shail. Shail, do you have a lot of conversations about the administrative challenges with California being conformed 10 years ago?

Shail Shah [\(12:13\)](#):

Jeff talked a little bit about staffing the Oregon Department of Revenue like the FTB. One of the things the FTB is required by law is every year they have to put out all the federal changes and then whether California conforms to those changes or not and what the revenue impact is for the lack of conformity. It's a large undertaking and they have to do this every year by January 10th, this has to be put out and it's put onto the FTB website.

[\(12:41\)](#):

Now to your point, the FTB is a very large tax organization, so they have the ability and the staff to do that. Oregon, I don't know. I mean it's sort of a big undertaking and the ability not to look to the Internal Revenue Service to provide guidance puts the burden on the state taxing agency. And it is a large burden. I mean, there's constant revenue analysis that's going on in California as a result of disconformity, and then also the discussions and the analysis on selective conformity because California oftentimes what they'll do if there are provisions of the updated Internal Revenue Code that they like, they will wholesale take the language and then include it within the revenue taxation code.

[\(13:24\)](#):

But that also requires obviously a lot of work and a lot of manpower to conclude whether one, it makes sense and two, what the revenue impact is.

Nikki Dobay ([13:34](#)):

So Jeff, I just think it would really behoove Oregon to think a little bit about this cliff they're walking up to the edge of and whether or not they really can be successful as maybe a large state like California. And we're not seeing any other states go down this road right now. There's a lot of states that are static conformity, but they conform every year. So to your point earlier about Oregon often gets confused for one of those states, that's true. But even though there are a significant number of states that are static conformity, they're still updating their code annually as well. I know you get afraid a lot. Are you afraid that's not going to be Oregon's situation if it makes this move?

Jeff Newgard ([14:23](#)):

I think that I'm always afraid when we talk about taxes. I live in Oregon, I live in a shelter sphere. Yes, I mean, I am afraid. Going down the route of static conformity, to me what that means, knowing the politics here, it means that the state's going to either get stuck in a point in time like California or more likely be stuck in a point in time, but conform to the things that raise revenue.

([14:49](#)):

If Oregon had this one-year freeze that's being proposed right now on the books from the 2017 session. So for tax year 2017 up until the 2018 session, Oregon captured the repatriation tax in its tax base by default. There was some work that needed to be done on an administrative side to be able to have it work for Oregon, but Oregon really didn't have to do anything to raise that revenue. And my clientele is all on the business side of tax policy. But for things like repatriation and guilty, the business community really walked the talk. We've talked about the importance of the federal reconnect and the connection to federal taxable income and ruling conformity. When repatriation came up, when guilty came up, the business community didn't come out in opposition. We actually went straight to the Department of Revenue to work with them on how to administer those systems.

([15:50](#)):

Part of that was the politics on the ground at the time. Oregon now had super majorities in both chambers, but just knowing the politics in Oregon, especially as it relates to revenue, and Nikki, I think we mentioned this every time that we talk about Oregon, but Oregon is one of I think five states without a general sales tax. And our reliance on the personal income tax is the highest of all of the states in the country. I believe we're at about 70 or 75% of the state revenues come from either the personal income tax or the income tax generally.

([16:23](#)):

To go and potentially risk going it alone and having all of the administrative and compliance burdens, to me, it actually raises concerns for, or should at least raise concerns about state cash flow. If you're going to have taxpayers that are struggling, and especially individual income taxpayers struggling to figure out what the home mortgage deduction is for the state versus federal, how to apply Oregon's unique peace limitation versus federal, whatever the differences are between state and federal tax codes, to me it actually at the end of the day is an immediate risk for state cash flow because that money will probably end up coming in. Does it come in at the right amount early on? What does it mean for the Oregon Tax Court or audit appeals? Especially if Oregon's having to do a lot of those audits on its own because it no longer follows what the federal government's doing. At the end of the day, we are a small state. We are a small state that thinks that it's wearing big pants.

Nikki Dobay ([17:26](#)):

Well, and to that point, and going back to what we were talking about earlier, multi-state taxpayers are going to spend the time to figure out California. And one good thing about it being stuck in 2015 is not a lot has changed. So you can do same as last year when it comes to California in many respects. And so at least there is some certainty with what is going on in California currently, and maybe we'll see that change if they update. But in Oregon, depending on the dollars, the taxpayers just aren't going to take the time and go through the effort of trying to figure out the differences and then it's just going to lead to more issues on audit and so on and so forth. So Shail, when do you think this conformity conversation is going to pick back up in California? Is it dead for this year? Will it keep going?

Shail Shah ([18:19](#)):

Everything's very slow moving, so there's going to be a lot of working groups in different committees taking a look. So realistically it probably won't gather any steam until next year. And that also depends on whether there's appetite from the chair of the Revenue Tax Committee to really take a hard look at it. The other thing I sort of think about is with everything going on in Washington and with the Internal Revenue Service being effectively gutted, it puts additional burden on states like California and other static conformity states, because not only is the burden now to audit the returns based off of the current Internal Revenue Code and then going back and then making the adjustments based off of the 2015 Internal Revenue Code, it's going to be a lot of work for these states. And because you're going to see a lot less federal audits, the complexity and the level of technical expertise that the state auditors are going to have to possess is going to increase inevitably, and I think it's going to lead to some interesting results at the state level in the next few years.

Nikki Dobay ([19:33](#)):

Yeah, this conformity question and what each state has to ask itself is you want to have static conformity so you can control these budgetary issues or whatnot on your own. That's one side of this discussion. The other side is really, okay if you do want to have that control, what are the consequences of that? And that's just taxpayers not being able to piggyback off of the federal system, not rely on the IRS. Again, we know there's some question marks there, but really to me, there's often a lot more good that comes with rolling conformity and the ability to decouple to things that you don't want, as opposed to having to get into these fights about what are you going to conform to and potentially getting really stuck in the past. So we'll see what Oregon does, I suppose, Jeff?

Jeff Newgard ([20:33](#)):

We'll see. I think it's going to be a long session, and this is Oregon's long session. We go for five months through really the last week of June. And so there's quite a bit of time for these conversations to come up, but at least for those of us that live and breathe this process, it's an eternity and a very short span of time all at the same time.

Nikki Dobay ([20:55](#)):

All right. Well, before we get into the surprise non-tax question, any other burning topics? I'll start with you, Shail, from California that you want to mention for the listeners?

Shail Shah ([21:07](#)):

Well, I'll stick to the conformity theme. The other part of the issue with conformity in California, and I'm sure it's the same issue for you, Jeff in Oregon, is the politics. And it's the lack of appetite for the

legislature in California to adopt anything that is passed by Republican administration. So I think the other wrench we're going to see with this conformity project here in California is the numbers may all shake out and all the reasonable minds will say, "Makes a ton of sense to conform as of 1/25." But once you throw the politics into the mix and say, "Well, this was in FTJCA, this was a Trump administration bill that passed," I think that's where you're going to see the wrench that's going to stop the conformity train from moving forward. So it'll be interesting. It'll be a messy fight.

Nikki Dobay ([22:06](#)):

All right, Jeff, I'll kick it over to you. Anything, and it can be conformity or non-conformity. Any other burning topics for the listeners?

Jeff Newgard ([22:13](#)):

The thing that really surprises me the most about Oregon up until this conformity conversation popped up in the legislature is that it's actually been oddly quiet. Nikki, I think we did our, what's going on in Oregon podcast probably a month, a month and a half ago or so. The revenue committees in Oregon have actually been fairly quiet. There are talks of a transportation package and a variety of different funding mechanisms for that, but that conversation has been slow to form. There really doesn't seem to be any real political momentum around changes to the corporate activity tax.

([22:48](#)):

We're really without that big, overarching, scary tax issue outside of conformity. And that's a weird environment for Oregon. Usually, especially during our long sessions, Oregon will have anywhere from 40 to, I've seen some sessions with a hundred terrifying bills from my vantage point. And that's not to say that there aren't some conversations out there that are scary, but it's not the 800 pound gorilla in the room type of scary.

([23:20](#)):

And frankly, sometimes from a process perspective, the 800 pound gorillas are actually a little bit easier because you at least know what the target is. And so in Oregon, we are very much in just a defensive position waiting to see what comes up. And right now it's that conformity bill and that's a very big conversation and it's a very big conversation that's being treated as a small conversation like we talked about.

([23:44](#)):

But I'm very to see how the rest of this session materializes, especially once we get to May when lawmakers receive their final revenue forecast before crafting the budget and given all of the uncertainty at the federal level, especially around spending to states, it's going to be very interesting to see how the state responds or even proactively responds to the uncertainties that are going to go much longer than when the legislature adjourns.

Nikki Dobay ([24:12](#)):

Yeah, I think this has been following kind of things nationally on the legislative front, and I think this is true in California too, Shail. It has been oddly quiet, and I think all the states are just grappling with so much uncertainty and it's just kind of like what to do during these times where we don't know what's going to happen. So I think we'll leave the discussion at that. Shail will definitely let me know if anything crazy is going on in California, but right now, I don't know if I want to say I'm pleasantly surprised.

([24:47](#)):

But before we go, we have to do a surprise non-tax question. And this one came out of a conference I was at last week and it's super fun, so I thought I'd try it again because neither of you are in the room. So if you were a Muppet, which Muppet would you be? So I'll go first. I would totally be Animal. I think Animal is the best Muppet, and I think he's just really fun. And it'd be cool to pretend like you can play the drums. So Shail, I'm going to go with you first. Which Muppet would you be?

Shail Shah ([25:20](#)):

I'd go with the two guys in the balcony.

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

The grumpy guys? You're the grumpy guys?

Shail Shah ([25:29](#)):

The grumpy guys. I want to be the guy in the balcony looking at the sort of the tax multi-state tax landscape and just providing my commentary and 2 cents about the wheels are falling off across the multi-state landscape. So that's my Muppet.

Nikki Dobay ([25:49](#)):

All right. All right. I'm not sure their names, but we know of them as the grumpy guys, so know exactly who you're talking about. And Jeff, bring us home. Which Muppet are you going for?

Jeff Newgard ([25:57](#)):

You know I have a three-year-old at home and she loves Sesame Street. And so if this was a Sesame Street question, I probably could have done a full podcast on Sesame Street.

Nikki Dobay ([26:05](#)):

Hey, other people went with Sesame Street characters. So it's your call.

Jeff Newgard ([26:11](#)):

Well, if I can go Sesame Street characters, I'm actually going to go with two. I think I'm just going to be Bert and Ernie because sometimes when I'm in the building across the street from here, I feel like that is the routine that I'm playing every single day. "Why do you have a pot on your head, Bert? I don't know, Ernie." So there you go.

Nikki Dobay ([26:32](#)):

All right, well, thank you both for talking about this exciting topic of IRC conformity. We've made it fun, I hope, for our listeners, and thank you all for listening and Jeff's information and Shail's information will be in the show notes. If you have any questions or comments, please leave those there as well. My name is Nikki Dobay and I'll be back again with you on the next GeTtin' SALTy.