

**59th Annual Great Plains
Federal Tax Institute
December 3, 2021**

State Tax, Incentives And Economic Development Update And Impact

Nick Niemann, JD
Matt Ottemann, JD, LLM
McGrath North

ATTORNEYS

TODAY'S AGENDA

Business Climate

Tax Changes

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- A Look Ahead to 2022

MORE INFORMATION IN THESE 2 BRIEFINGS

McGrath | North

WWW.MCGRATHNORTH.COM



NEBRASKA BUSINESS EXPANSION

DECISION GUIDE

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Matt Ottemann, JD, LLM

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THE ANATOMY OF

RESOLVING STATE TAX MATTERS

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TODAY'S AGENDA



Business Climate Report Card



The Ongoing Competition – Across America



Healthy Companies

Business Expansions

Site Expansions

Competing State Business Climates

Utilizing State Business Incentives

WHAT MATTERS MOST:

Most Important Site Selection Criteria

Workforce skills

Right-to-work state

Transportation
infrastructure

Higher education
resources

Ease of permitting and
regulatory procedures

State and local tax
scheme

Land/building prices and
supply

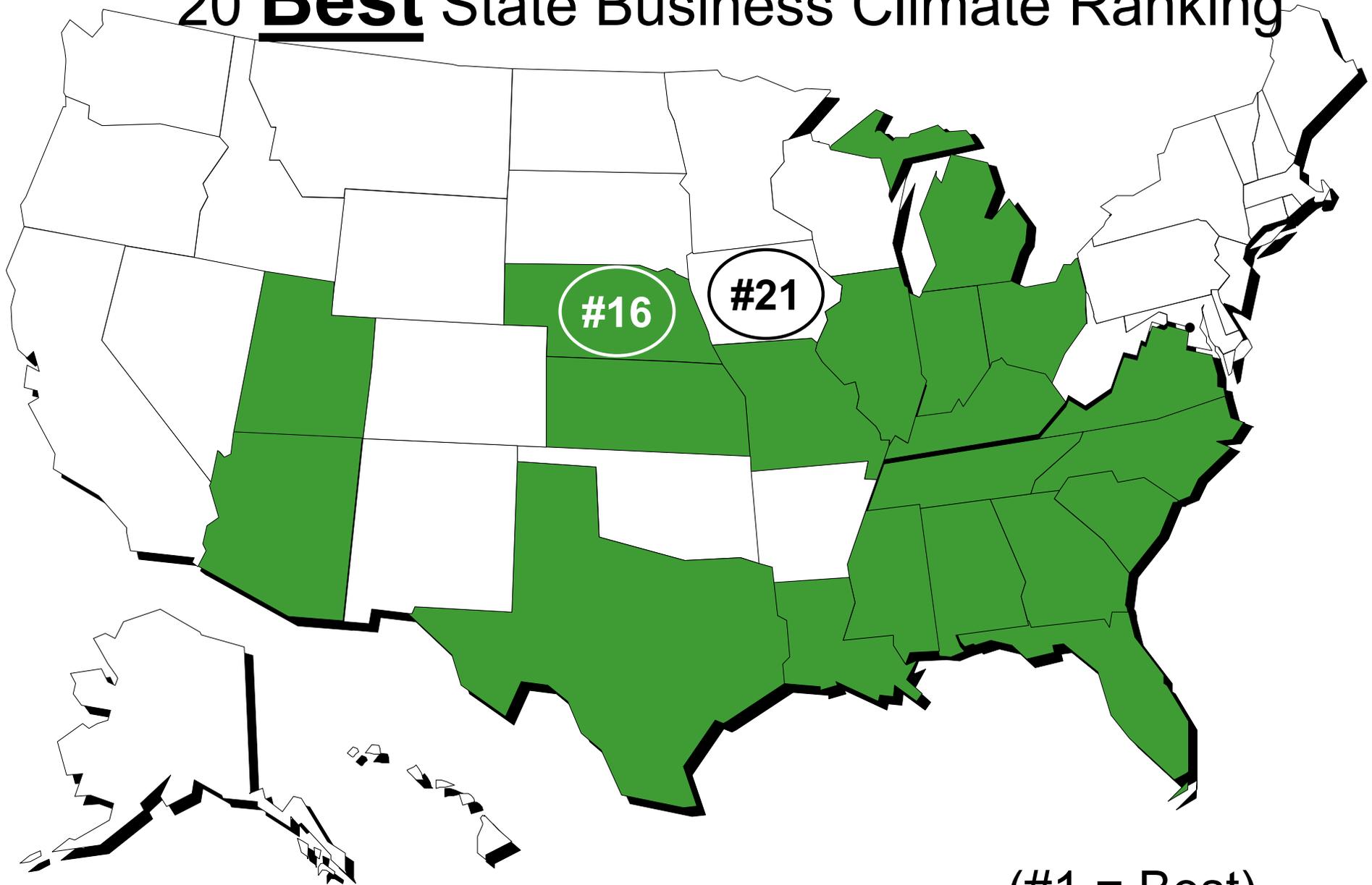
Economic development
strategy

Utilities (cost, reliability)

Workforce development

SITE SELECTION MAGAZINE

20 Best State Business Climate Ranking

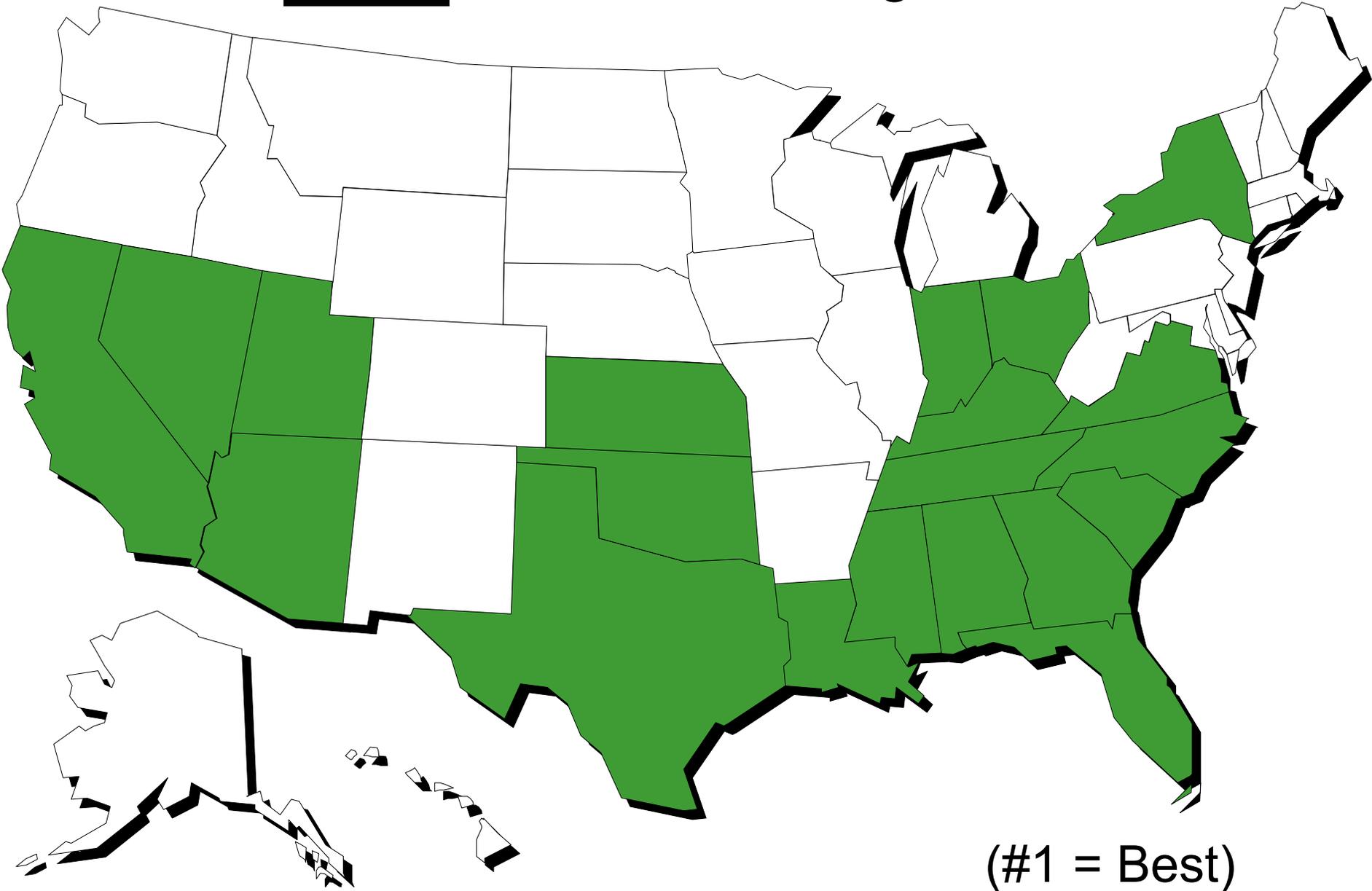


(#1 = Best)

Source: Site Selection Magazine, Nov. 2021

AREA DEVELOPMENT

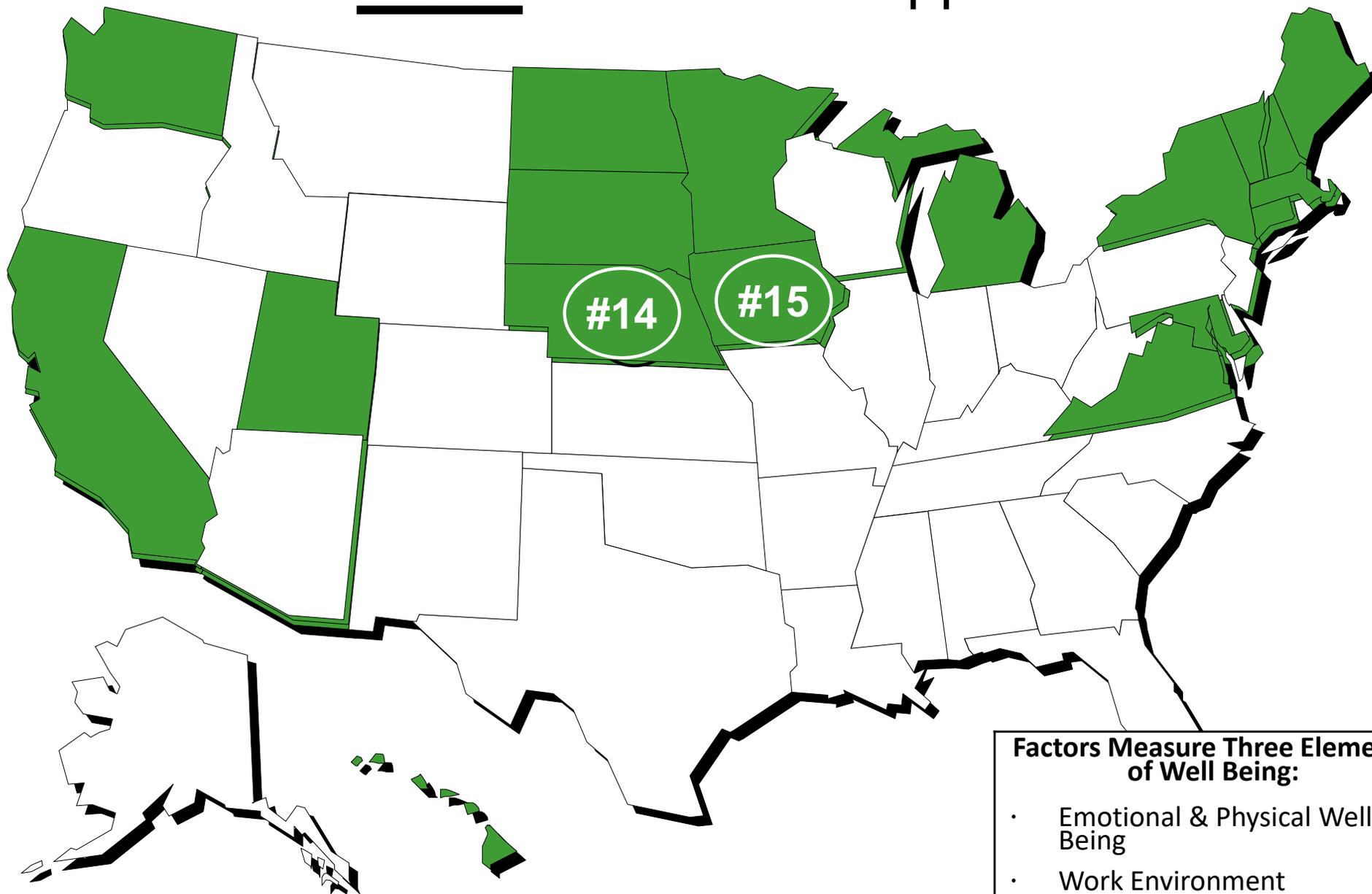
20 Best States For Doing Business



(#1 = Best)

Source: Area Development Magazine, Q3 2021

20 **Best** States For Happiness



(#1 = Best)

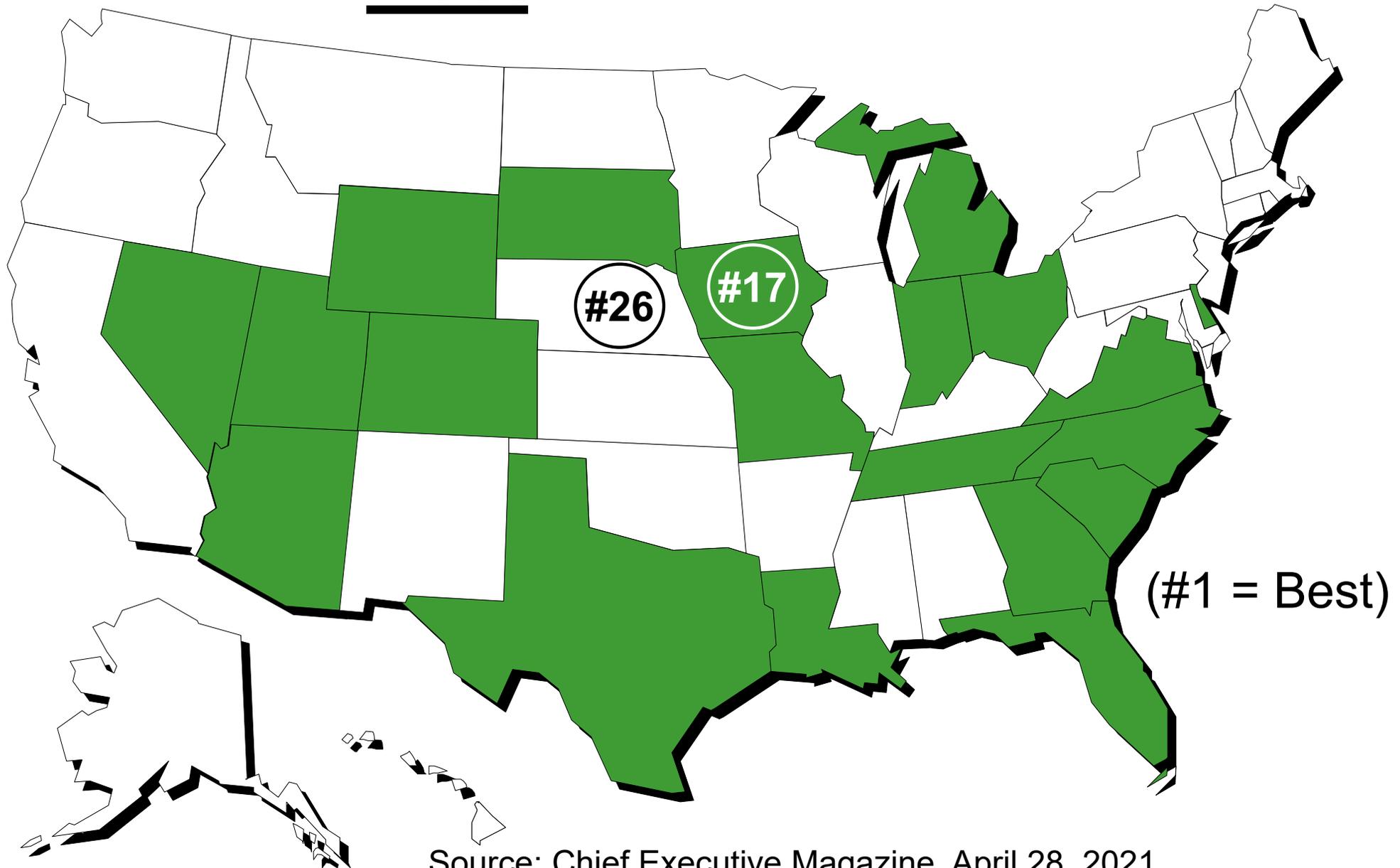
Source: WalletHub, September 14, 2021

Factors Measure Three Elements of Well Being:

- Emotional & Physical Well-Being
- Work Environment
- Community & Environment

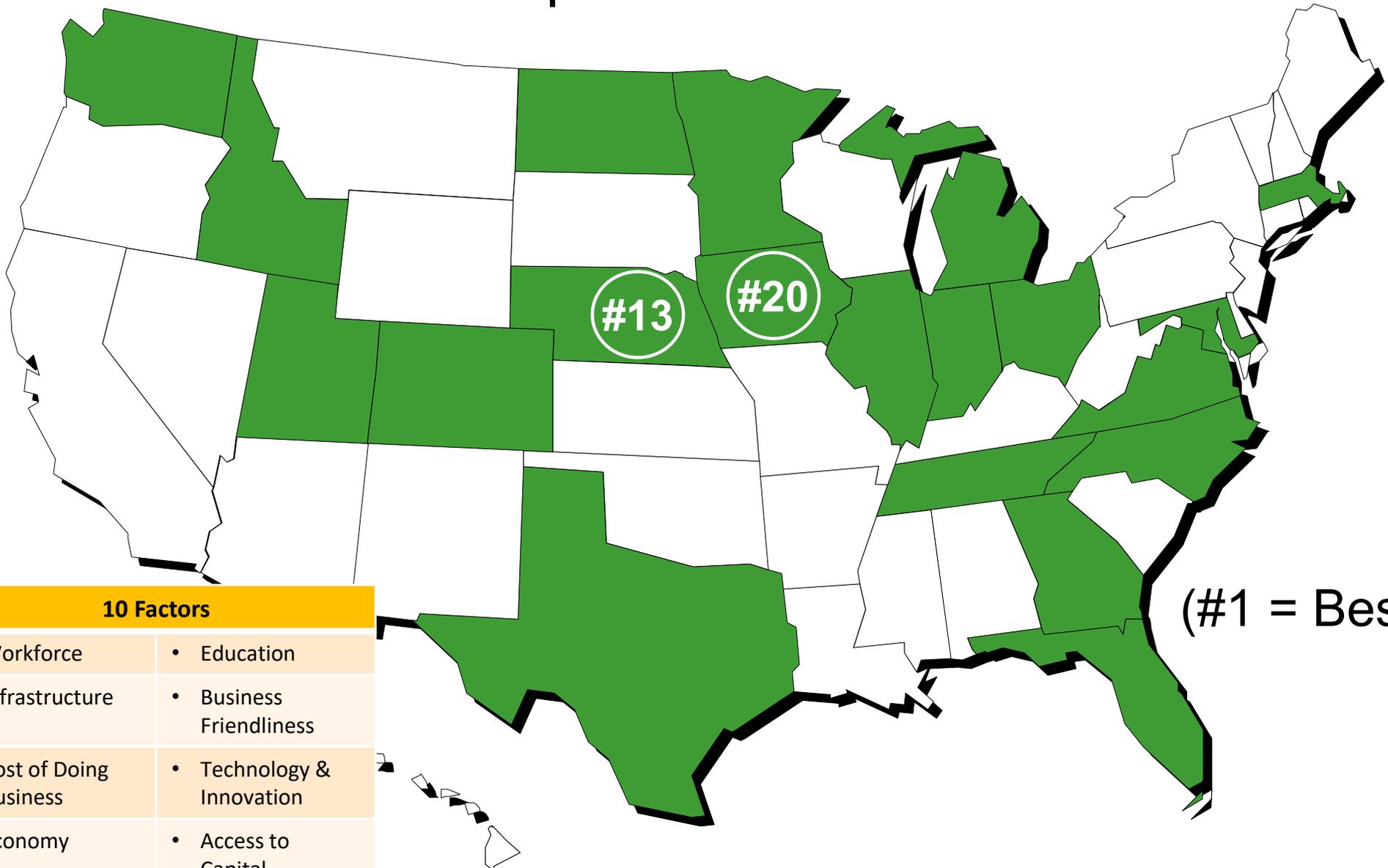
CHIEF EXECUTIVE MAGAZINE

20 Best States For Business



Source: Chief Executive Magazine, April 28, 2021
Based on Survey of CEOs.

America's Top 20 States for Business



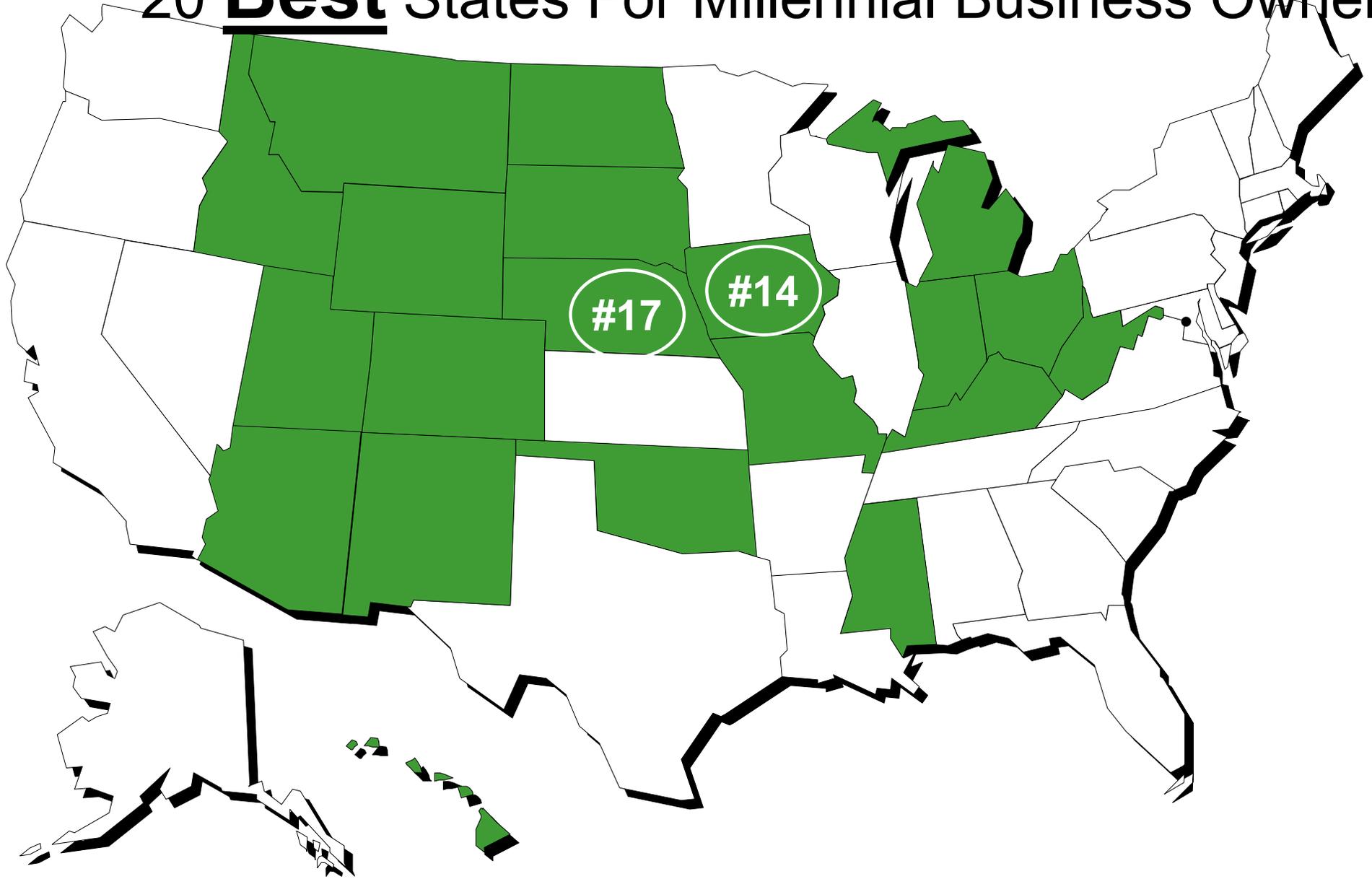
10 Factors

- | | |
|----------------------------|---------------------------|
| • Workforce | • Education |
| • Infrastructure | • Business Friendliness |
| • Cost of Doing Business | • Technology & Innovation |
| • Economy | • Access to Capital |
| • Life, Health & Inclusion | • Cost of Living |

(#1 = Best)

Source: CNBC, July 13, 2021

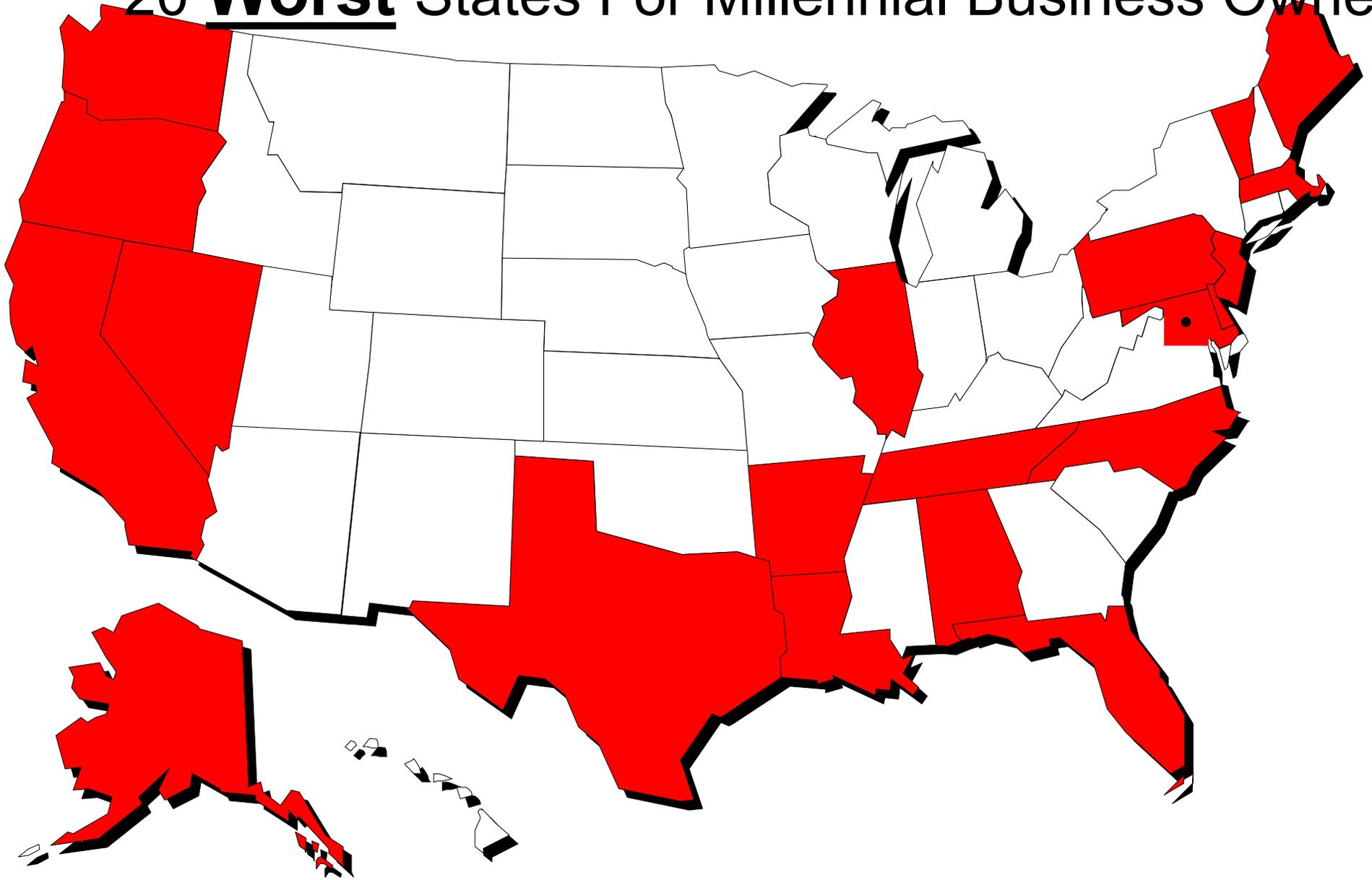
20 Best States For Millennial Business Owners



Source: Zippia, Nov. 17, 2020

(#1 = Best)

20 Worst States For Millennial Business Owners

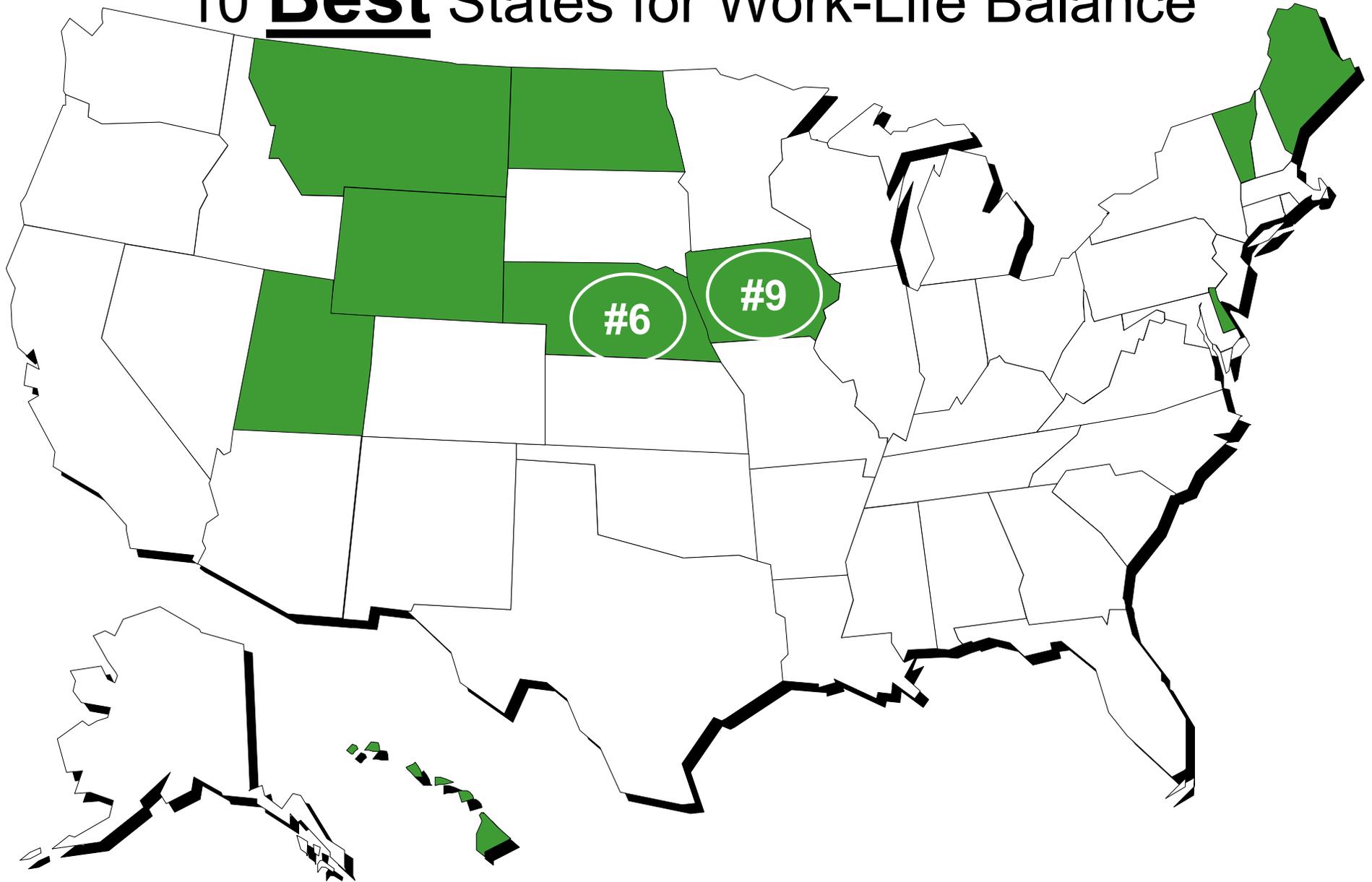


Source: Zippia, Nov. 17, 2020

(#1 = Best)

BUSINESS INSIDER MAGAZINE

10 Best States for Work-Life Balance

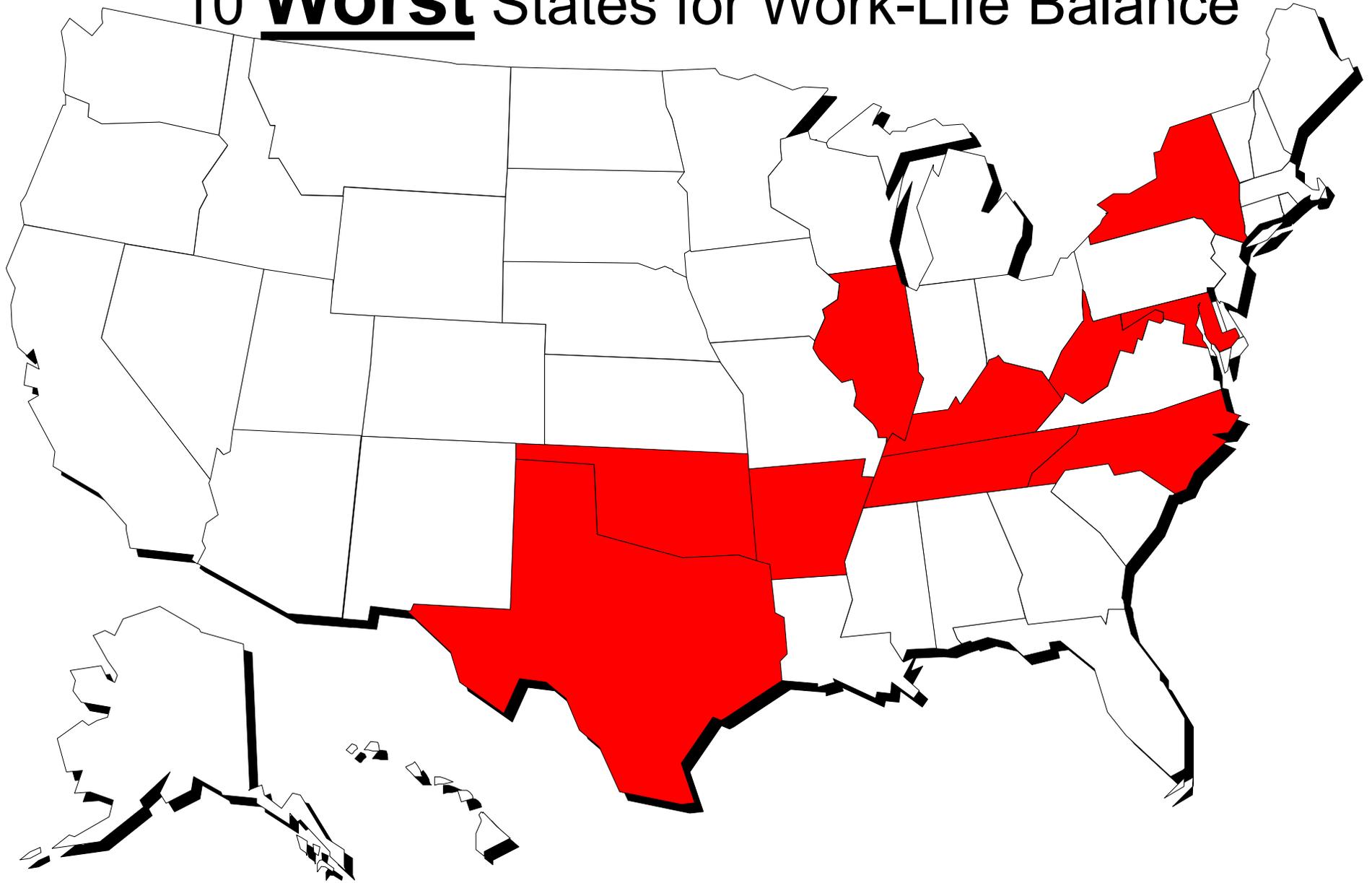


Source: Business Insider Magazine, September 28, 2021

(#1 = Best)

BUSINESS INSIDER MAGAZINE

10 Worst States for Work-Life Balance



Source: Business Insider Magazine, September 28, 2021

(#1 = Best)

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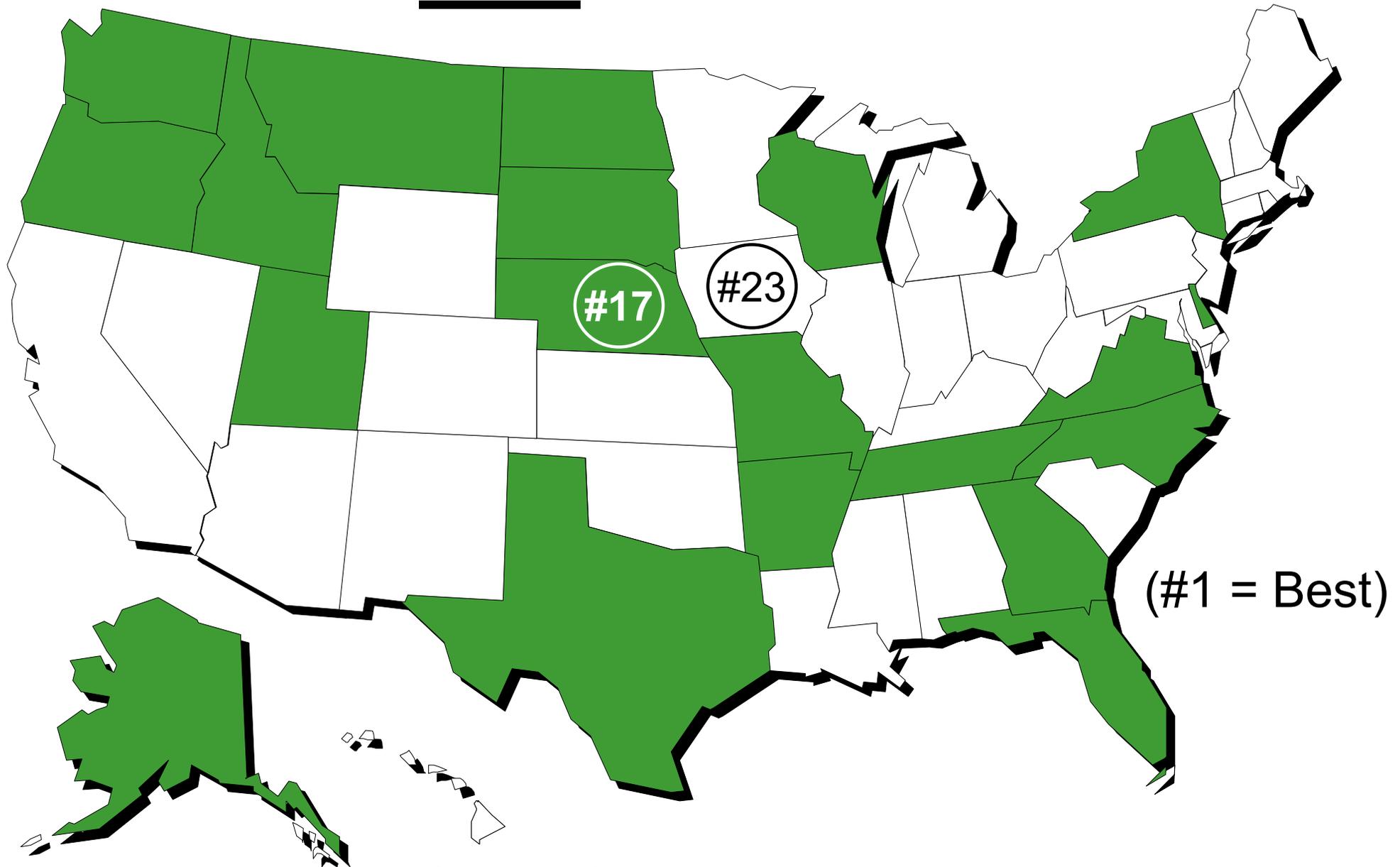


Fiscal Report Card



U.S. NEWS AND WORLD REPORT

20 Best Fiscal Condition



Source: U.S. News and World Report, March, 2021

State Fiscal Rankings

2 Separate Categories

1. Long-Term Fiscal Stability

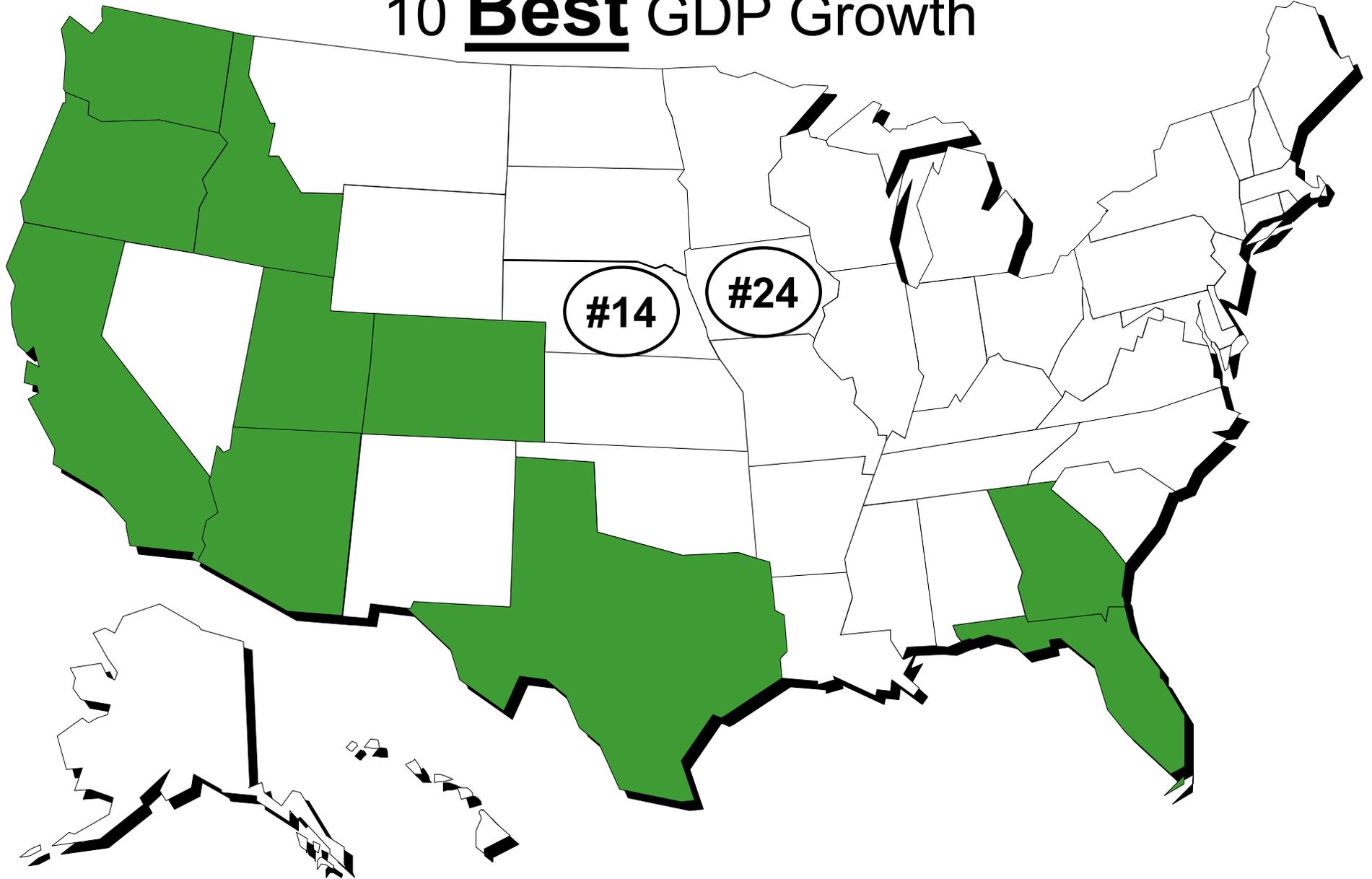
- Government Credit Rating
- Pension Fund Liability

2. Short-Term Fiscal Stability

- Budget Balancing
- Liquidity

FORBES MAGAZINE

10 Best GDP Growth

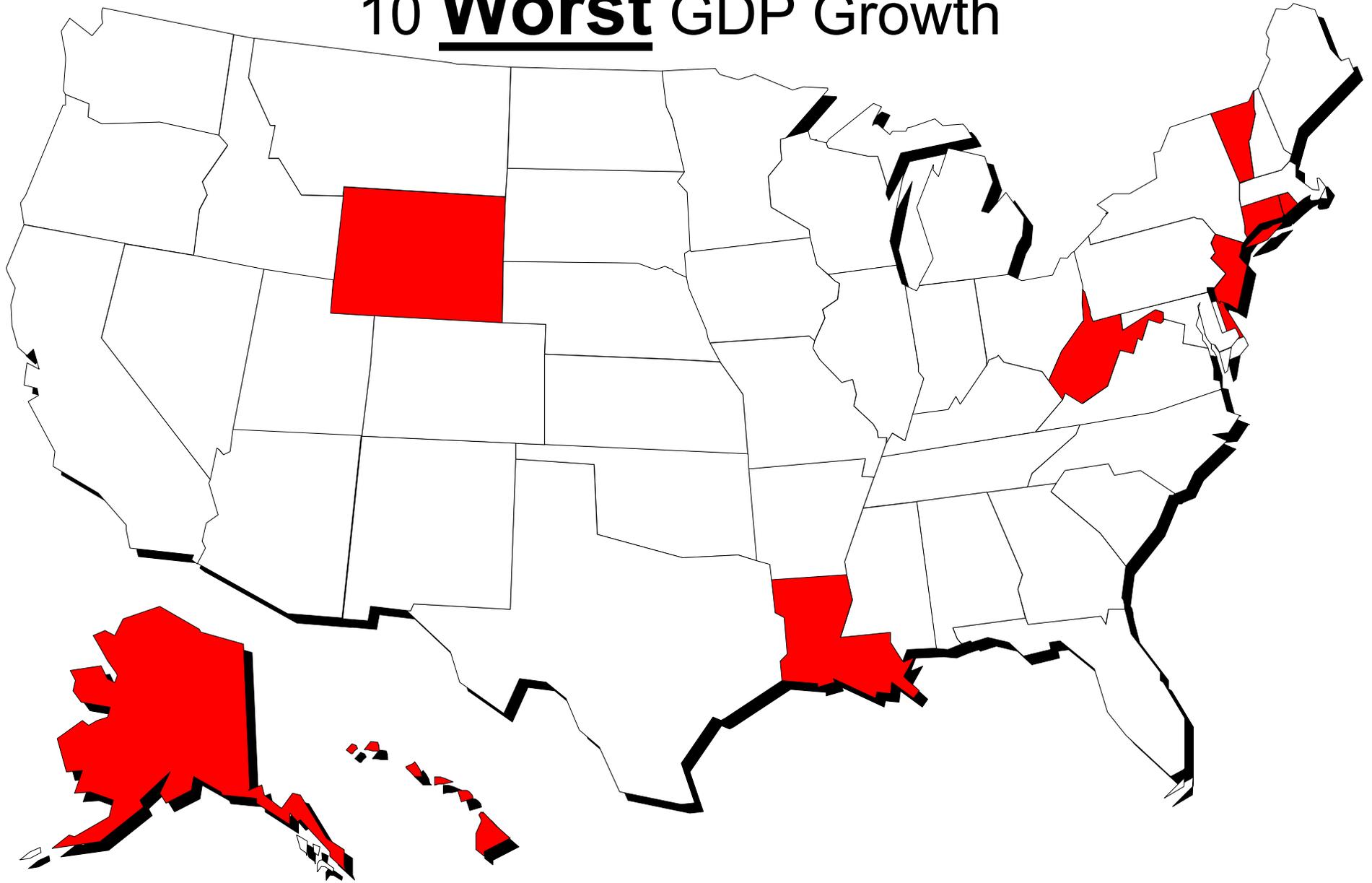


Source: Forbes Magazine, August 4, 2021

(#1 = Best)

FORBES MAGAZINE

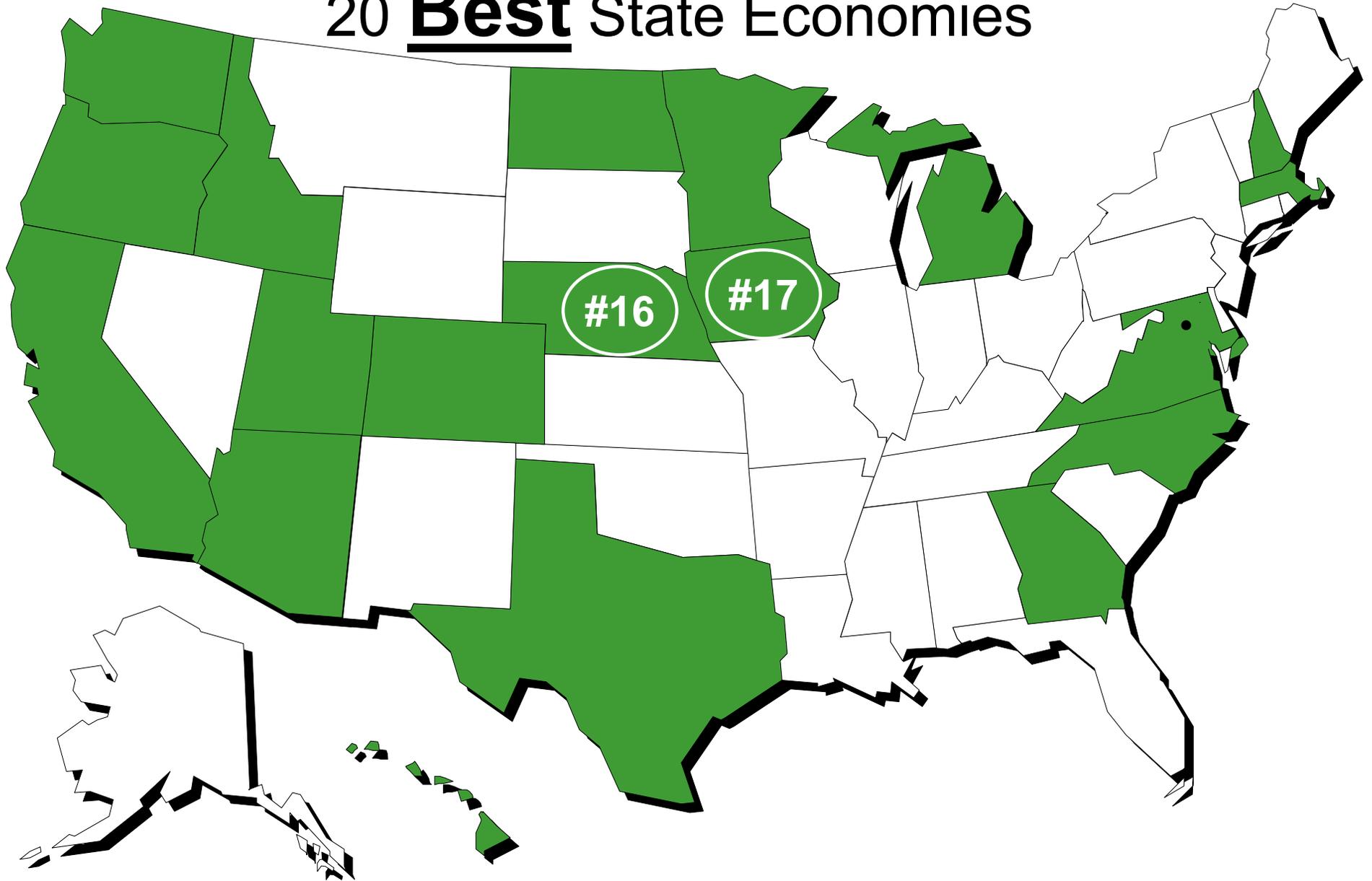
10 Worst GDP Growth



Source: Forbes Magazine, August 4, 2021

(#1 = Best)

20 Best State Economies



Source: Wallethub, June 7, 2021

(#1 = Best)

20 Worst State Economies



Source: Wallethub, June 7, 2021

(#1 = Best)

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Economic Performance Rankings

(Based on 3 policy variables)

Rank	State	Rank	State
1	Texas	41	Missouri
2	Colorado	42	Illinois
3	Washington	43	New Mexico
4	Utah	44	Wyoming
5	Florida	45	West Virginia
6	South Carolina	46	New Jersey
7	Arizona	47	Mississippi
8	Idaho	48	Alaska
9	Oregon	49	Louisiana
10	Georgia	50	Connecticut

(#1 = Best)

Nebraska = #24; Iowa = #33

Source: American Legislative Exchange Council, May 12, 2021

3 Policy Variables

- State Gross Domestic Product Growth
- Absolute Domestic Migration
- Non-Farm Payroll Employment

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Economic Outlook Rankings

(Based on 15 policy variables)

Rank	State	Rank	State
1	Utah	41	Rhode Island
2	Florida	42	Hawaii
3	Oklahoma	43	Maine
4	Wyoming	44	Oregon
5	North Carolina	45	California
6	Indiana	46	Minnesota
7	Nevada	47	Illinois
8	North Dakota	48	New Jersey
9	Texas	49	Vermont
10	South Dakota	50	New York

Nebraska = #35; Iowa = #33

(#1 = Best)

Source: American Legislative Exchange Council, May 12, 2021

15 Policy Variables (9 Tax, 6 Non-Tax)

- Top Personal Income Tax Rate
- Top Corporate Income Tax Rate
- Personal Income Tax Progressivity
- Property Tax Burden
- Sales Tax Burden
- Remaining Tax Burden
- Estate / Inheritance Tax
- Recent Tax Changes
- Debt Service As % of Revenue
- % of Public Employees
- State Liability System Survey
- State Minimum Wage
- Average Workers' Compensation Costs
- Right-to-Work State
- Tax Expenditure Limits

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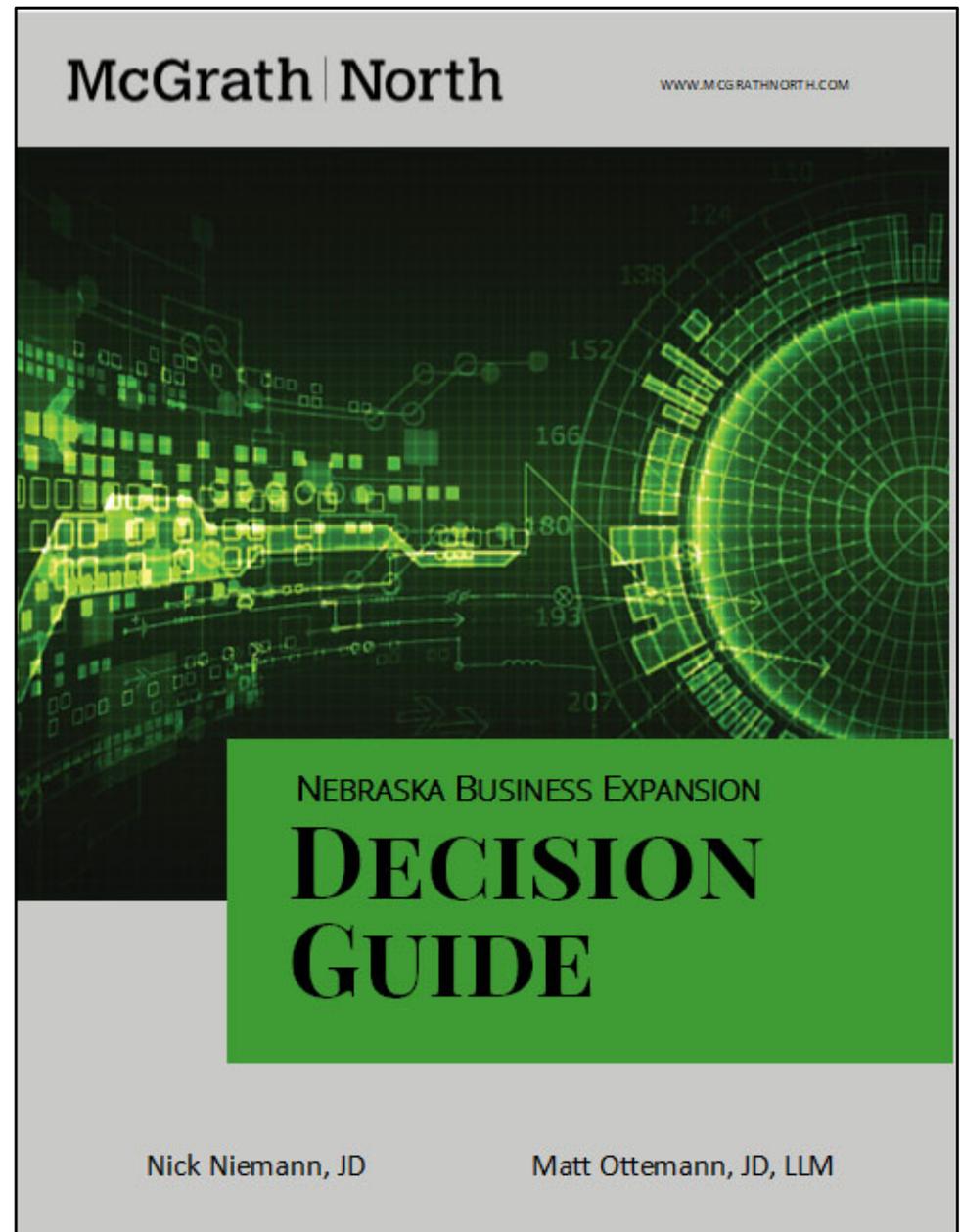
TODAY'S AGENDA



Expansion Decision Process



**This section
is based on
this:**



WE START HERE ...

Do You Have A Project
In Your Future?

What Is
A Project?

Grow an existing site
(new jobs and/or cap ex)

Move to, or add, a new or
larger site

Refurbish, remodel or
retool existing site

Start a new business or
product line

Move a business to
Nebraska

Acquire and then grow
another Company

POTENTIAL PROJECT SUMMARY

Brief Project Description

And Next
We Go
Here ...

Your Company Name: _____

Your Website: _____

Your Type(s) of Business: _____

Your Potential Expansion:

• Purpose: _____

• Estimated New Investment:

Land Acquisition \$ _____

New Construction or Remodel \$ _____

Building Purchase or Total Lease \$ _____

Equipment Purchase or Total Lease \$ _____

New Software \$ _____

Other Capital Expenditures \$ _____

Total \$ _____

• Estimated New Jobs: _____ Estimated New Job Wage: \$ _____

• Estimated Timeline: _____ years (beginning 20__ +/-)

• Potential Locations: Nebraska Other States

• Financing: Internal Investor
 Bank Other
 Leasing Combination

POTENTIAL PROJECT SUMMARY

Overall Incentive Value

<u>Incentive Name</u>	<u>\$ Value</u>
• _____	\$ _____
• _____	\$ _____
• _____	\$ _____
• _____	\$ _____
• _____	\$ _____
• _____	\$ _____
• _____	\$ _____
• _____	\$ _____
	Total \$ <u> </u>

- And Then Estimate Potential Incentives -

POTENTIAL PROJECT SUMMARY

Your Business Expansion Team

The Team you will need depends on the nature, size, scope and complexity of your Business Expansion.

Below are positions to consider:

- **Company**

- Board Chair
- CEO/President
- CFO
- Strategic Team Chair
- Public Relations
- General/Legal Counsel
- Logistics Operations
- Tax
- Real Estate
- Human Resources

- **Search**

- Site Selection Firm
- Real Estate Developer

- **Legislation**

- Lobbyist
- Legislative Committee

- **City/County**

- Elected Officials
- Permitting/Zoning, etc.

- **Workforce**

- University
- Community College

- **Financing**

- Bank
- Investor

- **Financial**

- CPA Firm
- Financial Analyst

- **Community**

- Local Chamber
- State Chamber
- Economic Development Corp./Assn.

- **Legal**

- Law Firm With Business Expansion Team
- Company Law Firm

- **State**

- Governor
- Dept. of Economic Development
- Dept. of Transportation
- Dept. of Environment & Energy
- Department of Revenue

- **Energy/Utility**

- Electric Company
- Gas Company
- Water Company
- Sewer Company

- **Construction**

- Real Estate Developer
- Architect
- Construction Firm
- Telecom

FOCUS OF BUSINESS EXPANSION TEAM

Site It

Selection and Incentives

Focus:

- Site Selection
- State and Local Incentives
- State and Local Taxation & Exemptions
- State and Local Legislation

Fuel It

Energy and Environment

Focus:

- Energy Sourcing and Supply
- Resource Use
- Environmental Counseling, Permitting and Compliance
- Sustainability

Own It

Formation and Structure

Focus:

- Company Structure
- Reorganization
- Executive Compensation
- Mergers/Acquisitions

Finance It

Finance and Investment

Focus:

- Project Finance
- Debt and Equity
- Capital Raise
- Private Equity

Build It

Real Estate and Construction

Focus:

- Site Acquisition & Control
- Real Estate Development
- Land Use, Entitlements and Zoning, Eminent Domain
- Construction

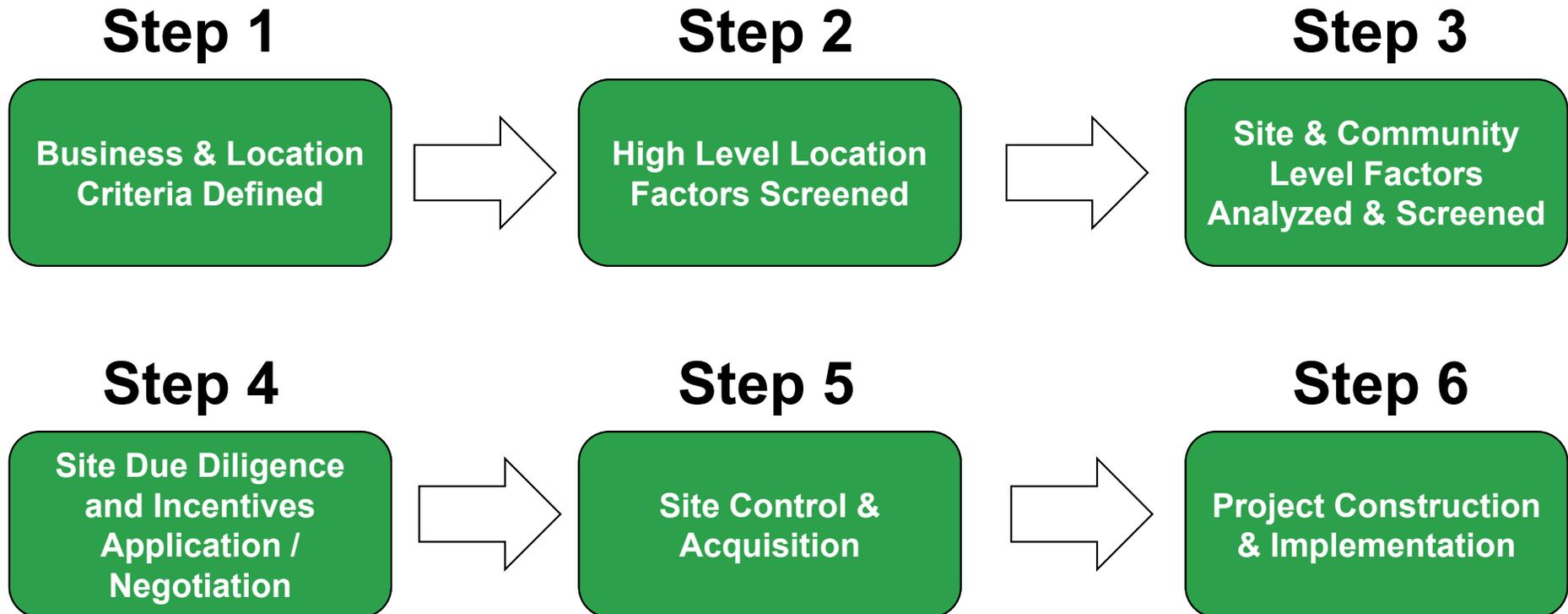
Staff It

Employment and Engagement

Focus:

- Hiring and Benefits
- Workplace Issues
- Immigration
- Workplace Policies

THE BUSINESS EXPANSION DECISION MAKING PROCESS



The analysis of potential State and Local tax and nontax incentives is important at each Step.

Key to success is team play and collaboration.

A QUICK HIGH LEVEL ANALYSIS

Are These Nebraska Features:

- Right For Our Project 
- Not Right For Our Project 
- Don't Know Yet. Check It Out 

- | | | |
|---|---|---|
|  Business Model Fit |  Industry and Business Sector Clusters |  Area Cost of Living |
|  Existing Presence |  Rail Infrastructure |  Energy & Utilities Costs and Reliability |
|  Proximity To Customers |  Air Infrastructure |  Legal & Regulatory Climate |
|  Business State & Local Tax Scheme |  State & Local Incentives |  Right To Work State |
|  Workforce Costs |  Skilled Workforce |  Ease of Permitting and Regulatory Process |
|  Available Sites and Buildings |  Proximity To Suppliers |  Highway Infrastructure |
|  Occupancy or Construction Costs |  Personal State & Local Tax Scheme |  Workforce Development |
|  Quality of Life | | |

Don't
Overlook:

POTENTIAL FEDERAL INCENTIVES FOR NEBRASKA GROWTH

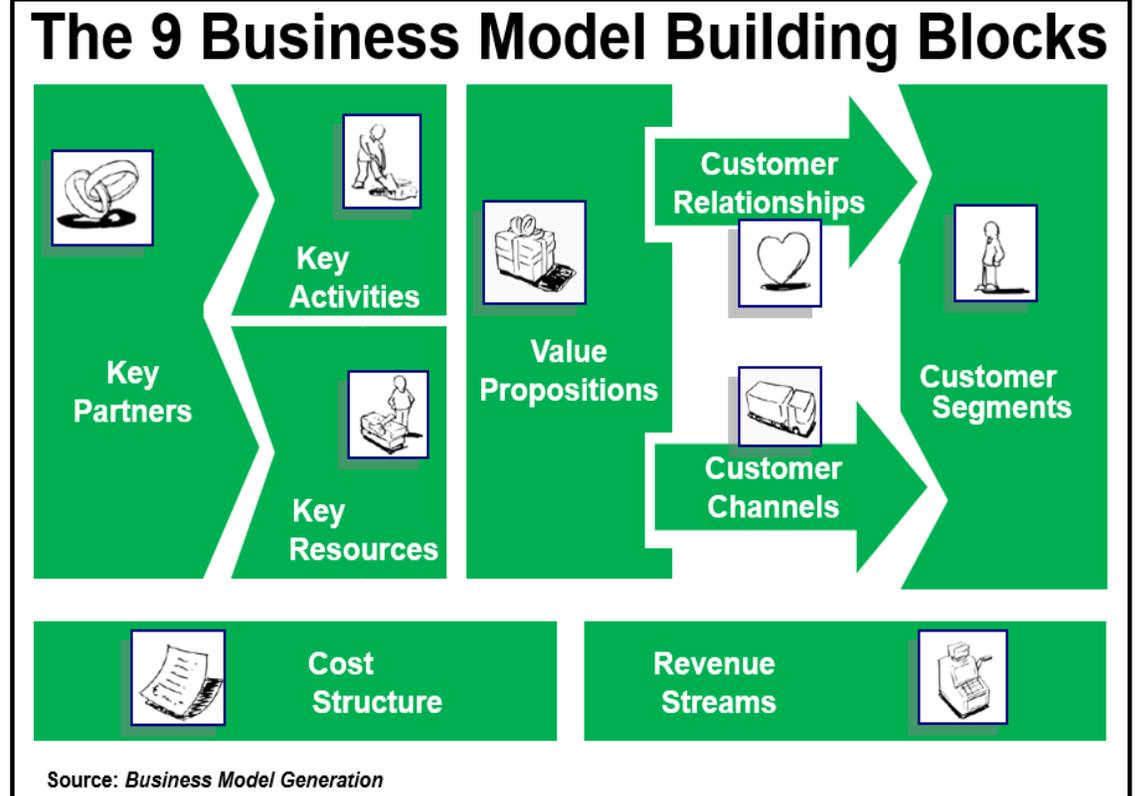
- Research and Development Tax Credit
- Federal Opportunity Zone
- New Markets Tax Credit
- Work Opportunity Tax Credit
- Federal Foreign Trade Zones
- Empowerment Zone Tax Incentives
- Credit for Electricity Produced from Certain Renewable Resources
- Second Generation Biofuel Producer Credit
- Historic Rehabilitation Tax Credit

Don't
Overlook:

PROJECT INCENTIVES FROM BUSINESS

Your expansion may yield other Incentive opportunities (such as pricing or discount) found in your Business Model.

- Equipment Supplier
- Inventory Supplier
- Repeat Contractors
- Electric Utility
- Franchisor
- Customers
- Service Providers
- Gas/Water Utility



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New Projects



GOVERNOR'S CUP

2020 Top States

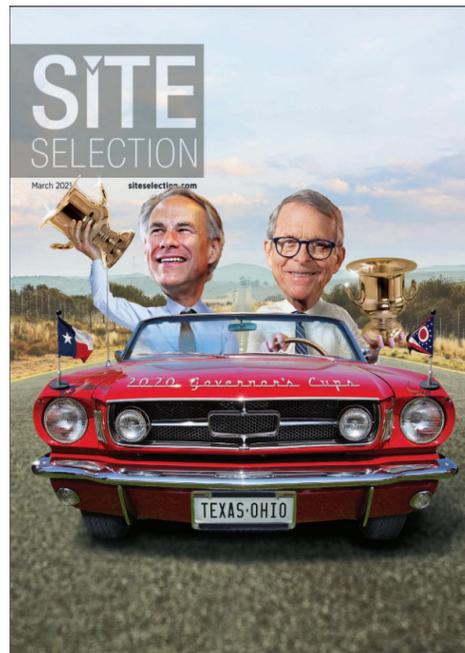
By Projects Per Capita

2020 Rank	2019 Rank	State	Project Count
1	1	Ohio	419
2	9	Georgia	360
3	2	Kentucky	152
4	3	Nebraska	59
5	8	Indiana	189
6	7	Texas	781
7	4	Illinois	329
8	10	Louisiana	116
9	6	Alabama	121
10	20	Kansas	70

Source: Conway Projects Database

Top States by Projects Per Capita:

#4 Nebraska



Prior Nebraska Rankings:

2019: #3

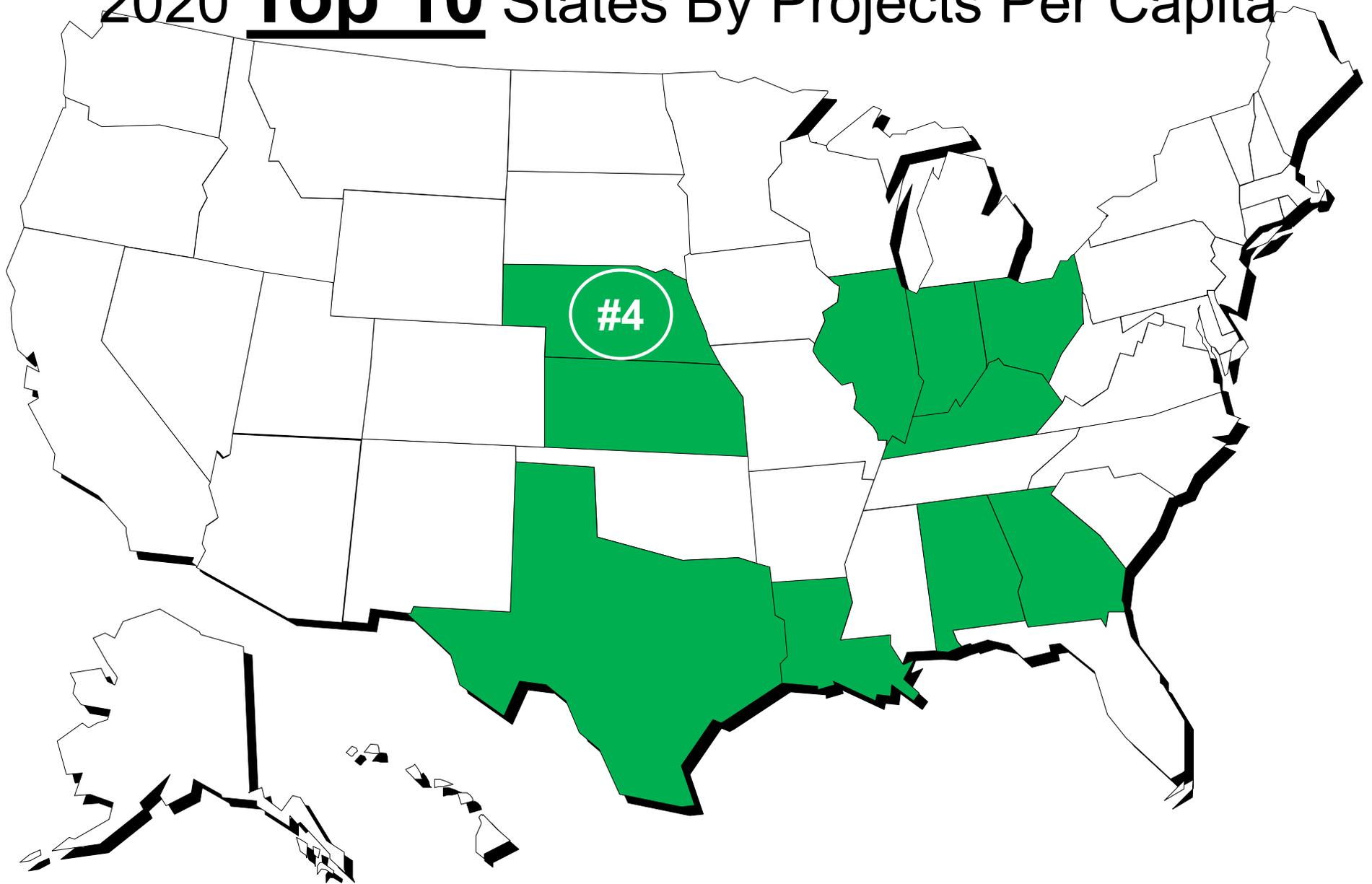
2018: #1

2017: #1

2016: #1

GOVERNOR'S CUP

2020 Top 10 States By Projects Per Capita



Source: Site Selection Magazine, Mar. 2021

(#1 = Best)

TOP STATES BY TOTAL PROJECTS

West North Central Region

2020	2019	State	Projects
1	2	Missouri	96
2	5	Kansas	70
3	3	<u>Nebraska</u>	59
T4	1	<u>Iowa</u>	48
T4	4	Minnesota	48
6	T6	South Dakota	5
7	T6	North Dakota	2

Source: Site Selection Magazine, May 2021

2021 PROSPERITY CUP

Site Selection Magazine's ranking of most **competitive** states
(based on job creation, new investment, workforce and
tax climate)

Top 10 States

Top 10 States

2021	2020	State
1	6	North Carolina
2	2	Georgia
3	1	Texas
4	5	Ohio
T5	3	Indiana
T5	9	Kentucky
7	15	South Carolina
8	12	Arizona
9	7	Tennessee
10	4	Michigan

West North Central Region

1. Kansas
2. Nebraska
3. Missouri
4. Iowa
5. South Dakota
6. Minnesota
7. North Dakota

Source: Site Selection Magazine, May 2021

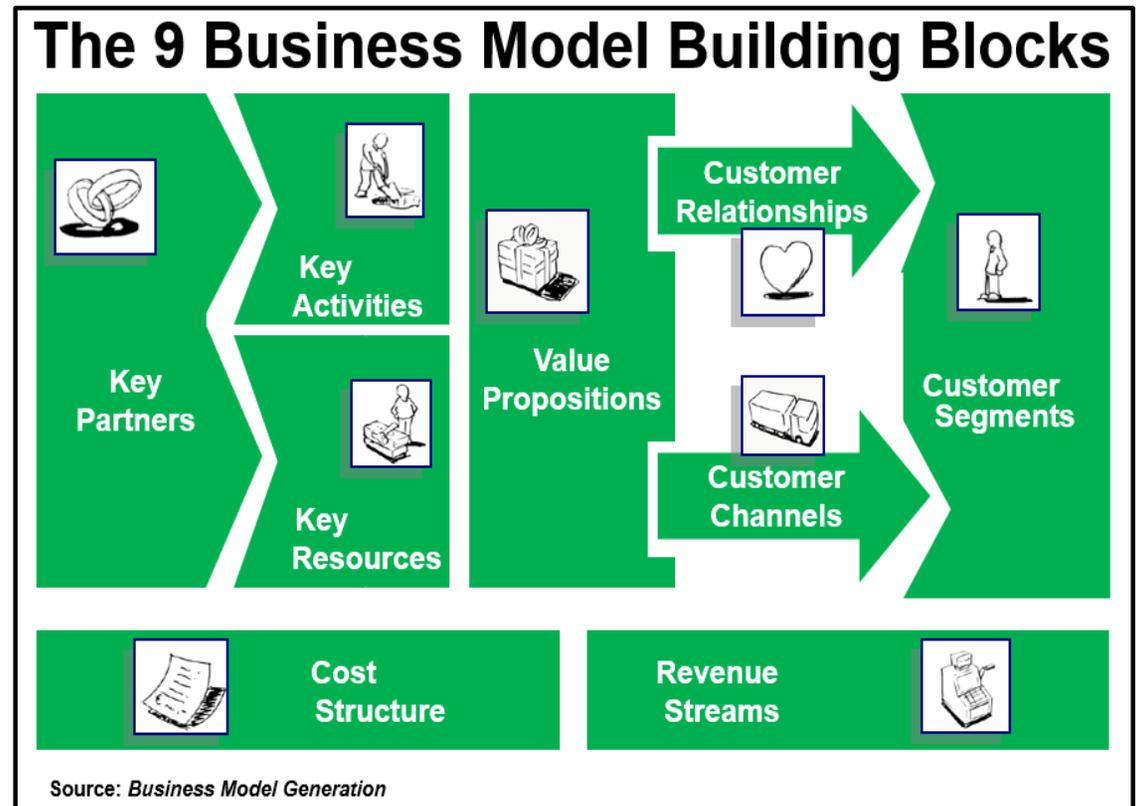
2021 PROSPERITY CUP

Prosperity Points Factors

- Total new and expanded facilities in 2020
- Total new and expanded facilities in 2020 per 1 million population
- Total capital investment in new and expanded facilities in 2020
- Total capital investment in new and expanded facilities per 1 million population in 2020
- Total new jobs created in 2020
- Total new jobs created in 2020 per 1 million population
- Rank in the corporate real estate executive portion of the 2020 Site Selection Business Climate Ranking
- State tax climate as ranked by the Tax Foundation
- Performance in the Beacon Hill Institute's State Competitiveness Index
- Number of National Career Readiness Certificates per 1,000 residents aged 18-64, according to ACT – Workforce Development Division, administrator of the ACT Certified Work Ready Communities initiative.

WHY DOES U.S. CONTINUE TO SEE NEW PROJECTS?

- The Present Situation
- Companies Come and Go, Grow and Fail (Small, Middle-Market & Large)
- New Business Models and a Changing Workforce
- Companies Change or Fail – Often Because They Are “Netflixed”



WHY DOES U.S. CONTINUE TO SEE NEW PROJECTS?



netflixed



netflixed

BORDERS

WHY DOES U.S. CONTINUE TO SEE NEW PROJECTS?

craigslist

netflixed



netflixed

netflixing

craigslist



WHY DOES U.S. CONTINUE TO SEE NEW PROJECTS?



netflixed



netflixing



WHY DOES U.S. CONTINUE TO SEE NEW PROJECTS?



netfixing



netfixing



WHY DOES U.S. CONTINUE TO SEE NEW PROJECTS?



netfixing



netfixing

Gillette[®]

WHY DOES U.S. CONTINUE TO SEE NEW PROJECTS?



netfixing



amazon.com

netfixing



“Watch Out Retail: Amazon is Opening Department Stores”

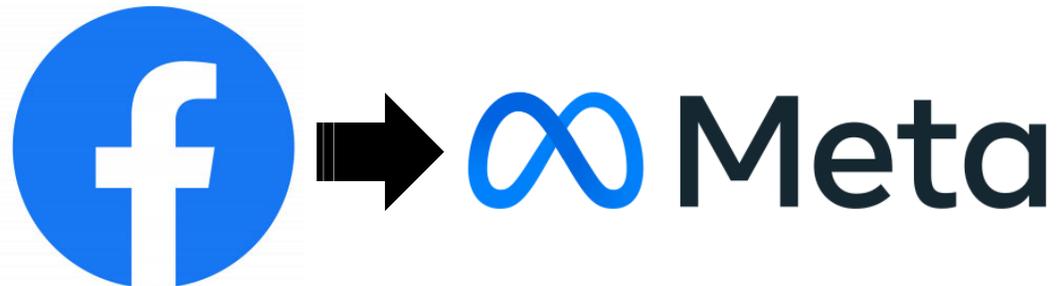
- Amazon reportedly plans to open multiple large physical stores across U.S.
 - Operate like Department stores
- Company aims to increase the sales of its clothing, household items, electronics and other products



METaverse

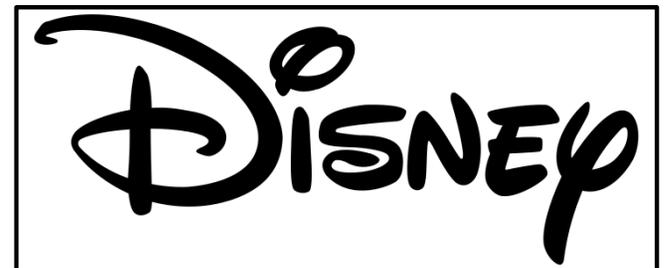
“Mark Zuckerberg Sets Facebook on Long, Costly Path to Metaverse Reality”

- Mark Zuckerberg says he has long imagined a virtual world where people work, play and interact.
- Now he’s preparing to spend billions of dollars and years of effort at making that a reality so Facebook Inc. can prosper.



Disney's Relocation to Florida

- Disney announced its movement of 2,000 employees from California to Florida
- In part due to “Florida’s business-friendly climate”
- Median Home Prices
 - California: \$951,000
 - Florida: \$318,000



NEBRASKA'S APPROACH TO BUSINESS INCENTIVES

“The incentives are part of the reason why Nebraska has ranked among the top three states in the nation for most new economic development projects per capita for five consecutive years.”

Site Selection Magazine
(January 2021)

NEBRASKA INCENTIVE PROJECTS ACROSS NEBRASKA



Source: Nebraska Department of Revenue Reports

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Incentives Update



BUSINESS INCENTIVE PLANNING

What Should Occur Before Beginning Your Project or Expansion?

Each business expansion presents a unique combination of business, tax, legal, contract, and financial issues that need to be addressed and coordinated.

What Are Some Key Incentive Planning Considerations?

- Business Model
- Coordination
- Optimizing
- Discretionary or Not
- Corporate Structure
- Business Contracts
- Timelines and Deadlines
- Potential Programs

NEBRASKA'S APPROACH TO BUSINESS INCENTIVES

Main Incentive Platform

- **1987 Employment and Investment Growth Act (known as LB775).**
- **2005 Nebraska Advantage Act (known as LB312).**
- **2020 Imagine Nebraska Act (effective January 1, 2021).**

These programs have incented the creation of:

- **Over 900 expansion projects**
- **Over \$35 billion of capital investment**
- **Over 100,000 new jobs in Nebraska**

Variety of Other Incentive Programs

INCENTIVE BENEFIT ILLUSTRATIONS

For Just The Imagine Nebraska Act:

<p>Illustrations:</p> <p>Based on certain project assumptions, these are illustrations of potential Tax Incentive Benefits for selected types of projects, based on just the Imagine Nebraska Act.</p>	<p>Project: Econ. Redev. Area</p> <p>New Jobs: 5 New Investment \$250,000</p> <p>Tax Incentive Benefits</p> <p>\$110,000</p>	<p>Project: Manufacturing (Rural)</p> <p>New Jobs: 5 New Investment \$1,000,000</p> <p>Tax Incentive Benefits</p> <p>\$140,000</p>	<p>Project: Manufacturing (Urban)</p> <p>New Jobs: 10 New Investment \$1,000,000</p> <p>Tax Incentive Benefits</p> <p>\$190,000</p>
<p>Project: Local Distribution</p> <p>New Jobs: 15 New Investment \$5,000,000</p> <p>Tax Incentive Benefits</p> <p>\$430,000</p>	<p>Project: Truck Transport</p> <p>New Jobs: 20 New Investment \$3,500,000</p> <p>Tax Incentive Benefits</p> <p>\$450,000</p>	<p>Project: Systems Design</p> <p>New Jobs: 20 New Investment \$0</p> <p>Tax Incentive Benefits</p> <p>\$700,000</p>	<p>Project: Insurance</p> <p>New Jobs: 30 New Investment \$5,000,000</p> <p>Tax Incentive Benefits</p> <p>\$1,960,000</p>
<p>Project: Warehouse</p> <p>New Jobs: 40 New Investment \$30,000,000</p> <p>Tax Incentive Benefits</p> <p>\$4,060,000</p>	<p>Project: Retail Exporting</p> <p>New Jobs: 45 New Investment \$5,000,000</p> <p>Tax Incentive Benefits</p> <p>\$1,430,000</p>	<p>Project: Bank</p> <p>New Jobs: 50 New Investment \$6,500,000</p> <p>Tax Incentive Benefits</p> <p>\$1,830,000</p>	<p>Project: Data Center</p> <p>New Jobs: 50 New Investment \$600,000,000</p> <p>Tax Incentive Benefits</p> <p>\$90,000,000</p>
<p>Project: Telecom Carrier</p> <p>New Jobs: 65 New Investment \$160,000,000</p> <p>Tax Incentive Benefits</p> <p>\$22,070,000</p>	<p>Project: Research & Develop</p> <p>New Jobs: 90 New Investment \$10,000,000</p> <p>Tax Incentive Benefits</p> <p>\$4,890,000</p>	<p>Project: Regional HQ</p> <p>New Jobs: 100 (High Wage) New Investment \$110,000,000</p> <p>Tax Incentive Benefits</p> <p>\$19,870,000</p>	<p>Project: Food Processing</p> <p>New Jobs: 100 New Investment \$17,000,000</p> <p>Tax Incentive Benefits</p> <p>\$3,710,000</p>
<p>Project: Distribution Center</p> <p>New Jobs: 130 New Investment \$30,000,000</p> <p>Tax Incentive Benefits</p> <p>\$6,010,000</p>	<p>Project: Large Headquarters</p> <p>New Jobs: 200 (High Wage) New Investment \$140,000,000</p> <p>Tax Incentive Benefits</p> <p>\$28,010,000</p>	<p>Project: Large Manufacturing</p> <p>New Jobs: 250 New Investment \$25,000,000</p> <p>Tax Incentive Benefits</p> <p>\$7,640,000</p>	<p>Project: Modernization</p> <p>New Jobs: 0 New Investment \$50,000,000</p> <p>Tax Incentive Benefits</p> <p>\$3,500,000</p>

BUSINESS GROWTH INCENTIVES

Imagine Nebraska Act - Incentive Summary

	Economic Redevelopment Areas*	Manufacturing Growth and Expansion	Growth and Expansion	Quality Jobs	Quality Jobs & Investment	Mega-Project	Modernization	
REQUIREMENTS (to be achieved within the 5 year Ramp Up Period and maintained for the 7 year Performance Period)								
		Rural	Urban					
New # of Jobs	5 FTE	5 FTE	10 FTE	10 FTE	20 FTE	30 FTE	250 FTE	None
New Investment	\$250,000	\$1,000,000	\$1,000,000	\$1,000,000	None	\$5,000,000	\$250,000,000	\$50,000,000
Wage Threshold	70% State Average	70% State Average	75% State Average	90% State Average	100% State Average		150% State Average	
TAX INCENTIVE BENEFITS								
Wage Credit	6%	6%	4%	4%	100% = 5% 150% = 7% 200% = 9%		150% = 7% 200% = 9%	None
Invest Tax Credit	4%	4% ⁽¹⁾	4% ⁽¹⁾	4%	None	7%	7%	None
Sales Tax Refund/Exemption	None	None	None	None	None	Yes	Yes	Yes
Personal Property Tax Exemption	No	No	No	No	No	Ag Processing Machinery & Data Center Equipment	All Tangible Personal Property	Ag Processing Machinery & Data Center Equipment

BUSINESS GROWTH INCENTIVES

Imagine Nebraska Act – Other Features

Project Length	Other Requirements And Factors	Extremely Blighted	Tax Credit Use
<ul style="list-style-type: none"> • Ramp Up Period - Up to 5 years • Performance Period - 7 Years • Carry Over Period - 3 Years 	<ul style="list-style-type: none"> • Must offer health insurance and show benefits for job to count. • The State Average wage, as of 2/5/21, 100% = \$23. • Pro rata benefit recapture if fall below thresholds before end of Performance Period. 	<p>Wage Credit and ITC are 1% point higher for Extremely Blighted Areas.</p>	<p>To offset withholding liability, sales tax, and corporate income tax. Also, for job training and recruitment of new, high wage employees. Also, to repay loans from the Imagine Nebraska Revolving Loan Fund for workforce training and infrastructure development.</p>
<p>Program Cap: \$25M/year for 2021-22; 100M/year for 2023-24; 150M/year for 2025. 3% of State tax receipts thereafter. Then no new Apps unless Legislative Committee expands. While only full-time employees count, FTE calculation is still applicable as a limit.</p>		<p>Process: File with Nebraska Department of Economic Development. Audit & Claims with Nebraska Department of Revenue. Footnote: (1) 7% if \$10M investment for manufacturing.</p>	
<p>* Economic Redevelopment Area = Area of high unemployment and poverty. A listing of Areas is available on Nebraska DED website (www.Imagine.Nebraska.gov).</p>			

HOW IS THE “IMAGINE NEBRASKA ACT” DESIGNED TO WORK WELL FOR YOUR PROJECT?

Important To Your Project?

- ✓ Magnitude
- ✓ Thresholds
- ✓ Qualified Business Activities
- ✓ Time Periods
- ✓ Application
- ✓ Qualified Business Activity Interpretations
- ✓ Sales Tax Refund vs. Exemption
- ✓ Signed Agreement
- ✓ Credit Use
- ✓ Multiple Locations
- ✓ Thresholds With No Maximums
- ✓ Transferability
- ✓ Administration

BUSINESS GROWTH INCENTIVES

Market State Income Tax Benefit

Business Benefit

- Nebraska business income tax rules apportion your national income to Nebraska based solely on the location of your customer.
- So, the presence of your property or workforce in Nebraska does not increase your Nebraska income tax.
- The financial \$ benefit is the difference between the traditional 3-factor formula (sales, property, payroll) and Nebraska's single factor (sales) for income taxation.

Requirements

- Available for all corporations and partnerships with at least one location outside Nebraska.

Financial Team

- Ensure records are kept to document delivery location of customer or use by buyer.
- Properly claim on Nebraska income tax return.

Legal Team

- Help ensure sales agreements, invoices and other documentation provide information necessary for apportionment.
- Handle special apportionment ruling requests where circumstances warrant a special rule.

Local Option Economic Development Act Grants

Business Benefit

- Cities and villages may collect and deploy local taxes - including sales and/or property tax - for economic development purposes to make expansion grants to companies.
- Estimated benefits range from \$20,000 to \$100,000 in a smaller community, but can often be as high as \$500,000 for significant projects in larger communities.

Requirements

- Cities must have formulated a local economic development program plan.
- Qualifying businesses must derive principal source of income from specific activities (all activities may qualify in cities with less than 2,500 population).

Financial Team

- To obtain incentives, company and its team must work with city leaders to determine project details and potential funding.

Legal Team

- Company and city must negotiate funding and execute legal agreements to complete the funding.

BUSINESS GROWTH INCENTIVES

Manufacturing Equipment Sales Tax Exemption

Business Benefit

- Sales tax exemption on purchases (and repairs) of machinery and equipment used in manufacturing.
- Savings of 5.5% - 7.5% (depending upon location) on investment in equipment and repairs.

Requirements

- No job or investment threshold.
- Buyer must qualify as a "manufacturer". 2020 Court Decision defined "manufacturing" vs. "processing"
- Could lose exemption if installation contractor is an "Option 2" or "Option 3" contractor.

Financial Team

- Provide Nebraska Form 13 to Seller.
- Don't commingle purchase with nonexempt items.

Legal Team

- Confirm qualification of equipment purchaser or lessee is a "manufacturer."
- Determine equipment installer is not an Option 2 or 3 contractor.
- Line up purchase contract with exemption tests.

Microenterprise Tax Credit Act

Business Benefit

- Refundable income tax credit to individuals actively involved in a microbusiness (defined as a business employing 5 or fewer FTE employees)
- Credit is 20% of the increase in new investment or new employment compensation over a 2 year period

Requirements

- Program limited to \$2 million total credits per year.
- An individual must submit an application to reserve credits.
- Individual may file for a subsequent application, but is limited to \$20,000 lifetime credits.
- The applicant may file a subsequent application after the first two-year application period has ended. The applicant may claim no more than the difference between the \$20,000 lifetime limit and the amount previously approved plus any pending amount currently reserved for the applicant or a related person.

Financial Team

- When filing for subsequent applications, coordinate total credits to ensure compliance with lifetime limit.

Legal Team

- Confirm that individual is actively engaged in the operation of a microbusiness.

SITE DEVELOPMENT INCENTIVES

Site and Business Development Act Grants

Business Benefit

- The Department of Economic Development (DED) will use funds to provide financial assistance for industrial site and building development.
- Estimated benefit varies, but for approved projects is **often between \$100,000 to \$500,000**.

Requirements

- Local governments and Nebraska nonprofits are eligible to act as sponsor for funding.
- Through **work with DED** an initial offer of Small Business Development Fund (SBDF) funding will be made by DED.

Financial Team

- Projects must be taken on by a committed local development team, including a local economic development sponsor.

Legal Team

- A legal agreement between DED and local sponsor is necessary.
- Agreements between state and local sponsor, as well as sponsor and recipient, are needed to complete the funding.

City/County Infrastructure “Entitlements”

Business Benefit

- Funding, approvals and other considerations are needed to develop an expansion project.
- **Zoning, land use, streets, sewer, utility, etc. infrastructure** Funding assistance or cost sharing may come from city/county. Estimate \$ value based on possible negotiated share of these expected infrastructure needs.
- Potential for **up front determination of real property tax** value should be considered.

Requirements

- Various local approvals are needed, which vary based on the project and its location.

Financial Team

- Expanding companies should work with experienced site or real estate development firms to determine the “entitlements” necessary for the project.

Legal Team

- Your legal team should be involved with the negotiation and approval process and the various legal agreements.

SITE DEVELOPMENT INCENTIVES

Pollution Control Sales Tax Refund

Business Benefit

- **Refund of sales tax paid** (5.5% to 7.0%) on equipment used in controlling industrial or agricultural waste.

Requirements

- **Must receive approval** for refund from **Department of Environment and Energy**.

Financial Team

- Certain equipment may also be exempt through other provisions. Financial team should determine best incentive to utilize.

Legal Team

- **Applications for refund involve legal filings with both the Department of Environment and Energy and Department of Revenue**

Nebraska Transportation Innovation Act Grants

Business Benefit

- Under the Transportation Innovation Act's Economic Opportunity Program, the State makes grants to offset the cost of transportation improvements needed for an economic development project.
- Funding is discretionary, with grants for selected projects **often between \$100,000 to \$500,000**.

Requirements

- **Must work with local public entity** to receive grant.
- Must provide funding match of at least 25% of transportation project costs.

Financial Team

- To receive grant, must have economic impact assessment. This will be prepared based on information provided by applicants in application materials.

Legal Team

- In order to receive this incentive, a company must complete a formal Letter of Intent.
- In addition, contracts with the **Department of Transportation** and the local public entity are needed.

BUSINESS INNOVATION INCENTIVES

SBIR / STTR Grants

Business Benefit

- Matching grant for Nebraska companies that have received a Federal Small Business Innovation Research (SBIR) or Small Business Technology Transfer Initiative (STTR) grant.
- Nebraska matching grant for approved projects is up to \$100,000, or 65% of federal grant, whichever is less.
- Also reimburses up to \$5,000 per project for preparing a federal proposal.

Requirements

- Application criteria includes evaluation of scientific and technical merit, as well as qualifications of business team.
- Department of Economic Development will not award funding to a qualifying business for more than one project every two years.

Financial Team

- Ensure company conducts at least 51% of activities proposed in federal application in Nebraska.

Legal Team

- Assist with Federal and Nebraska Applications to address legal qualifications for SBIR / STTR funding.

Nebraska Advantage Research & Development Tax Credits

Business Benefit

- Nebraska tax credits for companies that incur research and experimental expenditures in Nebraska.
- Nebraska's credit is tied to the federal credit which varies, based on numerous factors, but generally ranges from 14% to 20%.
- The Nebraska credit is equal to 15% of the federal credit (35% if expenditures are at a Nebraska college).

Requirements

- Must utilize federal E-Verify.
- Training may be provided by certain educational organizations or qualified providers that meet recognized skill standards.

Financial Team

- Credits may be used against multiple taxes, so the best usage must be determined.

Legal Team

- Eligible expenditures must be determined and confirmed.

BUSINESS INNOVATION INCENTIVES

Nebraska Innovation Fund Prototype Grants

Business Benefit

- Matching grant that provides financial assistance for **product development** to Nebraska businesses.
- Up to \$150,000 per project. **Average grant is \$50,000.**

Requirements

- Applicants **must be** businesses operating in Nebraska that can **provide a minimum of 50% of the grant request as matching funds**.
- Value-added agriculture projects require a match of 25%.

Financial Team

- Applicants must provide a budget at the time of application that will outline the anticipated project costs.
- Applicants must submit an application form and provide a business plan and evidence of matching funds.

Legal Team

- Must determine requirements for grant usage can be met. Review the grant agreement.

Nebraska Academic Research & Development Grants

Business Benefit

- Matching competitive grant for research and development **activities done in conjunction with a Nebraska college or university.**
- **Up to \$100,000 for Phase 1.**
- **Up to \$400,000 for Phase 2.**

Requirements

- Grant funding **must be matched at 100%** of the requested grant.
- Grant funding for value-added agriculture projects must be matched at 25% of the requested grant amount with eligible matching funds.

Financial Team

- Grant applications require coordination with Department of Economic Development, Nebraska college or university & academic researcher.

Legal Team

- **Contracts must be reviewed and executed with Department of Economic Development** and include an E-Verify requirement.

STATE FUNDING INCENTIVES

Imagine Nebraska Infrastructure Loan Fund

Business Benefit

- State may make loans to Imagine Nebraska Act Applicants for infrastructure development costs.
- Loans, both principal and interest, may be repaid with credits from Imagine Nebraska Act. So, financial \$ benefit is based on amount of credits that would otherwise not be used.
- \$5 Million annual allocation for total Nebraska loan fund.

Requirements

- A company must submit an Imagine Nebraska Application be approved, and meet the new job/investment thresholds.
- To qualify for a loan, DED will review number of jobs, expected pay, and necessity of loan for Nebraska expansion.

Financial Team

- Consider whether this financing fits into the company's objectives, including whether credits can otherwise be used more effectively.

Legal Team

- Address the Nebraska Incentive Critical Legal Criteria (on prior page) for Imagine Nebraska Act projects.
- Assist on the Revolving Loan Fund Application loan documents.

Nebraska Seed Investment Program

Business Benefit

- Up to a \$500,000 investment for Nebraska small businesses (less than 500 employees) to assist with turning research, innovation, and technology into businesses.
- The funding is an investment, not a grant, by Invest Nebraska and is invested via a stand-alone convertible note or as part of a minimum qualified round of equity financing.

Requirements

- Applicants must have matching funds equal to 100% of the amount of the Seed investment. If the investment is deemed a Value-Added Agriculture investment, that matching amount goes down to 20%.
- The funds are invested as a lump sum so proof of match is required before the Seed investment is made.
- In order for funds to be considered as match for the Seed Investment Program, the company's matching financing must be closed less than six months before the application or within six months after a notice of approval.

Financial Team

- Must have business plan and proof-of-concept demonstration.

Legal Team

- Develop company structure and prepare investment documents.

STATE FUNDING INCENTIVES

State Trade Expansion Program (STEP) Funds

Business Benefit

- STEP grants help businesses **defray the cost to market internationally** and assist with identifying potential international buyers.
- STEP grants operate on a reimbursement basis for qualified small Nebraska businesses. Successful applicants are reimbursed for eligible expenses when their project/activity has been completed.
- **Awards are typically up to \$10,000**

Requirements

- 25% company match of maximum reimbursement allowed is required for each activity funded through STEP.
- Applicants must operate a business in Nebraska to process, manufacture, and/or distribute a product, or provide an exportable service. They must be in business for at least one year, and they must qualify as a small business entity according to U.S. Small Business Administration standards.

Financial Team

- After qualification, the company must submit an Itemized Budget Request (IBR) for each activity for which they're requesting funding.
- The submitted IBR must be approved before incurring any costs related to the project in order to be eligible for reimbursement.

Legal Team

- Prepare required application. Help address eligibility.

Community Development Block Grant (CDBG) Loan Program

Business Benefit

- **Partially forgivable loan** for businesses that will expand the state's economic base and which create quality jobs principally benefiting employees in the **low and moderate income levels**.
- Funds may be used for additions of equipment, to provide operating capital, or for construction of new or expanded buildings.
- **Typical loans range from \$250,000 to \$1 Million.**

Requirements

- State funding is for expansions in Nebraska, other than Omaha, Bellevue, Lincoln or Grand Island. For expansions in those cities, direct city funding would apply.
- Must meet federal conditions for program, including conditions for environmental review, labor standards and other accountabilities.

Financial Team

- Confirm business can reach and maintain new FTE job requirements.

Legal Team

- Various legal documents must be executed, including loan documents and requirements for repayment of funds in the event the CDBG program requirements are not met or maintained.

SITE SPECIFIC INCENTIVES

Tax Increment Financing

Business Benefit

- Property tax increases resulting from a real estate development in a “blighted and substandard” area can be used to help fund the company share of public and certain related company costs for the project.
- City will devote the property tax revenue increases to fund these costs for up to 15 years (increased to 20 years effective in 2021 for “extremely blighted” areas).
- This Tax Increment Financing (TIF) benefit is often equal to 12 - 20% of new real estate value added

Requirements

- Site must be in a “blighted and substandard” area designated by city.
- Application must be made to a City’s Redevelopment Authority. Approval is discretionary. Process is public.

Financial Team

- The project details and financing need to be developed for submission to the City.

Legal Team

- A formal Redevelopment Agreement must be negotiated with the City.

Enterprise Zone Benefits

Business Benefit

- The Department of Economic Development (DED) gives preference (as to approval and \$ amounts to be negotiated) for various business incentive and grant programs to projects located in a designated Enterprise Zone.
- Enterprise Zones consist of areas of “economic distress,” meaning conditions of high unemployment, poverty, and declining population.
- Examples of potential preference programs include: Customized Job Training and Site and Building Development Fund.

Requirements

- Project must be in an Enterprise Zone.
- Currently designated Enterprise Zones are in Omaha, South Sioux City, and Otoe County. DED is accepting applications for up to two more Enterprise Zones.

Financial Team

- Develop an application for the requested incentive award.

Legal Team

- Legal team would assist in the incentive negotiation and documentation.

SITE SPECIFIC INCENTIVES

New Markets Job Growth Investment Act Funding

Business Benefit

- A qualified community development entity (CDE), can line up funding with expanding companies in "low-income" areas of Nebraska.
- These loans are at low interest rates with favorable repayment terms.
- The benefits are funded by a 7 year cumulative Federal and Nebraska tax credit totally 39%.

Requirements

- Very specific and time sensitive applications must be filed with the State by the CDE sponsor, which then contracts with the Company to help fund an expansion.

Financial Team

- From the expanding company's perspective, the financing needs close review and analysis.

Legal Team

- When a CDE wishes to make such an investment, legal review is needed for the expanding company to structure the company and to review the various project and finance agreements.

Nebraska Rural Development Act Tax Credits

Business Benefit

- Tax credits equal to \$3,000 for each new employee and \$2,750 for each \$50,000 of new investment for development in rural areas (and certain impoverished parts of Omaha).
- 10% credits, up to \$150,000, are also available for livestock modernization and expansion projects.

Requirements

- Application date will determine the required level of wages and the base year.
- Application date will determine the project's priority for benefits.
- Must utilize E-Verify.

Financial Team

- Compare benefits to Imagine Nebraska Act to determine the greatest benefit for a given project. Cannot use both.

Legal Team

- Application becomes part of the legal contract with the State for this incentive, so it should be prepared with legal review.

SITE SPECIFIC INCENTIVES

Nebraska Urban Redevelopment Act Tax Credits

Business Benefit

- Tax credits equal to \$3,000 for each new employee and \$2,750 for each \$50,000 of new investment, for development in urban economic redevelopment areas.
- 5% credits are also available for investment in an economic redevelopment area (minimum \$50,000 investment).

Requirements

- Application date will determine the required level of wages and the base year.
- For incented employees, must pay 70% of statewide average wage.
- Must utilize E-Verify.

Financial Team

- Compare benefits to Imagine Nebraska Act to determine the greatest benefit for a given project. Cannot use both.

Legal Team

- Application becomes part of the legal contract with the State for this incentive, so it should be prepared with legal review.

TALENT DEVELOPMENT INCENTIVES

Talent Recruitment & Retention Tax Incentive

Business Benefit

- Corporations can incent the recruitment and retention of employees in Nebraska by providing them tax-favored stock ownership.
- Employee shareholders of corporations **may exclude the capital gains on the sale of their stock** from Nebraska income tax.
- **Estimated benefit is about 7% of the capital gain** when stock is sold.

Requirements

- Corporations must meet certain ownership and presence requirements.
- Employees must make an election on Nebraska Form 4797N for this exclusion to apply.

Financial Team

- Determine financial aspects of employee ownership.

Legal Team

- Analysis of employee ownership factors. Document stock issuance. Confirm capital gain exclusion requirements are met.

Job Training & Recruitment Funding

Business Benefit

- **Credits earned under Imagine Nebraska Act may be used for reimbursement of job training expenses** incurred at Nebraska school or unrelated company and for reimbursement of talent recruitment expenses.
- So, financial \$ benefit is based on amount of credits that would otherwise not be used.

Requirements

- Must file Imagine Nebraska Application and be approved.
- Must meet qualified business and new job and investment requirements under Imagine Nebraska.

Financial Team

- Review Application descriptions and financial projections.
- Prepare forms needed for Imagine Nebraska compliance.

Legal Team

- Address the Nebraska Incentive Critical Legal Criteria (on prior page) for Imagine Nebraska Act projects.

NEBRASKA INCENTIVES

Imagine Nebraska Act Changes (LB 18)

(Operative May 26, 2021)

Adds two additional activities to definition of a “qualified location”

1. Postharvest Crop Activities (except Cotton Ginning)
 - NAICS Code 115114
2. Processing Tangible Personal Property
 - Based on Ne. S. Ct. ruling in Ash Grove v. NDR

NEBRASKA INCENTIVES

Imagine Nebraska Act Changes (LB 18)

(Operative May 26, 2021)

- Removes the requirement that an employee be a resident of Nebraska
 - To be included in the equivalent employee calculation

NEBRASKA INCENTIVES

Imagine Nebraska Act Changes (LB 84)

(Operative August 28, 2021)

- Adds nuclear energy as a renewable energy source
 - For qualified locations that produce electricity for sale from one or more renewable energy sources

Changes to Nebraska Advantage Microenterprise Tax Credit Act (LB 366)

(Operative August 28, 2021)

- Extends sunset date for Act to December 31, 2032
- For applications after operative date:
 - Limit on the total lifetime microenterprise credits that can be claimed by taxpayer and any related person increased to \$20,000;
 - Spouses, siblings, ancestors, and lineal descendants except for minor sons or daughters are eliminated from the definition of related persons.

NEBRASKA INCENTIVES

Urban Redevelopment Act (LB 544)

(Operative January 1, 2022)

- Creates new incentive for projects in urban areas
 - Beginning January 1, 2022
 - Sunsets December 31, 2031
 - Must file application with DED
 - Pay \$500 application fee
- No further applications once expected incentives reach \$8 million

NEBRASKA INCENTIVES

Urban Redevelopment Act (LB 544)

(Operative January 1, 2022)

- Must meet minimum requirements in one of two options:
 1. Earn a credit equal to \$3,000 for each new equivalent employee and \$2,750 for each \$50,000 in investment
 - Additional \$1,000 is earned for each equivalent employee who resides in an economic development area
 - Taxpayers must invest \$150,000, hire 5 new equivalent employees, and pay 70% of the Nebraska statewide average wage
 2. Earn a credit equal to 5% of investment
 - Taxpayers must invest \$50,000

NEBRASKA INCENTIVES

Urban Redevelopment Act (LB 544)

(Operative January 1, 2022)

- If reach thresholds within 2 years of application date, taxpayer is entitled to receive tax benefits
 - Up to a maximum of \$50,000 for each project
 - Credits may be earned for each year of the performance period where they have maintained levels.
 - The taxpayer may request that DOR certify base-year employment levels.

NEBRASKA INCENTIVES

Urban Redevelopment Act (LB 544)

(Operative January 1, 2022)

- Credits may be used to:
 - Obtain a refundable income tax credit
 - Obtain a refund of sales or use tax
 - Reduce income tax withholding liability; or
 - Obtain a payment from the State equal to the real property taxes due, after the year levels are met, for real property at a qualified location that is acquired by the taxpayer after the date of application.
- Credits may be distributed to a partner, limited liability member, shareholder, or beneficiary
 - Credits may be used against the income tax liability of the recipient.

Urban Redevelopment Act (LB 544)

(Operative January 1, 2022)

- Employment and investment levels must be maintained through the third year following the year levels are met.
 - A percentage of benefits will be recaptured if levels are not maintained for the required period.
- No taxpayer can qualify for benefits under this program if they are receiving any benefits under any other Nebraska tax incentive program.

Beginning Farmer Tax Credit Act (LB 432)

(Operative August 28, 2021)

- Extends sunset date for Beginning Farmer Tax Credit incentive date to December 31, 2025
 - Was December 31, 2022

Benefits Under Act

- Landowner receives refundable tax credit of 10% of cash rent, or 15% of share crop rent, for three years
- Farmer receives personal property tax exemption for equipment and tax credit reimbursement for financial management course

Tax Increment Financing (LB 25)

(Operative March 18, 2021)

- Allow Tax Increment Financing projects to last for 20 years
 - Rather than 15 years
 - If more than 50% of the property has been declared an “extremely blighted” area

NEBRASKA INCENTIVES

Imagine Nebraska Act - DED Memo 20-01

(Issued December 28, 2020 and Revised August 16, 2021)

Sufficient Benefits

- New Job counts only if “sufficient benefits”:
 - If company offers paid time off (vacation and/or sick leave), must offer two listed benefits
 - If company does not offer paid time off, the employer must offer four listed benefits

Imagine Nebraska Act - DED Memo 20-01 (Issued December 28, 2020 and Revised August 16, 2021)

Sufficient Benefits

- What Are The Listed Benefits?
 - Family Health Insurance
 - Life / Disability Insurance
 - Dental Insurance
 - Retirement
 - Vision Insurance
 - Tuition Reimbursement
 - Childcare
 - Transportation Subsidy

Imagine Nebraska Act - DED Memo 21-01

(Issued January 21, 2021)

When Is Property Counted

- For TPP, the term “used at the qualified location” has the same meaning as “placed in service” under IRC Sec. 167
- For improvements to real estate, the date of investment is the date the qualified property is incorporated into the real estate
- For real property purchased, property will be investment when control of property is transferred to taxpayer
- For property leased by taxpayer, the property will be investment when control of the property is transferred to the taxpayer

Imagine Nebraska DED Memo 21-02

(Issued September 3, 2021)

Definition of Qualified Pre-Production Services

- Pre-production services are services utilized by manufacturers to prepare for production of a product.
- Pre-production services are focused on completing the tasks which must be completed prior to the initiation of manufacturing.
- Pre-production services typically include but are not limited to services such as:
 - Product design
 - Product engineering and prototyping
 - Pre-production product testing
 - Product manufacturing planning
 - The designing or engineering of the tools necessary to manufacture parts or components.

TODAY'S AGENDA

59th Annual Great Plains
Federal Tax Institute
December 3, 2021

State Tax, Incentives And Economic Development Update And Impact

Nick Niemann, JD
Matt Ottemann, JD. LLM
McGrath North
ATTORNEYS

Business Climate

- Business Climate Report Card
- Fiscal Report Card
- Expansion Decision Process
- New Projects
- Incentives Update
- Workforce Development**
- Political Impact
- COVID Impact
- National Events
- International Events

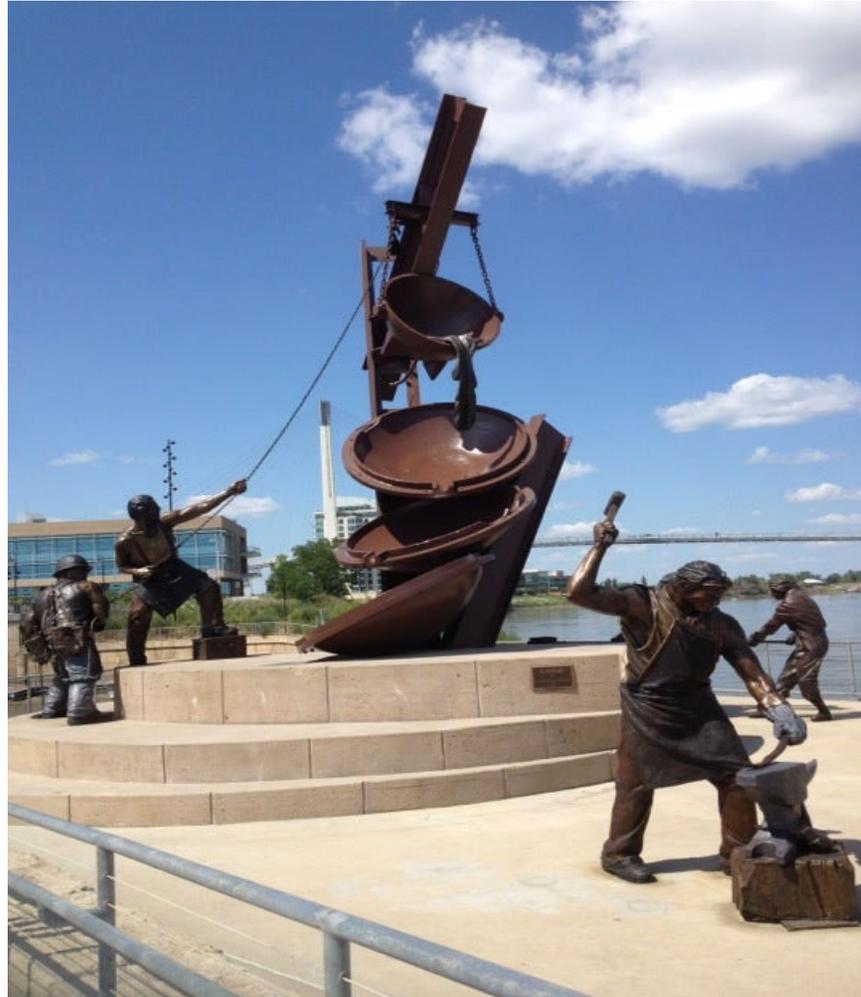
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Workforce Development



WORKFORCE DEVELOPMENT

WorkForce: “If We Can Work From Anywhere, Everywhere Is The Right Place To Be”

“As of May 20, 2021, the percentage of paid remote job postings on LinkedIn grew 457% from the year earlier.”

LABOR SHORTAGE

Two-Thirds of Businesses Around the World Are Struggling to Hire

- Businesses around the world want to hire but face a similar dilemma: attracting workers.
- A survey of nearly 45,000 employers across 43 countries showed 69% of employers reported difficulty filling roles
 - 15-year high

“The Great Resignation”

LABOR SHORTAGE

Two-Thirds of Businesses Around the World Are Struggling to Hire

- About 40% of employers said they offer training and skills development
 - A similar share reported offering flexible work schedules.
- Nearly a third increased wages.
- Others offered signing bonuses and more vacation time.
- Incentives varied by industry.

“The Great Reimagination”

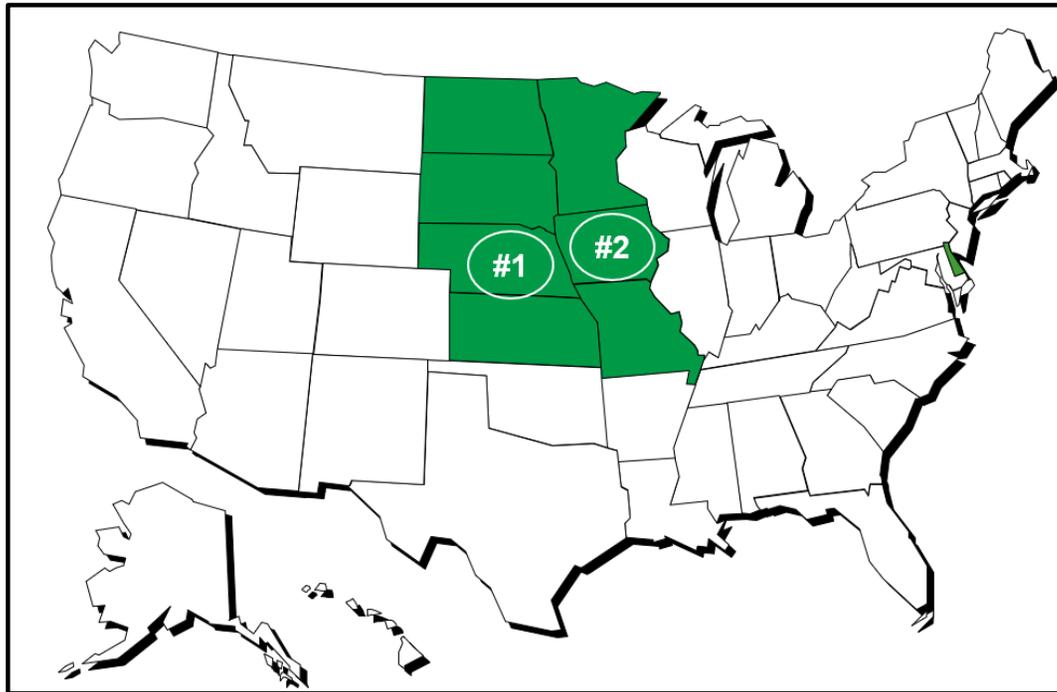
NEBRASKA WORKFORCE

1.9%

Nebraska Has The
Lowest Unemployment
Rate of Any State -
Ever

SITE SELECTION MAGAZINE

2021 Regional Workforce Development Rankings



West North Central	2020	2019
Nebraska	1	3
Iowa	2	2
Minnesota	3	1
South Dakota	4	5
North Dakota	5	7
Missouri	6	4
Kansas	7	6

States are ranked based on their rank in the following:

1. CNBC's Top States for Business: Workforce and Education Rank
2. Forbes' Best States for Business Labor Supply
3. US News' Best States for Education
4. ACT National Career Readiness Certificates
5. Workforce Preparation & Development Expenditures

(#1 = Best)

Source: Site Selection Magazine, January 2021

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Political Impact



INFRASTRUCTURE

“No specifics yet, but federal infrastructure bill could have widespread impact in Nebraska”

INFRASTRUCTURE

Nebraska is expected to get
\$2.8 Billion – includes \$100
Million for high speed
internet

INFRASTRUCTURE BILL

\$1 Billion Infrastructure Bill Includes Minority Business Development Act

- Grants federal gov't broad spending powers to help “socially or economically disadvantaged individuals”
- Encourages federal gov't partnerships with private sector entities to “consult and cooperate”
- In the facilitation of assistance to minority-owned businesses

“Taxes Separate Dying Illinois From Thriving Missouri”

- High taxes, political corruption and disastrous local policies drive decline in Southern Illinois
 - Nearby Missouri prospers



Smith & Wesson Moves from MA to TN

- Cites Proposed MA Gun Laws
- Would prevent Smith & Wesson from manufacturing guns which account for 60% of its revenue



2020 Migration Trends As Tracked By:



- Largest Net Gain of Trucks:

- | | |
|--------------|-------------------|
| 1. Tennessee | 6. Colorado |
| 2. Texas | 7. Missouri |
| 3. Florida | 8. Nevada |
| 4. Ohio | 9. North Carolina |
| 5. Arizona | 10. Georgia |

Shows Where People Are Moving To

2020 Migration Trends As Tracked By:



- Largest Net Loss of Trucks:
 1. California
 2. Illinois
 3. New Jersey
 4. Massachusetts
 5. Maryland
 6. Oregon
 7. Louisiana
 8. Connecticut
 9. New York
 10. Pennsylvania

Shows Where People Are Moving From

HEADQUARTERS MOVE

Tesla Abandons California Sets Up HQ in Texas

- Tesla announced its movement of its headquarters from California to Austin, Texas
- “From a legal perspective, there’s less of a regulatory burden in Texas. It’s a more business- and employer-friendly state in many ways. You have to jump through far fewer hoops in Texas or Florida as an employer than you do in California in terms of reporting requirements and more.”

The Tesla logo, consisting of the word "TESLA" in a stylized, uppercase, sans-serif font. The letters are white and set against a dark background.

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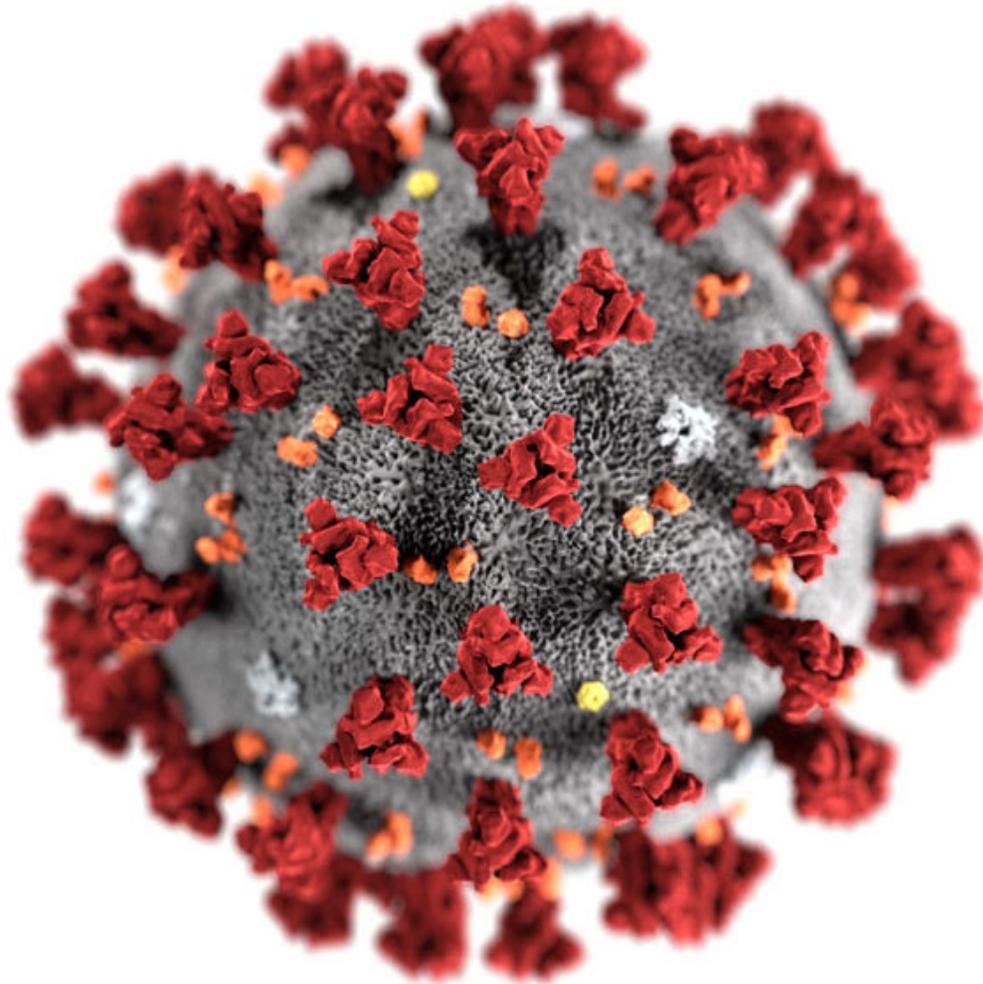
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COVID Impact



PANDEMIC MOVES

Pandemic Changed Where Americans Live

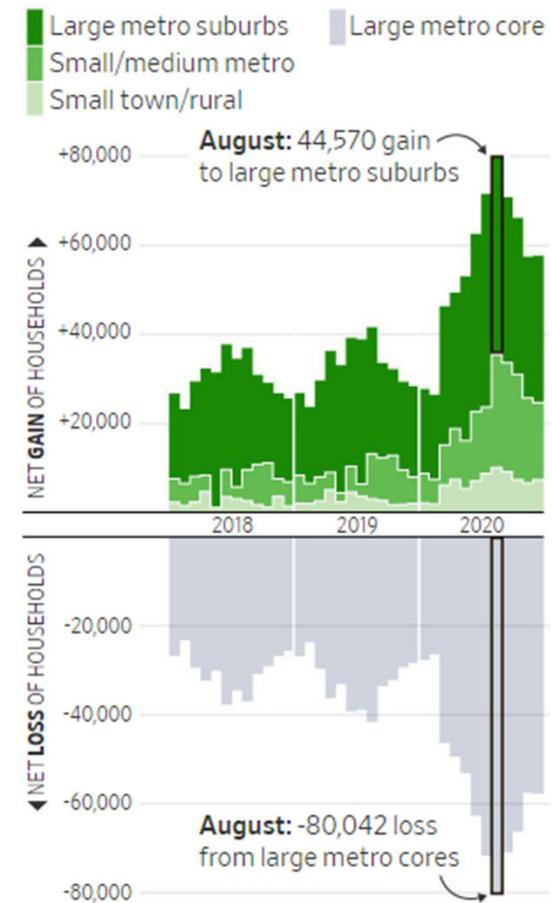
- Big cities lost residents
- Younger households left for the suburbs
- Older people accelerated retirement moves
 - Fewer newcomers came to take their places

PANDEMIC MOVES

Pandemic Changed Where Americans Live

- South, especially Florida and Texas, added households
- Northeast lost households
- Big Cities lost households

Net flow of households by county type, monthly



Note: In May 2018 small/medium metro counties had a net loss of 1,300 households (not shown)
Source: U.S. Postal Service

PANDEMIC MOVES

Vaccine Mandate Implications – Widespread and Still TBD

One Example:

“NYPD Officers Flee New York for Better Opportunities in Florida Police”

- 14 NYPD officers have moved to Lakeland, FL Police Department in the past year
- Main factor: NYPD’s Vaccine Mandate

NEBRASKA INCENTIVES - COVID

GIL 29-20-2 Tax Incentives: Treatment of Alternative Employment Arrangements Due to the COVID-19 (May 28, 2020)

- Sets rules for alternative employment arrangements, made necessary by COVID-19
- While GIL was applicable, DOR did not require employers to track the location of workers displaced by the pandemic
 - Applied from March 13, 2020 through January 1, 2021, or 30 days after end of declared emergency, whichever is later
 - Expired July 30, 2021 per NDR Notice

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National Events



TOP 20 NORTH AMERICAN DEALS

**Agriculture
Technology Campus
Early Branch,
South Carolina**
\$314 million, 1,500 jobs

**Centene Corporation
Charlotte,
North Carolina**
\$1 billion, 3,200 jobs

**Great Plains MDF
Kneehill County,
Alberta**
\$563 million, 1,000 jobs

**Northrop Grumman
Ogden,
Utah**
\$380 million, 2,250 jobs

**Ultium Cells LLC
Lordstown,
Ohio**
\$1.5 billion, 1,100 jobs

**Amazon.com
Detroit,
Michigan**
\$400 million, 2,000 jobs

**Fiat Chrysler
Automobiles
Windsor, Ontario**
\$986 million, 2,000 jobs

**Grön Fuels
Baton Rouge,
Louisiana**
\$9.4 billion, 1,025 jobs

**Taiwan Semiconductor
MFG Co. Ltd.
Phoenix,
Arizona**
\$12 billion, 1,600 jobs

**Urban Outfitters
Kansas City,
Kansas**
\$350 million, 2,000 jobs

**Amazon.com
New York,
New York**
\$250 million, 2,000 jobs

**General Motors
Hamtramck,
Michigan**
\$2.2 billion, 2,200 jobs

**Lordstown Motors
Lordstown,
Ohio**
\$423 million, 1,570 jobs

**Tesla Motors
Del Valle,
Texas**
\$1 billion, 5,000 jobs

**Walmart Inc.
McCordsville,
Indiana**
\$600 million, 1,000 jobs

**Axiom Space
Houston,
Texas**
\$2 billion, 1,000 jobs

**General Motors
Oshawa,
Ontario**
\$762 million, 1,400 jobs

**Netflix, Inc.
Albuquerque,
New Mexico**
\$1 billion, 1,000 jobs

**Toyota Motor Corp.
Guanajuato,
Mexico**
\$700 million, 1,000 jobs

**West Coast Olefins
Prince George,
British Columbia**
\$5.6 billion, 800 jobs

NATIONAL EVENTS

Incentives: “Fighting Back - Poaching Companies? California Draws The Line And Ups The Ante”

Allocates \$285 million in tax credits for FY2022 to the CalCompetes Tax Credit Program.

Eligible if:

- Create 400 New FTE jobs
- New Facilities of \$10 million, or
- Create jobs at high poverty or unemployment areas

NATIONAL EVENTS

Clusters: Top 10 Life Sciences Clusters In The U.S.

1. Boston / Cambridge
2. San Francisco
3. New York / New Jersey
4. U.S. Capital Region
5. San Diego
6. L.A. / Orange County
7. Greater Philadelphia
8. Seattle
9. Raleigh-Durham
10. Chicagoland

Based on: NIH Funding, Venture Capital Funding, Patents, Lab Space and Jobs

Lordstown Motors To Sell Ohio Plant to Taiwan-Based Foxconn

- Lordstown Motors, the electric vehicle start-up company, to sell its Lordstown, Ohio manufacturing plant to the Taiwan-based Foxconn
 - General Motors idled in 2019
- Foxconn reduced its commitment to WI
 - Over \$1 billion investment cut to \$672 million
 - Over 13,000 jobs cut to 1,500
 - Likely to get \$80 million tax credits over 6 yrs from WI



NATIONAL EVENTS

Infrastructure: Electricity – Top Utilities In Economic Development

List of the Top 20
out of 3300
Utilities:

Includes



GROWTH OF WIND INDUSTRY

Advancing the Growth of the U.S. Wind Industry: Federal Incentives, Funding, and Partnership Opportunities

- To stimulate the deployment of renewable energy technologies, including wind
- Federal government provides incentives for private investment, including:
 - Tax credits
 - Financing mechanisms such as tax-exempt bonds,
 - Loan guarantee programs
 - Low interest loans



Study: Global Perspective on State Sales Tax Systems: Inefficient, Ineffective & Obsolete

Key Findings

- U.S. state sales taxes are inefficient and ineffective consumption taxes
 - Overinclusive of business inputs
 - Underinclusive of household goods & services
- U.S. relies less on consumption taxes – more on income, payroll & property taxes – than any other advanced nation

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International Events



Global Best To Invest 2021

Top 10 Countries

1. United States
2. Canada
3. United Kingdom
4. Australia
5. Germany
6. Ireland
7. Netherlands
8. Belgium
9. Sweden
10. China

Top 10 Countries Per Capita

1. United States
2. Ireland
3. Canada
- T4. Australia
- T4. United Kingdom
6. Sweden
7. Denmark
8. Finland
- T9. Netherlands
- T9. Belgium

Infrastructure: 2021 Global Groundwork Index

- | | |
|------------------|-------------------------|
| 1. Canada | 6. Denmark |
| 2. Australia | 7. United Kingdom |
| 3. Costa Rica | 8. United Arab Emirates |
| 4. Bahrain | 9. Ireland |
| 5. United States | 10. Philippines |

Infrastructure Projects

INTERNATIONAL EVENTS

“2020: When Your Data Center Becomes Your Real HQ”

“Your Data Center is now the single most mission critical facility that your company owns or leases.”

Top 10 Data Center Markets Worldwide

1. Northern Virginia
2. Chicago
3. Sydney
4. Silicon Valley
5. Singapore
6. Dallas
7. London
8. Seattle
9. New York/New Jersey
10. Amsterdam

NEBRASKA'S TRADE MISSIONS

“Nebraska’s Global Reach”

- Over the past decade, Nebraska exports have totaled almost \$10 billion per year
- Gov. Ricketts has led a number of trade missions to grow Nebraska’s international commerce
 - Japan: 3 times
 - Mexico: 2 times
 - Germany: 2 times
 - Hong Kong
 - Macau
 - Belgium
 - Vietnam
 - Italy
 - China: 2 times
 - Denmark
 - Canada

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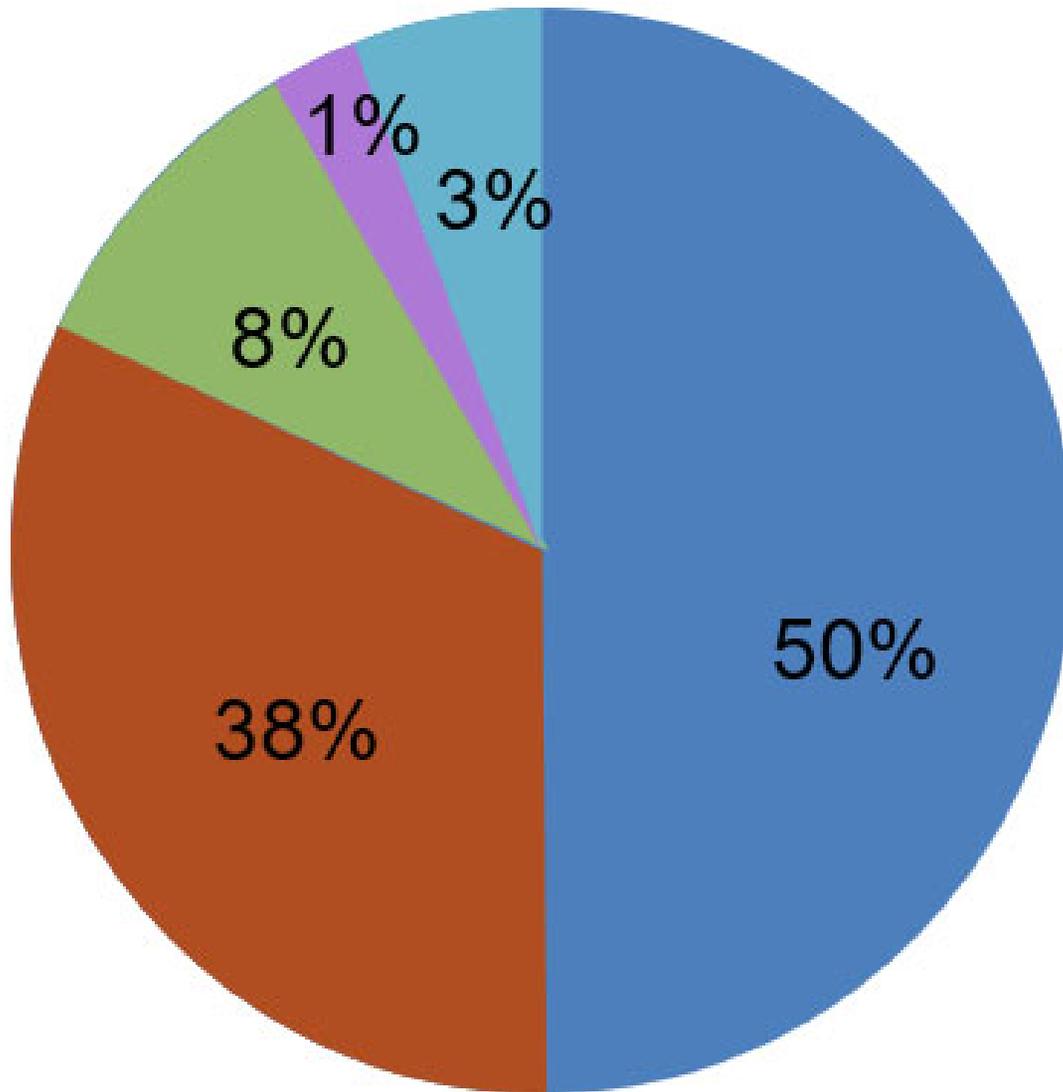
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Nebraska Tax Report Card



Nebraska State Tax Revenue Sources

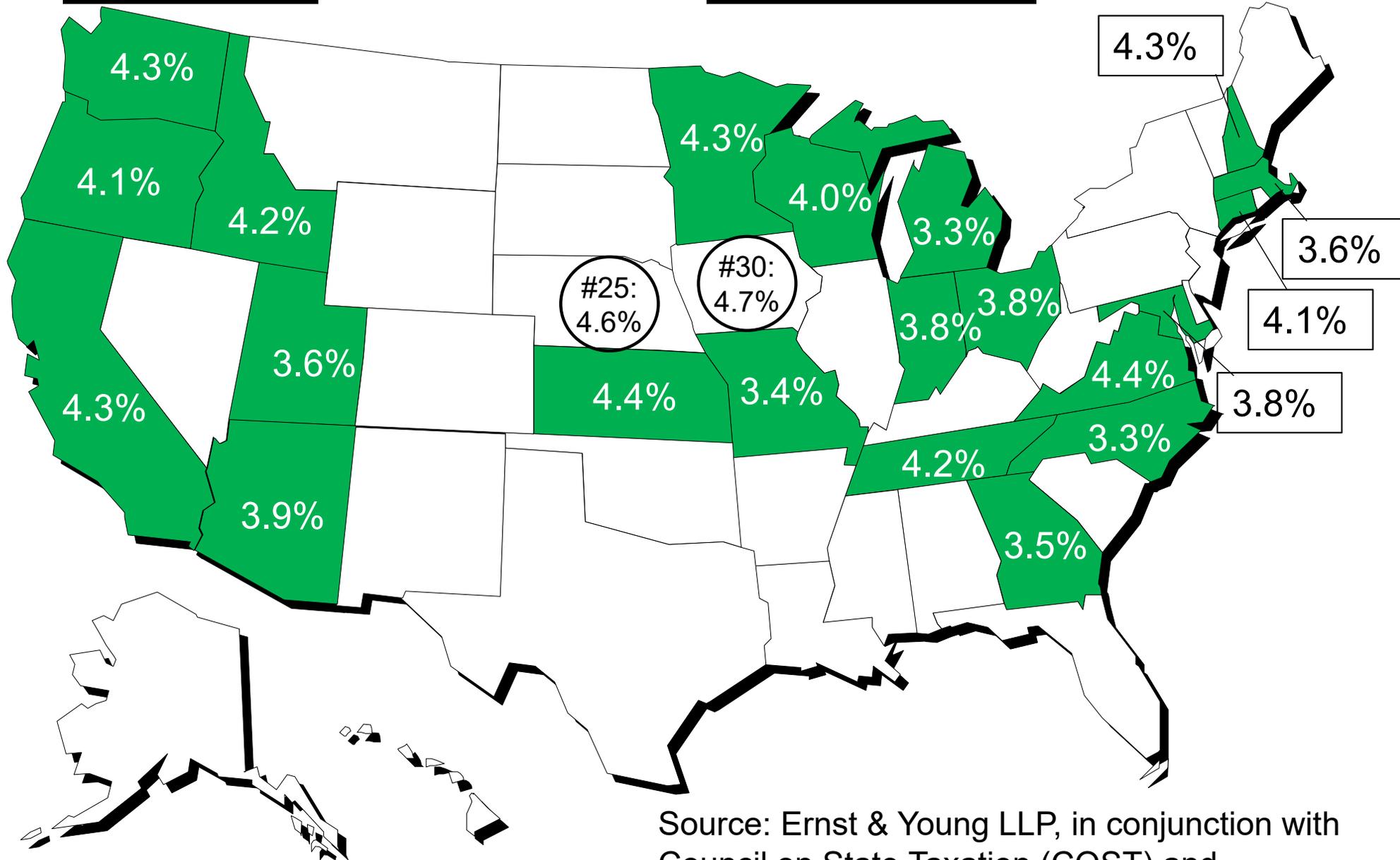


Total: \$4.9 Billion

- Individual Income Tax
- Sales and Use Taxes
- Corporate Income Taxes
- Excise Taxes
- Other Sources

Source: DAS Accounting Division
Fiscal Year 2019-2020

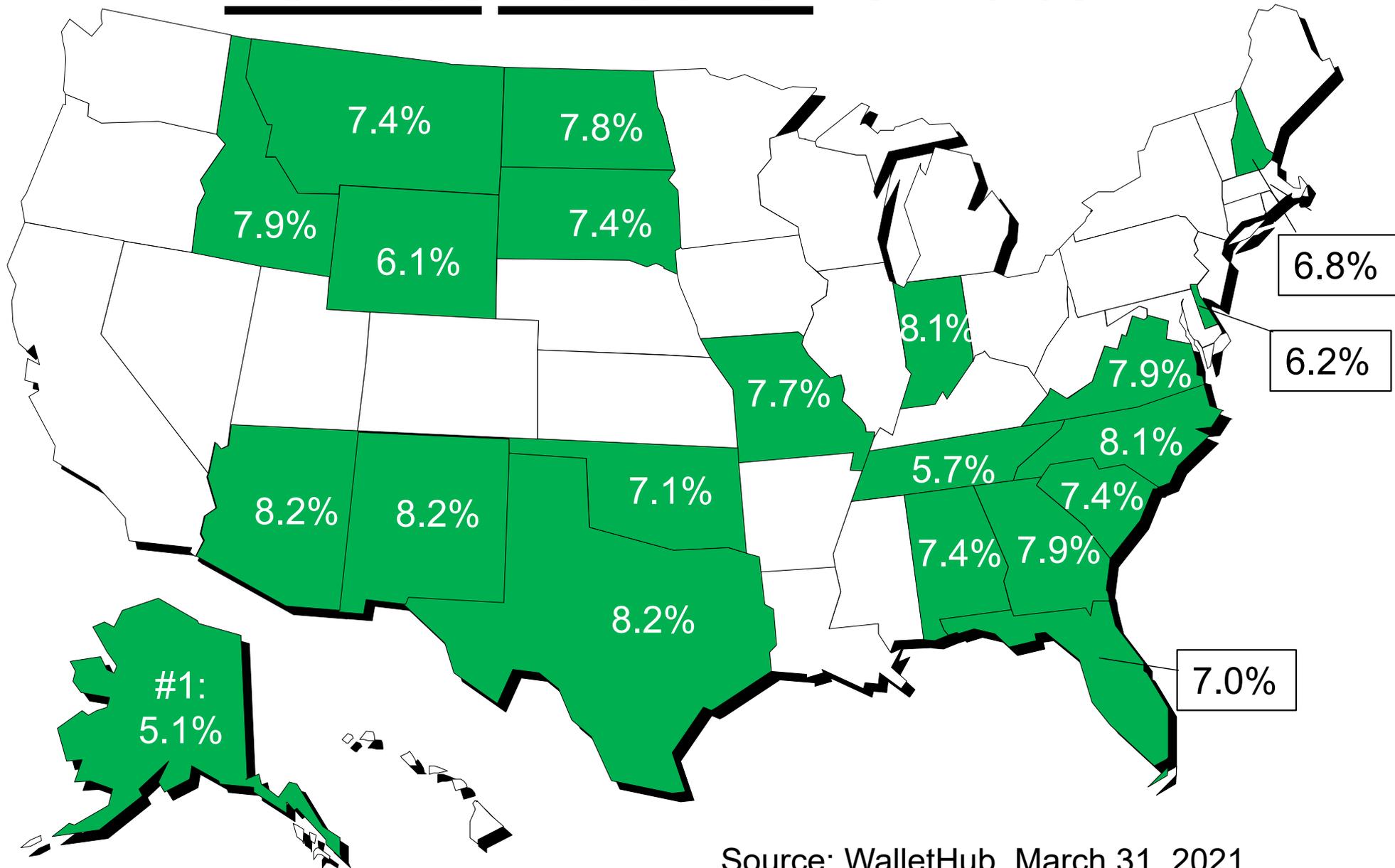
Lowest Total Effective Business Tax Rate



(#1 = Best)

Source: Ernst & Young LLP, in conjunction with Council on State Taxation (COST) and State Tax Research Institute (STRI), Oct. 2021

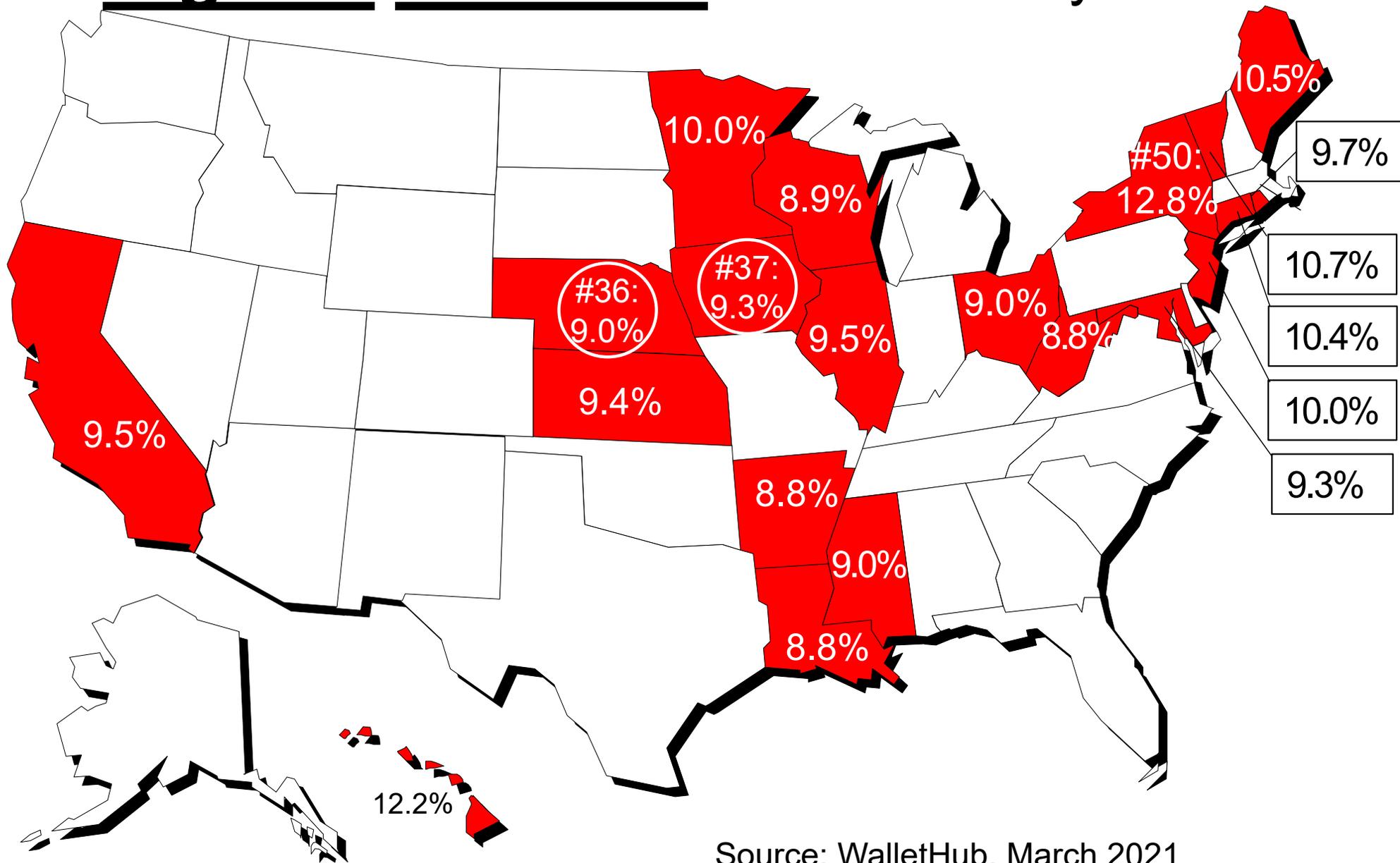
Lowest Personal Tax Burden



(#1 = Best)

Source: WalletHub, March 31, 2021.

Highest Personal Tax Burden by State

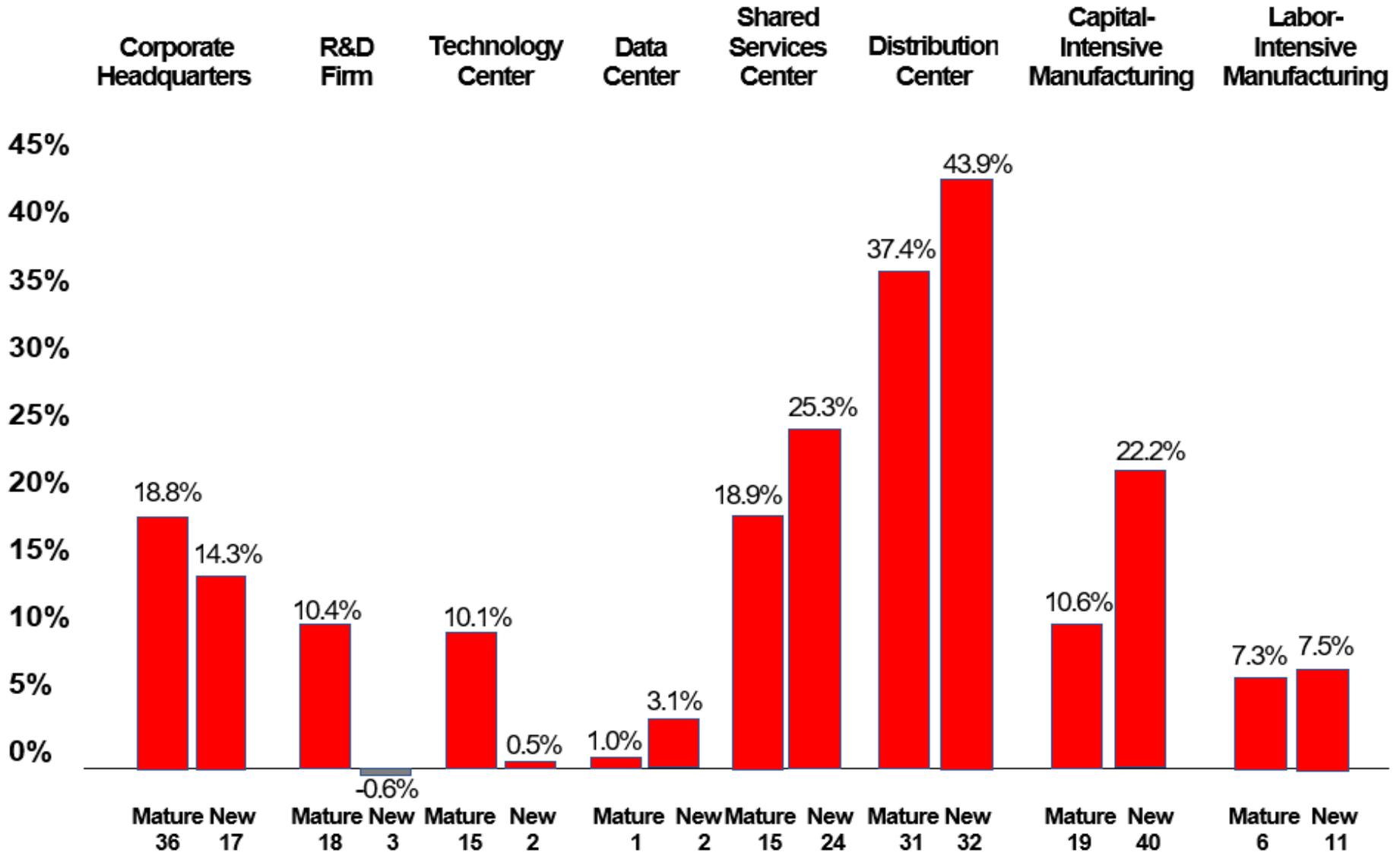


Source: WalletHub, March 2021

(#1 = Best)

Total State Tax Burden

Nebraska



Total Tax Burden = Income + Property + Sales + Unemployment Insurance Taxes

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Nebraska Income Tax Update



NEBRASKA INCOME TAX

Taxation of Social Security Benefits (LB 64)

(Operative Beginning in 2021)

- Percentage of social security benefits are deducted from Nebraska taxable income
 - 5% for 2021
 - 20% for 2022
 - 30% for 2023
 - 40% for 2024
 - 50% for 2025 and beyond
- For lower income seniors, may instead take existing exemption for Social Security
 - Below \$44,460 (\$59,960 for joint filers)
 - 100% exemption on Social Security benefits



Taxation of Military Retirement Benefits (LB 387)

(Operative Beginning in 2022)

- Exempts 100% of military retirement benefits from Nebraska income tax
 - No application is necessary
 - Includes military retirement benefits reported on Form 1099-R issued by U.S. government



Tax Credits for School District Property Taxes (LB 181)

(Operative May 6, 2021)

- Made discretionary the requirement that school district property taxes paid by an LLC, S Corp., Partnership or Fiduciary must be passed through to owners
 - Limited to tax year 2020
 - Beginning with 2021, school district property taxes paid by these must be claimed by the entity
- For tax year 2021, pass-through entities that did not claim or distribute the school district property taxes paid in 2020 are allowed a credit for the amount paid in 2020
 - 6% x amount paid in 2020
- Results – This becomes a refundable tax credit for pass-through entities

NEBRASKA INCOME TAX

Corporate Tax Rate Change (LB 432)

(Operative for Tax Years Beginning on or after 1/1/2022)

- Corporate tax rate for Nebraska Taxable Income in excess of \$100,000 is reduced
 - 7.50% in 2022
 - 7.25% in 2023 and later years
 - Was 7.81%
- No change for first \$100,000
 - 5.58%

Revenue Ruling 24-21-1

(Issued February 17, 2021)

Issue

- Does Subpart F income qualify as a dividend or deemed dividend for purposes of Nebraska deduction?

NDR Analysis

- Nebraska law allows a deduction for dividends, or deemed dividends, from foreign corporations.
- Most types of Subpart F income are not dividends or deemed dividends under federal law
 - Nebraska tax law uses federal tax definitions unless otherwise defined

Revenue Ruling 24-21-1

(Issued February 17, 2021)

Conclusion

- Subpart F income is not categorically a dividend or deemed dividend.
- However, those portions of Subpart F income that are dividends or deemed dividends can qualify for Nebraska deduction.

Revenue Ruling 24-21-1

(Issued February 17, 2021)

Apportionment

- Denominator

- Include the Subpart F income included in gross income of the corporate taxpayer
- Exclude the part of Subpart F income that is deducted as dividends received or deemed received

- Numerator

- Source to Nebraska based on rules for sales other than sales of TPP
- Must be sourced so as to fairly represent the extent of the taxpayer's business activity in this state.

Revenue Ruling 24-21-1

(Issued February 17, 2021)

Apportionment Result

- If there is not a way to identify how much activity, that results in Subpart F income, is associated with Nebraska
- Then Taxpayers must include Subpart F income in their sales factor denominator, and exclude this income from their sales factor numerator.

Revenue Ruling 25-21-1

(Issued August 5, 2021)

Issue

- How are limited liability companies and their resident individual members treated for Nebraska income tax purposes?

NDR Analysis & Conclusion

- A member of an entity organized as an LLC is allowed an adjustment decreasing federal adjusted gross income
 - For his or her share of the income of the LLC which is apportioned to states other than Nebraska
 - Using the sales-factor formula.
- So, a member cannot take a credit for taxes paid to another state on income from the LLC

Revenue Ruling 25-21-1

(Issued August 5, 2021)

- In the same situation, a partner is not allowed a decreasing adjusted gross income adjustment.
 - A full year Nebraska resident individual partner reports his or her share of the partnership's entire income to Nebraska
 - May claim a credit for taxes properly paid to another state.

GIL 24-20-1

(Issued November 19, 2020)

Issue

- Nebraska's treatment of Global Intangible Low-Taxed Income (GILTI) and Foreign-Derived Intangible Income (FDII).

NDR Analysis

- IRC Section 951A requires U.S. shareholders of a controlled foreign corporation (CFC) to include the taxpayer's GILTI in the taxpayer's gross income.
 - GILTI is based on the shareholder's net income from the CFC.
 - IRC Section 250(a) allows domestic corporations to claim a deduction against a portion of GILTI.

NEBRASKA INCOME TAX

GIL 24-20-1

(Issued November 19, 2020)

NDR Analysis

- Any IRC section 951A income included in the taxpayer's federal return must also be included in the Nebraska tax return.
 - As federal income is the starting point for Nebraska taxable income, the § 250(a) Deductions are not separately deducted on the Nebraska tax return.
- GILTI is not a foreign dividend or deemed dividend
 - Except for IRC § 78 dividends that are attributed to GILTI pursuant to IRC § 250(a)(1)(B)(ii).
- Therefore, there is no exclusion for GILTI income as a foreign dividend or deemed foreign dividend.

GIL 24-20-1

(Issued November 19, 2020)

Apportionment

- Denominator of the sales factor should include the entire amount of GILTI.
- As to numerator, this is a sale of other than TPP
- NDR suggests using rule for sales not specifically addressed under statute:
 - “Must be sourced so as to fairly represent the extent of the taxpayer’s business activity in this state.”

GIL 24-20-1

(Issued November 19, 2020)

Apportionment

- There is no uniform way to calculate numerator
 - However, a part or all of the GILTI amount should be included in the numerator
 - To the extent that the GILTI is connected with and fairly attributable to developing or maintaining the intangible property in Nebraska.

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Nebraska Sales Tax Update



NEBRASKA SALES TAX

Agricultural Machinery and Equipment (LB 595)

(Operative October 1, 2021)

- Defines exempt “agricultural machinery and equipment” to mean TPP used directly in:
 - Cultivating or harvesting a crop
 - Raising or caring for animal life
 - Protecting the health or welfare of animal life, and
 - Collecting or processing of an agricultural product on a farm or ranch³
- “Agricultural machinery and equipment” also includes:
 - Fans, curtains, and climate control equipment within livestock buildings used to protect the health or welfare of animal life; and
 - Header trailers, head haulers, header transports, and seed tender trailers.

NEBRASKA SALES TAX

Catalysts, Chemicals and Materials (LB 595)

(Operative October 1, 2021)

- Exempts sales of catalysts, chemicals, and materials used in manufacturing ethyl alcohol and its coproducts

Residential Water Services (LB 26)

(Operative October 1, 2021)

- Exempts residential water service

Towers Used in Internet and Broadcasting (LB 595)

(Operative October 1, 2021)

- Exempts income received from leasing or using towers and other structures primarily used in conjunction with furnishing:
 - Internet Access
 - Agricultural Global Positioning System Locating
 - Over the air radio and television (licensed by FCC)

NEBRASKA SALES TAX

GIL 1-21-1

(Issued September 10, 2021)

Issue

- Are purchases of water by apartment owners, residential health care facilities, and hotels exempt from sales tax as residential water services?

NDR Analysis

- Department determined that “residential water service” means that the water service is
 - Provided to places that are designed primarily for residences or permanent places of abode for people.
 - Based on plain language definition of “residence”

GIL 1-21-1

(Issued September 10, 2021)

Conclusion

- Exemption applies to
 - Single-family homes / Townhomes
 - Duplexes / Condos
 - Apartments
 - Dorms
 - Nursing Homes / Assisted Living
 - Other dwellings designed for people to live in for a considerable time

NEBRASKA SALES TAX

Conclusion

- The units do not have to be billed individually from their own meters.
 - A single meter for an apartment complex where water service is provided as part of the rent is exempt
- When there is no separate measure of water between the two uses, the exemption does not apply.
 - Hotels, motels, hospitals, jails, travel trailers, and recreational vehicles do not qualify for the exemption.
 - Sewer fees for residential service remain taxable.

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Nebraska Property Tax Update



Annexation (LB 9)

(Operative May 6, 2021)

- Allows for the annexation of land, lots, tracts, streets, and highways
 - Which are adjacent to or contiguous with property owned by the federal government
 - In counties with at least three cities of the first class.
 - To keep applicability to Sarpy County right now
 - Intended to allow the City of Bellevue to grow around Offutt Air Force Base

Special Valuation (LB 9)

(Operative May 6, 2021)

- Make agricultural or horticultural land within the corporate boundaries of a city or village
 - Within a flood plain or that is subject to air installation compatible use zone regulations
 - Eligible for special valuation
 - Prevents farmers from losing this special valuation for flood plain property if they farm ground that is annexed

NEBRASKA PROPERTY TAX

Property Tax Exemption Application (LB 521)

(Operative August 28, 2021)

- Exemption Application, Form 451, must now include an estimated valuation for the property
 - Local government must deny applications that lack an estimated property valuation or any other required information.

NEBRASKA PROPERTY TAX

Homestead Exemption (LB 313)

(Operative August 28, 2021)

- Allow an owner to file a late homestead exemption application
 - On or before June 30 of the year in which the property taxes become delinquent
- Because of the death of a spouse during the year for which exemption is requested
 - Must include a copy of the death certificate of the spouse
- or because of a medical condition which impairs the claimant's ability to apply in a timely manner

Changes in Value for Agricultural Land (LB 2)

(Operative January 1, 2022)

- All agricultural and horticultural land
 - To be valued at 50% of actual value
 - For purposes of taxes levied by school districts to pay principal and interest approved after January 1, 2022
 - Including agricultural and horticultural land that receives special valuation
 - To bring financial liability for school bonds more closely in line with voting authority for bonds

TODAY'S AGENDA

59th Annual Great Plains
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December 3, 2021

State Tax, Incentives And Economic Development Update And Impact

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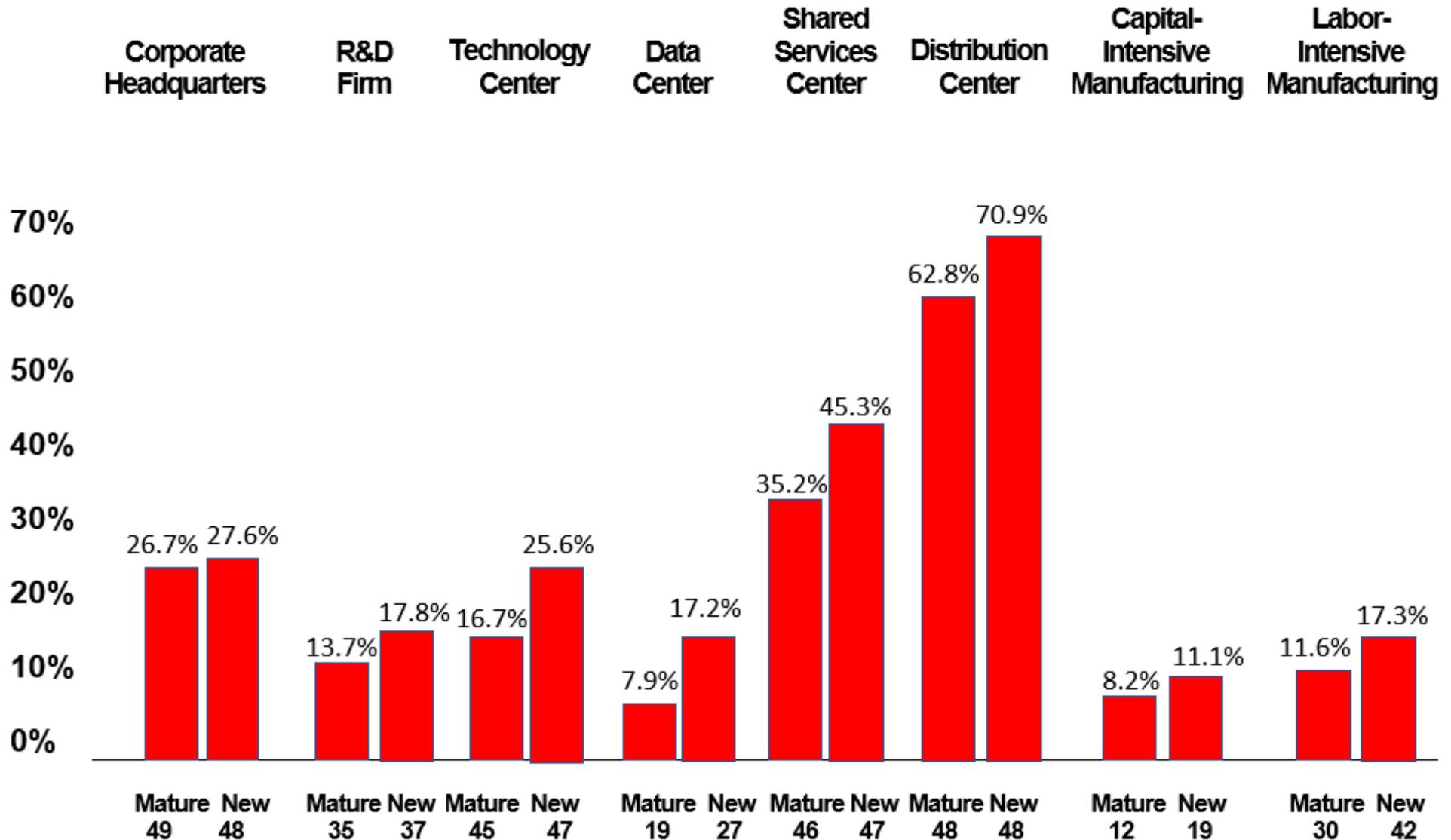


Iowa Tax Update



TOTAL STATE TAX BURDEN

Iowa



Total Tax Burden = Income + Property + Sales + Unemployment Insurance Taxes

Source: Tax Foundation, 2021

IOWA INCENTIVES

High Quality Jobs Program (SF 619)

- Reduced maximum tax credits under program from \$105 million to \$70 million annually

Renewable Chemical Production (SF 619)

- Reduced maximum tax credits under program from \$10 million to \$5 million annually

Changes Effective July 1, 2021

IOWA INCENTIVES

Beginning Farmer Credits (SF 619)

- Expanded Beginning Farmer Tax Credits Program by allowing participation for up to 15 years
- Broadened definition of agricultural assets
- Expands total amount of credits

Changes Effective January 1, 2022

Manufacturing 4.0 Technology Investment (SF 619)

- New fund meant to assist investments relating to the use of smart technologies in Iowa manufacturing operations.
- Awards may be made up to \$75,000.
- A manufacturer must meet certain criteria to be eligible for the award
 - Provide matching financial support for the investment
 - Derive a minimum of 51% of gross revenue from the sale of manufactured goods.

Changes Effective September 1, 2021

Removed Revenue Triggers (SF 619)

- 2018 Iowa Tax Reform contained certain tax revenue “triggers” to initiate certain changes in 2023.
- This bill removed those triggers, so changes take effect regardless of revenue targets.

Changes Effective January 1, 2023

IOWA INCOME TAX

Individual Tax Changes in 2023 (SF 619)

- Tax brackets will be reduced from nine to four
- Top rate reduced to 6.5%
 - Incomes above \$75,000 / \$150,000
- Federal deductibility is repealed
 - Iowans can no longer deduct federal income tax payments from Iowa income
- Federal taxable income is starting point for Iowa income taxes
 - Was Federal AGI
- Iowa capital gain deduction only applies to real property used in farming business

Changes Effective January 1, 2023

Corporate Tax Changes in 2023 (SF 619)

- Iowa conforms to the federal NOL rules.
 - Iowa previously defined “net income” as federal taxable income before federal deduction for NOL
- As part of transition, Iowa will require any federal net operating loss deduction carried over from a tax year beginning before January 1, 2023 to be added back to net income.
- Any Iowa net operating loss carried over from a tax year beginning before January 1, 2023 may be deducted as under current law.

Changes Effective January 1, 2023

Corporate Tax Changes in 2021 (SF 619)

- Iowa will now conform to federal Sec. 168(k) bonus depreciation
 - Applies retroactively for qualified assets purchased on or after January 1, 2021.
- Iowa will stay decoupled from Sec. 163(j) federal business interest expense deduction limitation.

Changes Effective January 1, 2021

IOWA INCOME TAX

Other Business Tax Changes (SF 619)

- Excludes from Iowa tax grants related to COVID-19 that were administered by Iowa agencies
 - Iowa Economic Development Authority (IEDA), Iowa Finance Authority, or Iowa Department of Agriculture and Land Stewardship.
 - Applies retroactively to March 17, 2020.
- Paycheck Protection Program (PPP) loan recipients may now claim business expense deductions related to forgiven PPP loan proceeds
 - To fully conform with federal tax law.

Changes Effective January 1, 2021

IOWA INHERITANCE TAX

Repeal of Iowa Inheritance Tax (SF 619)

- Beginning for decedents dying on or after January 1, 2021, tax is phased out by reducing rate by 20 percentage points each year
- Tax is eliminated for deaths occurring on or after January 1, 2025
 - This tax was not commonly encountered before 2021, as it did not apply to transfers to spouses or lineal descendants

Changes Effective January 1, 2021

IOWA PROPERTY TAX

Stateline Cooperative v. Iowa Property Assessment Appeal Bd. Iowa Supreme Court (4/30/21)

- Detached corn silos did not qualify as machinery
- Customized overhead ingredient bins were part of a continuous piece of machinery
 - Qualify for tax exemption



IOWA PROPERTY TAX

Lowe's Home Centers, LLC v. Iowa Property Assessment Appeal Bd. Court of Appeals (2/17/21)

- Lowe's property should be valued based on current use
- Lowe's had argued for fair market value of property if sold
 - Empty big box stores tend to sell for low values



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**State Tax, Incentives And
Economic Development
Update And Impact**

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National State Tax Update



PROPOSED FEDERAL TAX CHANGES

50-State List of Top Tax Rates Under Congressional Proposals

- Under Congressional proposal, the top state and federal combined tax rate on personal income would rise to 57.4%
 - Highest tax rate in developed world
- Combined federal and state rates:
 - NY: 66.2%
 - CA: 64.7%
 - NJ: 62.7%
 - HI: 62.4%
 - DC: 62.2%
 - KS: 59.6%
 - IA: 58.6%
 - NE: 58.2%
 - MO: 57.8%
 - CO: 56%
 - SD: 51.4%
 - WY: 51.4%

FY 2020 STATE AND LOCAL BUSINESS TAX BURDEN STUDY

State and Local Business Taxes

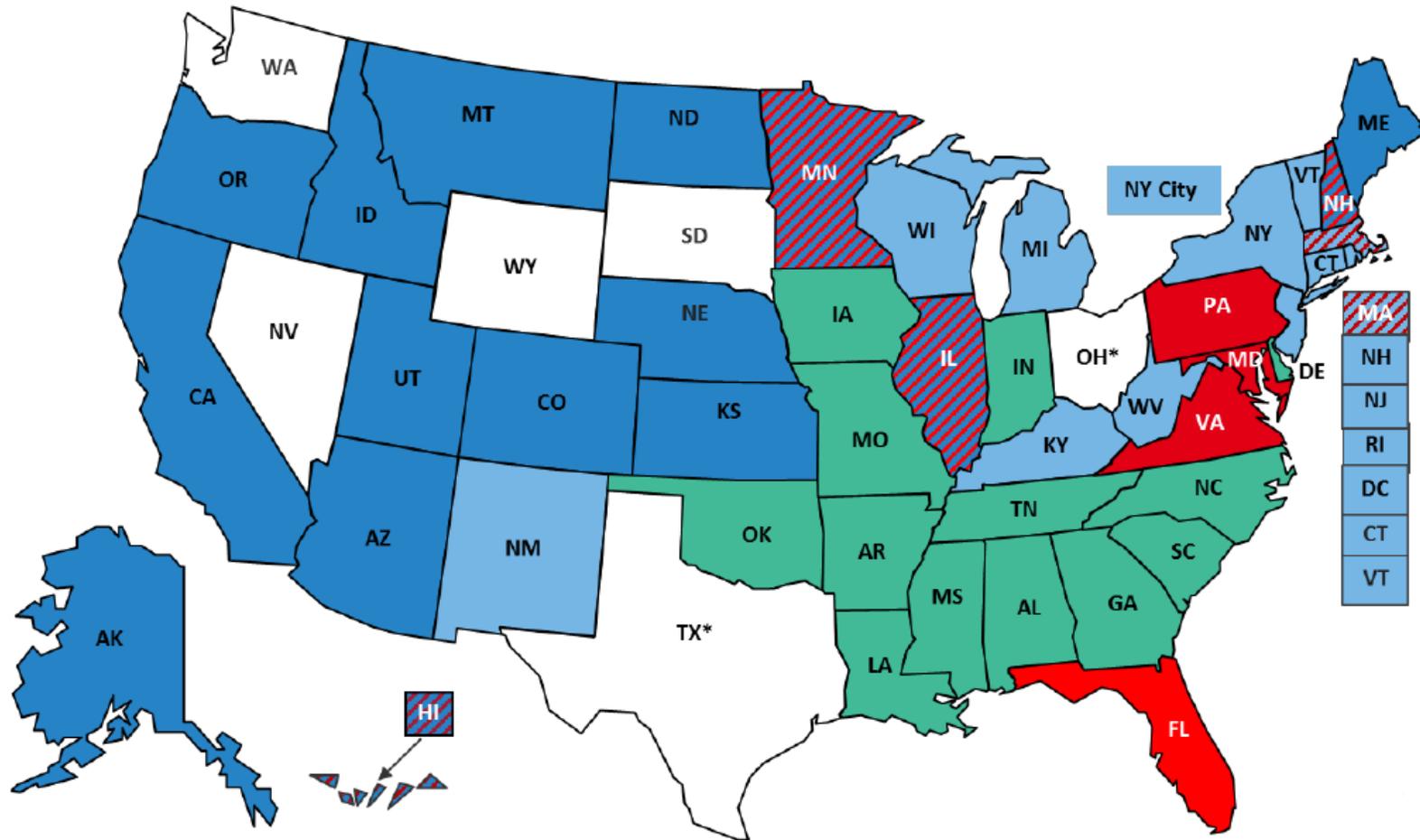
Property Tax	39%
Sales Tax on Business Inputs	22%
Excise, Utility and Insurance Taxes	13%
Corporate Income Tax	8%
Unemployment Insurance Tax	4%
Individual Income Tax (Pass-Thru Entities)	6%
License, Severance & Other Taxes	<u>8%</u>
	<u>100%</u>

How Much Do Businesses Pay?

- Businesses paid more than \$839 Billion in U.S. state and local taxes.
- Business tax revenue accounted for 44.3% of all state and local tax revenue.

Source: State Tax Research Institute and the Council On State Taxation (October 2021)

COMBINED REPORTING ADOPTION



- Combined reporting/consolidated return required prior to 2004
- Combined reporting/consolidated return adopted for 2004 or later
- Separate return state
- No income tax
- 2021 legislation introduced in separate reporting states
- 2021 legislation introduced in combined reporting states*

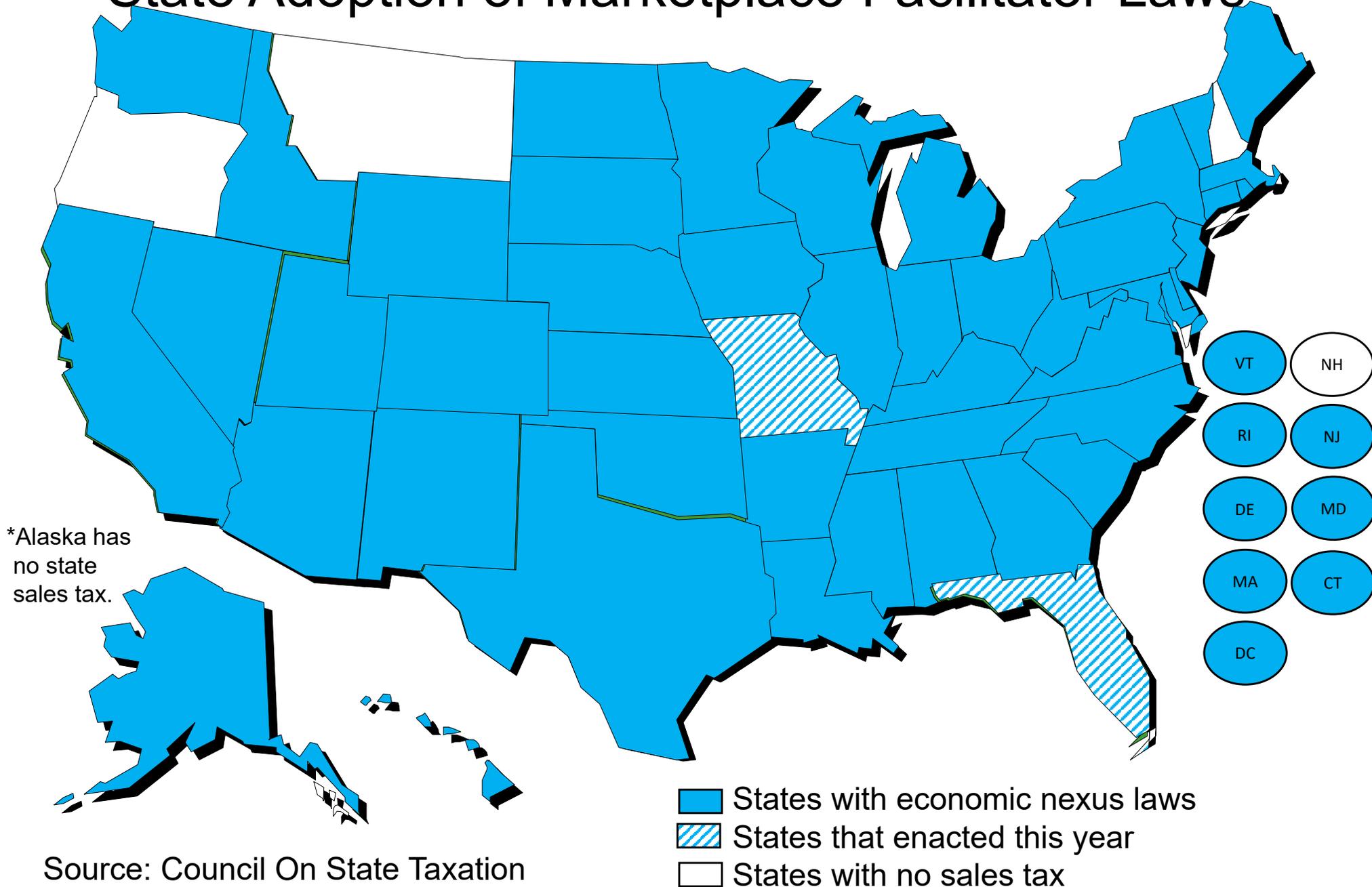
*Combined reporting for a tax based on gross receipts

Proposals To Tax Digital Services

- Digital economy has led to revenue losses for states
 - Digital services are often not subject to state sales tax
- States are thus reviewing ways to tax digital services
- Proposals:
 - New taxes on sales of digital advertising and/or
 - New taxes on collection / sale of personal information or user data

COUNCIL ON STATE TAXATION

State Adoption of Marketplace Facilitator Laws



NFT TAX ISSUES

“NFT Markets Create More Tax Concerns Than Just Gains”

- An NFT (non-fungible token) is a unique data unit stored on a digital ledger that can be sold or traded
- Each NFT represents a different underlying digital asset signifying the asset’s authenticity and possible rarity
- An NFT’s creation, use, sale, contribution to charity and loss of value may have various Federal and State tax implications



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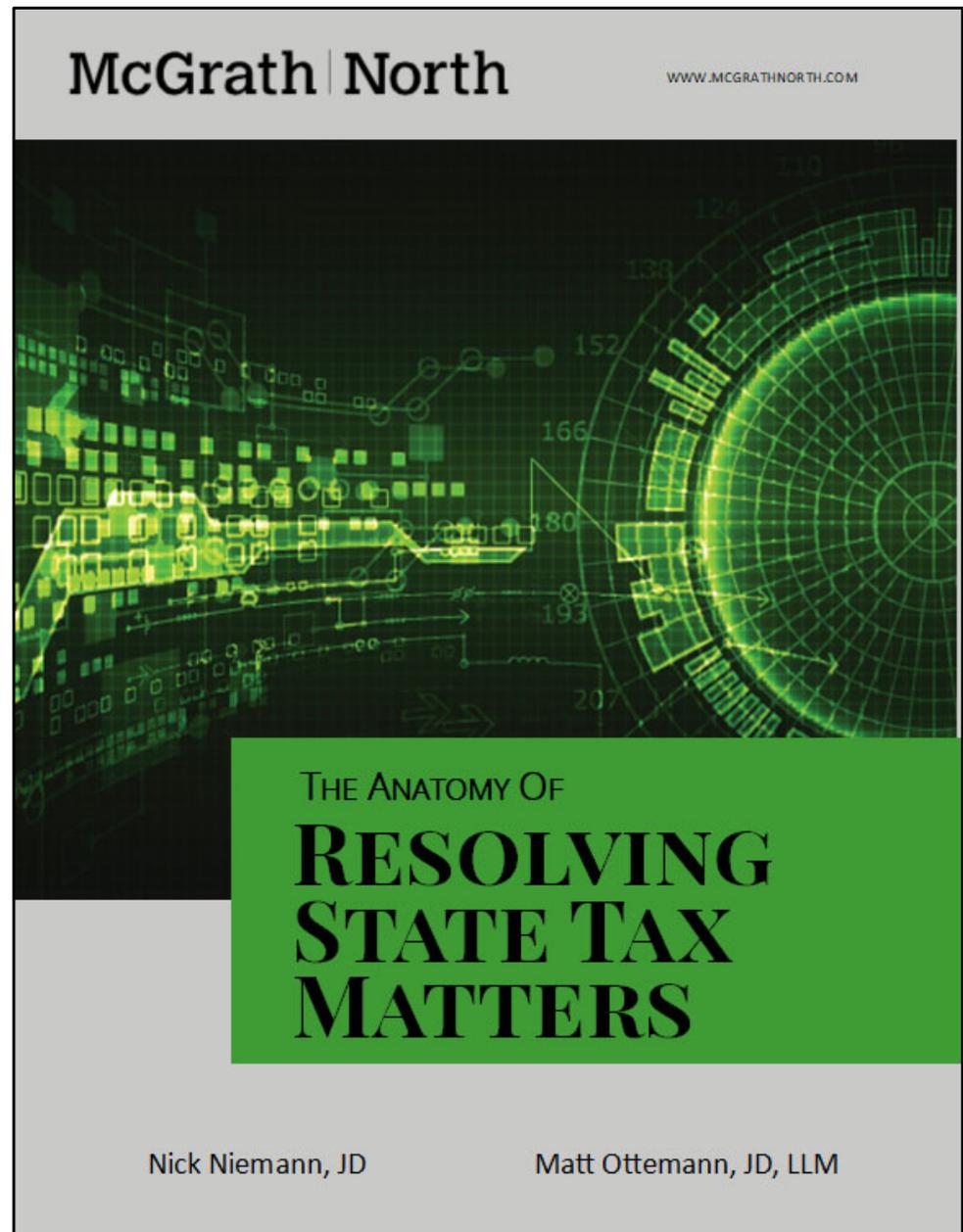


Audits & Appeals Update

NEBRASKA
Good Life. Great Service.

DEPARTMENT OF REVENUE

**This section
is based on
this:**



TAX AUDIT BEST PRACTICES

Before

(the Audit)

- Keep the Statute Open
- Determine the Team Needed
- Know When to Engage
- Think 6 Steps Ahead
- Preserve Evidence

During

(the Audit)

- Professional & Cooperative
- Know the Issues Ahead of Time
- Know How the Facts & Evidence Impact the Legal Outcome
- Protect Privilege & Work Product

After

(the Audit:
the Appeal)

- Protest or Claim = Initial Legal Pleading
- Pay or Not
 - Income vs. Sales Tax
- Request Formal Hearing
- Rules of Evidence
- Work to Resolve with Informal Conferences
- Plan to Avoid Issue Repeats

“Begin With The End In Mind”

SAMPLE OF NEBRASKA TAX ISSUES WE ARE SEEING

Personal Income Tax

- Residency
- Capital Gain Exclusion
- Deferred Compensation After Moving From NE

Corporate Income Tax

- Sec. 965 / GILTI Income
- Allocable v. Apportionable Income
- Inclusion of Subsidiaries in Unitary Tax Return

Sales Tax

- Sourcing
- Combined Goods & Services Transactions (*Enterprise Decision*)
- Taxability of Cloud Computing Services
 - Sourcing
- Security Services
- Custom Software
 - Rev. Rul. 1-02-1
- Data Center Services v. Lease

Procedure

- Late or Missed “Notices of Deficiency”

Incentives

- The 20 “Critical Legal Criteria” for Expansion Projects
- Qualified Business
- Incentives for Work From Home Employees
- Whose Location?
 - Ownership, Lease or License

Property Tax

- Valuation of Centrally Assessed Companies
- Classification of Real v. Personal

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New Case Decisions



NEBRASKA INCENTIVES

Union Pacific v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (9/30/21)

Background

- Union Pacific had LB 775 project
- Carryover Period ended 12/31/10
- Following sales tax audit, NDR assessed tax on payments for software made during 2009 and 2010
- Software was not placed into use until 2013
- Question: Can UP use LB 775 credits against 2009 and 2010 tax?



Union Pacific v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (9/30/21)

District Court Ruling

- No. UP's Carryover Period ended before software was placed in use
- So, software was not a purchase "for use at the project" as required for credit refund
- Decision was not appealed by UP



NEBRASKA SALES TAX

Big Blue Express, Inc. v. Dep't of Revenue Nebraska Supreme Court (7/30/21)

Facts

- Big Blue Express, Inc. leased aircraft to related entities
- NDR assessed tax on the purchase of the aircraft

Issues

- Whether Big Blue had purchased the aircraft for leasing in the normal course of its "business"
- Whether Nebraska sales tax exemption for sales to lessors is available when leasing to related parties
 - NDR claimed that any lease to a related company retroactively made the lessor liable for sales tax on the purchase price



NEBRASKA SALES TAX

Big Blue Express, Inc. v. Dep't of Revenue Nebraska Supreme Court (7/30/21)

Rulings

- Due to fact details in case, Big Blue did not qualify as purchasing the aircraft for leasing in “the normal course of its business”
- Dist Ct. Ruling: Nebraska sales tax exemption for sales to lessors is available when leasing to related parties
 - S.Ct. declined to rule on this question



NEBRASKA SALES TAX

Gelco Fleet Trust v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (7/2/21)

Background

- Company purchased a 2020 GMC Terrain to replace a 2015 Chevy Equinox
- Claimed credit for trade-in on a sales tax refund claim
- Timing:
 - Old vehicle was traded in by Company in August 2019
 - New vehicle was purchased October 2019
- NDR Denied Refund Claim
- NDR claimed that trade-in vehicle must be taken in trade in the same transaction as the purchase

NEBRASKA SALES TAX

Gelco Fleet Trust v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (7/2/21)

District Court Decision

- Purchase of old vehicle and new vehicle were separate transactions
- Nebraska law requires the trade-in and new vehicle purchase must occur in the same transaction
- Affirmed denial of refund claim
- Decision appealed to Nebraska Court of Appeals

NEBRASKA INCOME TAX

Houghton v. Dep't of Revenue

Nebraska Supreme Court (1/15/21)

Facts

- Taxpayer accepted a job in England and moved there on a restricted work visa
- Visa expired after 3 years
- Taxpayer obtained second restricted visa, and eventually pursued permanent residency in England
- Kept home in Nebraska for several years

Issue

- During years in which taxpayer had restricted visa, whether taxpayer maintained Nebraska domicile

NEBRASKA INCOME TAX

Houghton v. Dep't of Revenue Nebraska Supreme Court (1/15/21)

Tax Commissioner Ruling

- To establish new domicile, must have intention to remain at new location for an indefinite period of time
- Visa had expiration date, so could not have had intention to remain indefinitely
- Also, Taxpayer claimed special capital gains exclusion in one year, which taxpayer could not do unless a resident for tax purposes

Conclusion: Taxpayer remained Nebraska resident for tax purposes

NEBRASKA INCOME TAX

Houghton v. Dep't of Revenue Nebraska Supreme Court (1/15/21)

Supreme Court Ruling

- Affirmed District Court and Tax Commissioner
- When someone moves to foreign county, the nature of their visa is critical in determining domicile
- Court also noted statement of Taxpayers regarding eligibility for special capital gains exclusion in Nebraska, in which they claimed they were Nebraska residents

Conclusion: Taxpayer remained Nebraska resident for tax purposes

COST (Council on State Taxation)

v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (6/17/21)

Background

- NDR issued GIL 24-19-1 on September 13, 2019
 - Modified GIL 24-18-1 issued on December 21, 2018
- NDR ruled that foreign earnings that are deemed repatriated under IRC 965 are not eligible for the Nebraska income tax deduction for dividends received from foreign corporations

COST (Council on State Taxation)

v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (6/17/21)

COST's Position

- Nebraska's dividends-received deduction is available for both dividends and "deemed dividends"
- 965 Income inclusions are "deemed dividends"
- Therefore, 965 Income is eligible for Nebraska's dividends-received deduction



COST (Council on State Taxation)

v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (6/17/21)

District Court Ruling

- COST filed as action for Declaratory Judgment
- Dist. Ct. ruled that it could not rule on substance of COST's position, as the GLs were "Guidance Documents"
 - Not formal regulations

Appeal to Court of Appeals

- COST filed appeal to Court of Appeals
- COST dismissed case before judgment
 - Expecting ruling on merits via action by a separate company



Acklie v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (Filed November 12, 2021)

Background

- Retired couple purchased Florida home and kept Nebraska home
- Question: Did they remain Nebraska residents?

NEBRASKA INCOME TAX

Acklie v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (Filed November 12, 2021)

Key Facts for Florida

- FL drivers' licenses
- Registered to vote in FL
- FL Homestead Exemption for Residents
- FL registered vehicles
- Moved personal property to FL

Key Facts for Nebraska

- NE registered vehicles
- Used NE mailing addresses
 - Receipts of most political contributions
 - Had mail forwarded to NE
- More time in NE than FL
 - Also significant travel to other locations
 - Started and ended travel in NE

NEBRASKA INCOME TAX

Acklie v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (Filed November 12, 2021)

Tax Commissioner Ruling

- Couple maintained Nebraska domicile
- Maintained Nebraska residency for tax purposes

District Court Ruling

- District Court Affirmed Tax Commissioner
- Key Fact – Couple routinely traveled to and from Lincoln home when taking trips

NEBRASKA PROCEDURE

Lynch Properties v. Dep't of Revenue

Douglas County District Court (4/13/21)

- Taxpayer received “Balance Due Notice” for income taxes
- NDR collected tax by levying bank account
- Taxpayer then filed refund claim for taxes at issue and filed action at Dist. Ct. following NDR inaction
- NDR defended by claiming that taxpayer could not file refund claim under Sack decision

Conclusion: Taxpayer voluntarily dismissed appeal prior to decision by Dist. Ct.

Revenue Ruling 99-21-1

(Issued February 5, 2021)

Issue

- What is the procedure for requesting a review of a guidance document issued by the Department of Revenue?

NDR Analysis

- Nebraska law specifies that any person may request a review of a guidance document
 - To revise or repeal guidance document
 - To convert a guidance document into a formal regulation
- Guidance document includes Revenue Rulings, General Information Letters and Information Guides

Revenue Ruling 99-21-1

(Issued February 5, 2021)

NDR Analysis

- Request must:
 - Identify the person making the request
 - Identify the specific guidance document
 - Include statements of law or fact and any legal arguments justifying revision or repeal;
 - State concisely the specific revisions sought or request that the guidance document be repealed entirely by DOR; and
 - Be signed by the requestor or authorized representative

Revenue Ruling 99-21-1

(Issued February 5, 2021)

Conclusion

- Within 60 days after receiving the request, the requestor will receive a written determination from the Department that it will:
 - Revise or repeal the guidance document;
 - Initiate an action to revise or repeal the guidance document;
 - Initiate a rulemaking proceeding covering the subject matter of the guidance document; or
 - Deny the request and state the reasons for denial.

NEBRASKA PROPERTY TAX

Property Tax Protest Form (LB 291)

(Operative January 1, 2022)

- Require property tax protests to be made on a form created by the Tax Commissioner or a county.
- All property tax protests must include a requested property valuation.

NEBRASKA PROPERTY TAX

Property Tax Protest Form (LB 291)

(Operative January 1, 2022)

- If any required information is not included on the protest form, the county board of equalization must dismiss the protest.
- Prior to June 30 each year, counties are allowed to contact protestors
 - Who have filed a timely protest but have not provided all required information
 - Who have not used the required form.

Property Tax Refund Changes (LB 644)

(Operative January 1, 2022)

- Property tax refunds must be paid no more than 30 days after a final action finding that a refund is due
 - Or any unpaid balance will be subject to 9% interest
 - If mutually agreed to by the local government and taxpayer, the refund may be applied to satisfy future taxes until refund claim is satisfied.

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A Look Ahead to 2022



Blueprint Nebraska



Tax Modernization Framework

- Strategically Reduce Property Tax Burden
- Simplify Income Taxes To Stimulate Growth
- Modernize and Expand Sales Tax Base



**Economic and Fiscal Impacts of Modernizing
Nebraska Tax Codes & Supporting Innovation
to Advance the Prosperity of Nebraska**

August 2021



Sponsor
Blueprint Nebraska



Principal Investigator
Peter Evangelakis, Ph.D.

Project Manager
Chris Judson

Economic Analyst
Xiaochu Ma

(issued August 4, 2021)

Is Nebraska's Economic Development and Tax Policy Ready For What Is Quickly Coming?

The Fourth Industrial Revolution

"Smart Factories"

Bitcoin

Blockchain

Drones

Bionics

Autonomous
Electric Vehicles

"Artificial
Intelligence"

Metaverse

Neuro-technological
brain enhancements

"Precision
Biology"

Permanent
Workforce
Shortages

Intelligent
Robots

Nanobots

Massive Disruptive
Business Models

Ongoing
Pandemic
Variants

Food Technology
Disruption

Nanomaterials

Genetic
Editing

NFTs

Disruption of
industrial animal
farming

"The Fusion of Physical,
Digital & Biological Worlds"

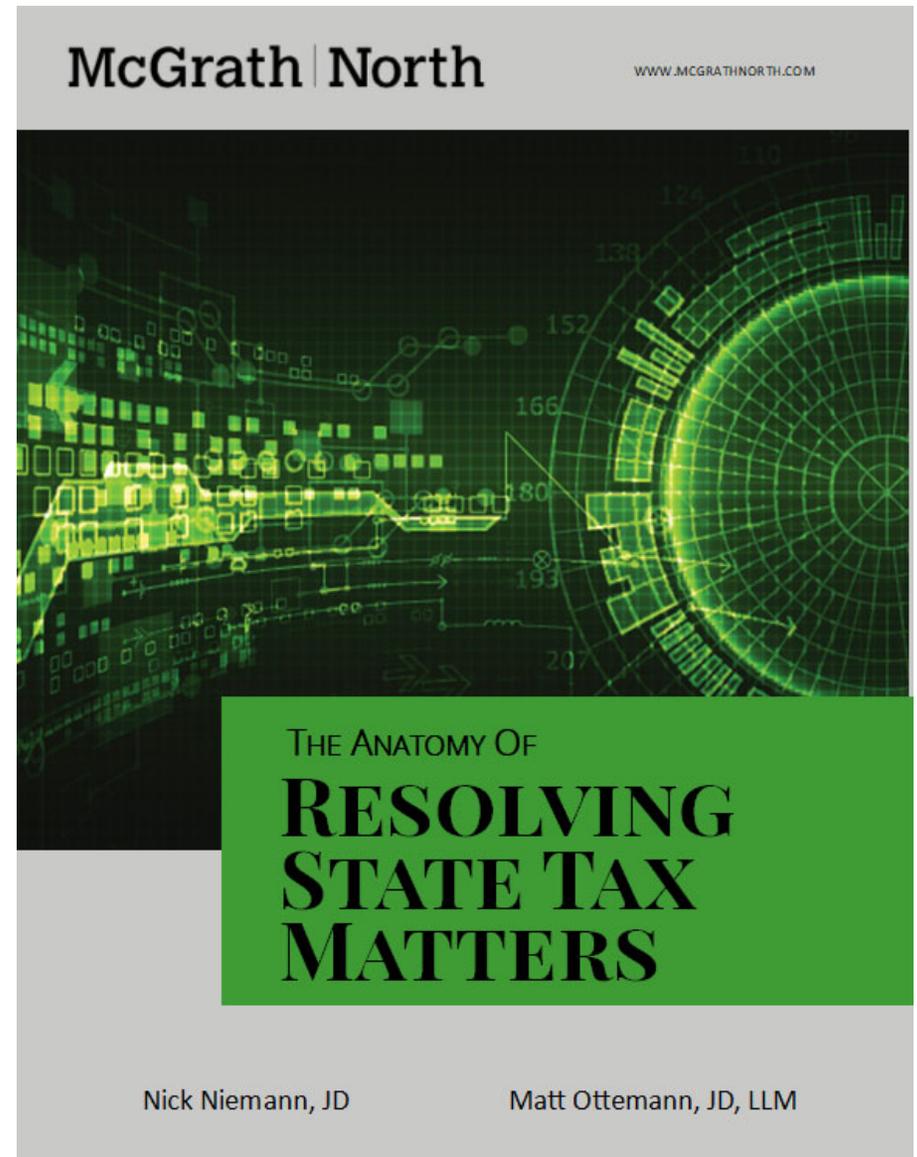
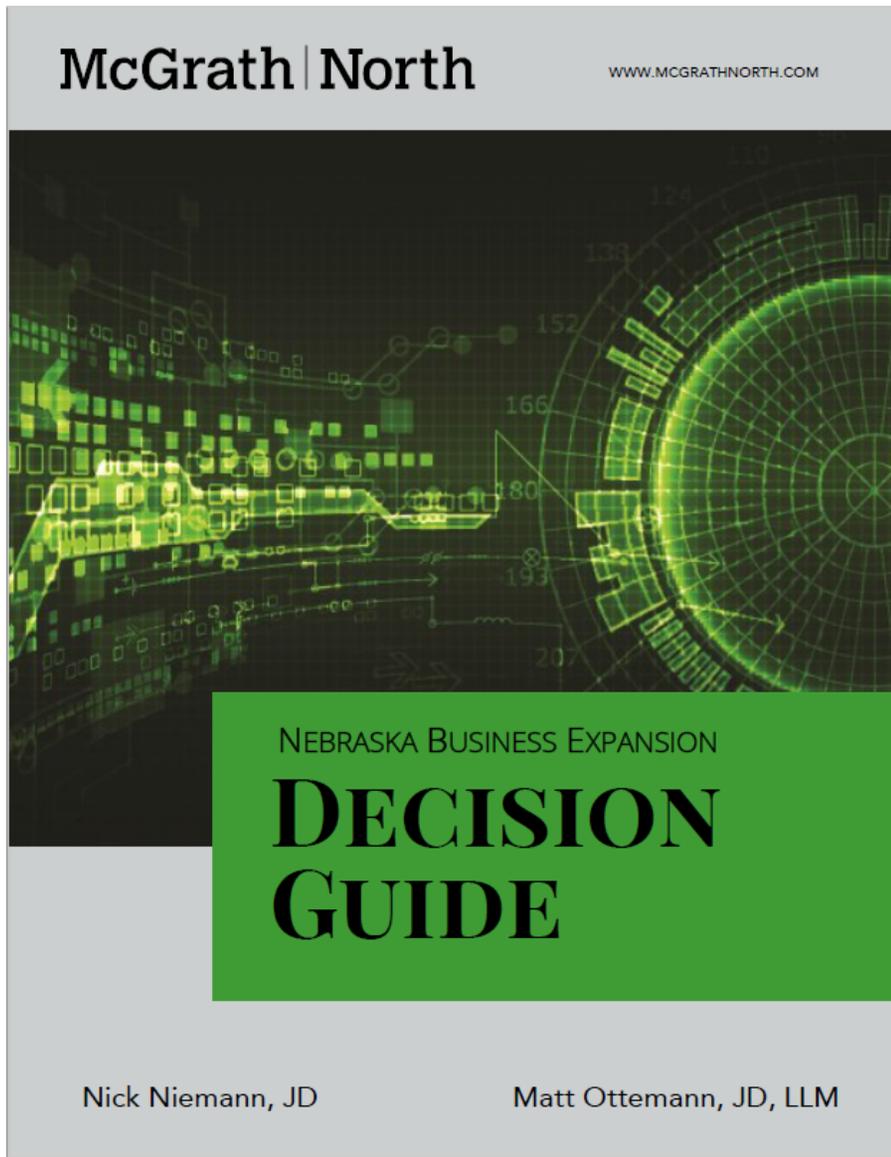
Virtual
Reality

WE WILL SEE



CLOSING THOUGHTS

MORE INFORMATION IN THESE 2 BRIEFINGS



- Please Leave Me Your Card If You'd Like A Copy -



Thank You!



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 - American Institute & Nebraska Society of CPA's
 - Council On State Taxation (COST) - Practitioner
- Creighton - College of Business 1978 (Summa Cum Laude)
 - School of Law 1981 (Magna Cum Laude)
 - Adjunct Faculty – State Tax
- Best Lawyers In America (Tax Law and Litigation & Controversy – Tax)
- “Lawyer of the Year” – Best Lawyers (Omaha) – Litigation & Controversy - Tax
- “Lawyer of the Year” – Best Lawyers (Omaha) - Tax
- Principal designer and drafter of most of Nebraska’s economic development tax incentive programs (e.g., 1987’s LB775 and 2005’s LB312, Nebraska Advantage Programs, Capital Gain Exclusion, Single Factor Apportionment, and Manufacturer Sales Tax Exemption).
- Co-designer and co-drafter of 2020 Imagine Nebraska Act
- Nick works with company tax department personnel and their outside CPA firms and/or legal counsel, to address site selection, state tax planning opportunities, tax incentives, tax audits and appeals, and refund claims and appeals.
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- American Institute & Nebraska Society of CPA's
- Creighton - College of Business 1999 (Summa Cum Laude)
- School of Law 2006 (Summa Cum Laude)
- Adjunct Faculty – Estate Planning / Estate & Gift Tax
- Alabama - LL.M in Taxation 2010 (Magna Cum Laude)



- Matt Ottemann assisted in the preparation of this Program. Matt works with Nick Niemann in the areas of tax incentives, site selection and state tax defense and planning for businesses.
- Co-designer and co-drafter of 2020 Imagine Nebraska Act
- Matt works with company tax department personnel and their outside CPA firms and/or legal counsel, to address site selection, state tax planning opportunities, tax incentives, tax audits and appeals, and refund claims and appeals.
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State Tax, Incentives And Economic Development Update And Impact

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