

**61st Annual Great Plains
Federal Tax Institute
November 30, 2023**

State Tax, Incentives And Economic Development Update And Impact

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

ATTORNEYS

TODAY'S AGENDA

60TH ANNUAL GREAT PLAINS
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STATE TAX, INCENTIVES AND ECONOMIC DEVELOPMENT UPDATE AND IMPACT

Nick Niemann, JD | Matt Ottemann, JD, LLM

Business Climate

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

Tax Changes

- Nebraska Tax Report Card
- Nebraska Income Tax Update
- Nebraska Sales Tax Update
- Nebraska Property Tax Update
- Iowa Tax Update
- National Tax Update

Resolution

- New Cases
- Audits & Appeals

What Next

- A Look Ahead to 2023
- Closing Thoughts

MORE INFORMATION IN THESE 2 BRIEFINGS

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**NEBRASKA
BUSINESS EXPANSION
DECISION GUIDE**

Nick Niemann, JD Matt Ottemann, JD, LLM

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THE ANATOMY OF
**RESOLVING
STATE TAX
MATTERS**

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Business Climate Report Card



The Ongoing Competition – Across America



Healthy Companies

Business Expansions

Site Expansions

Competing State Business Climates

Utilizing State Business Incentives

Workforce Shortage & Remote
Impact

Impact of National & International
Events

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

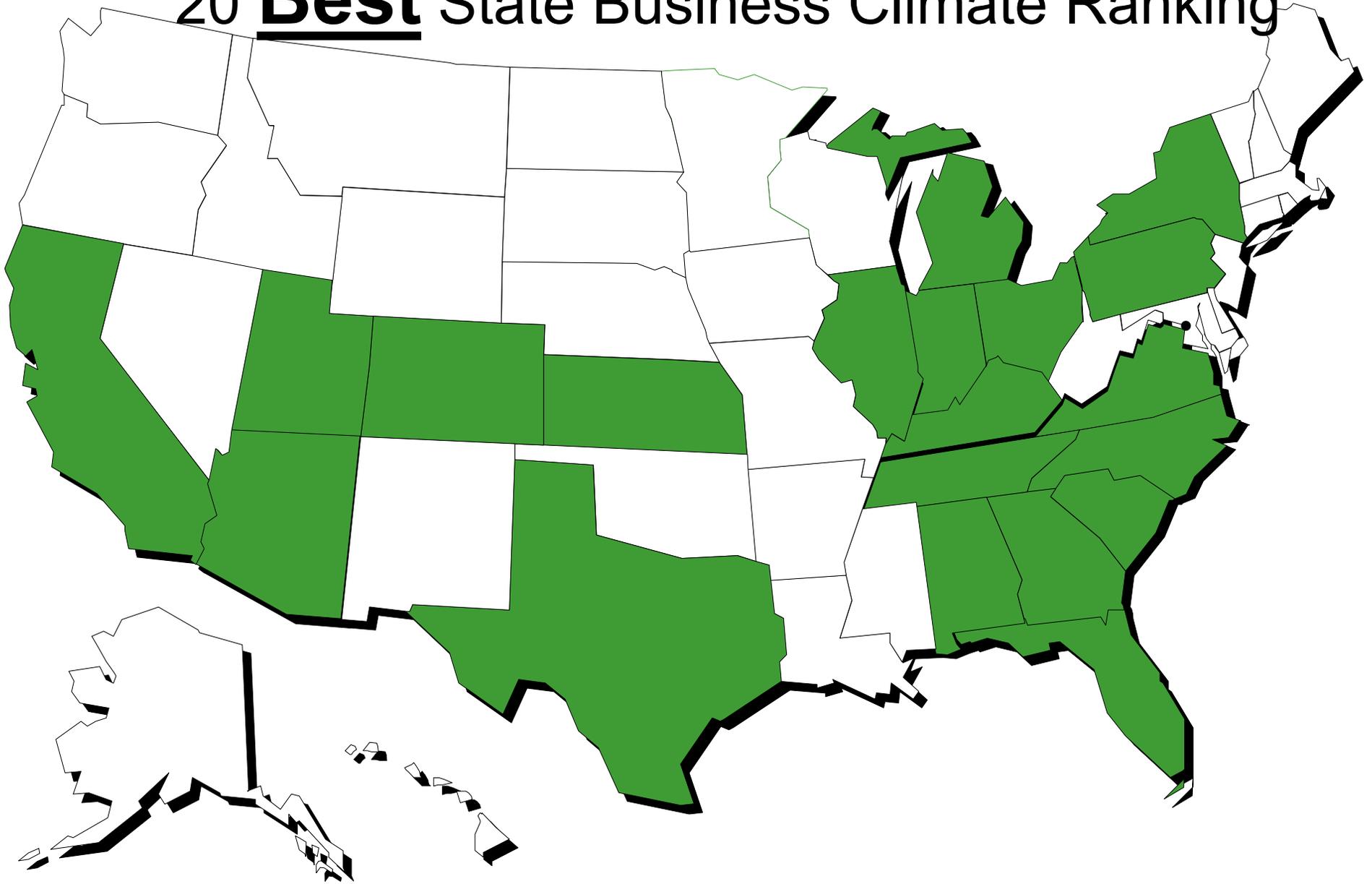
Land/building prices and
supply

Economic development
strategy

Utilities (cost, reliability)

Workforce development

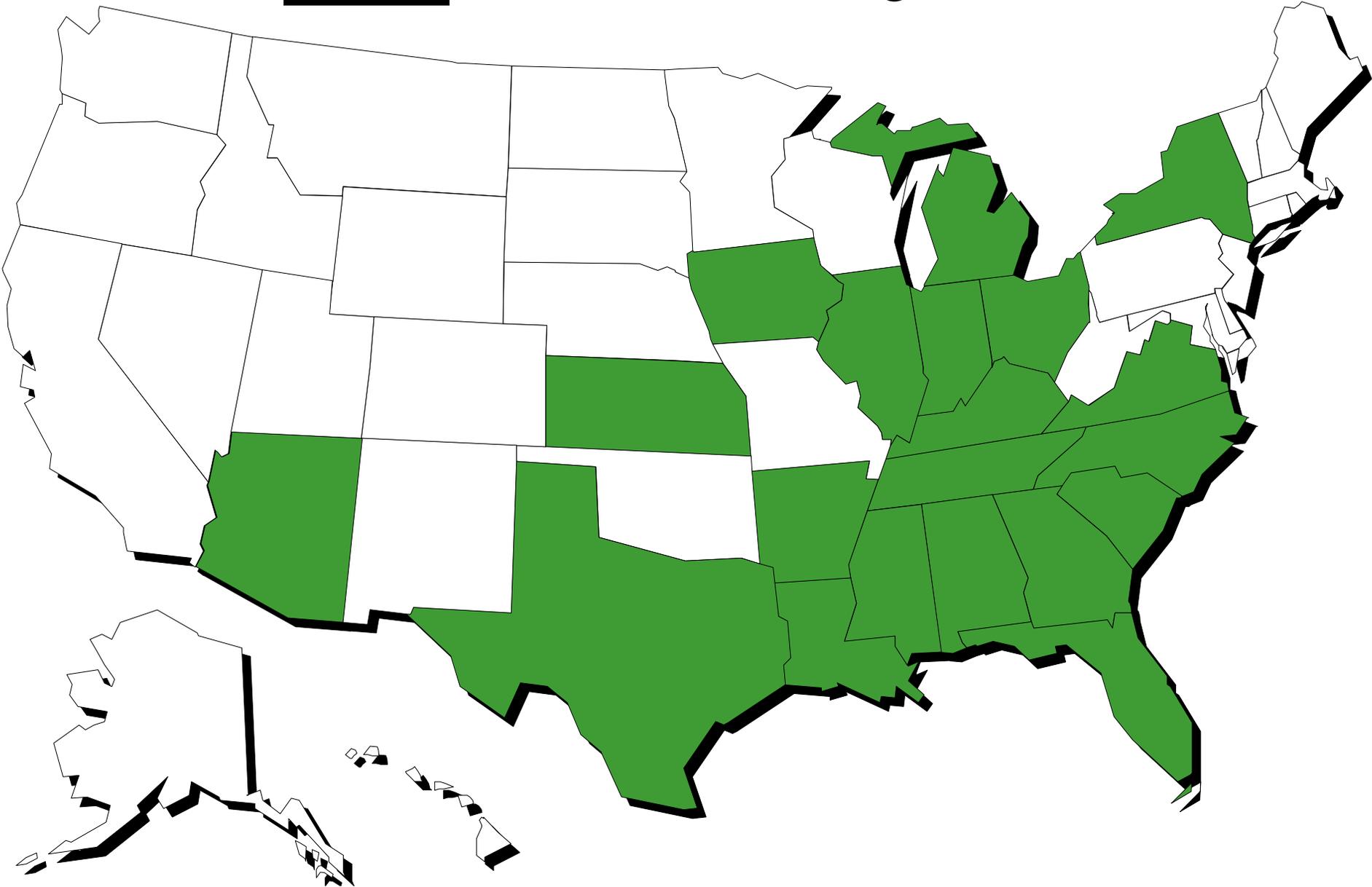
20 Best State Business Climate Ranking



Source: Site Selection Magazine, Nov. 2023

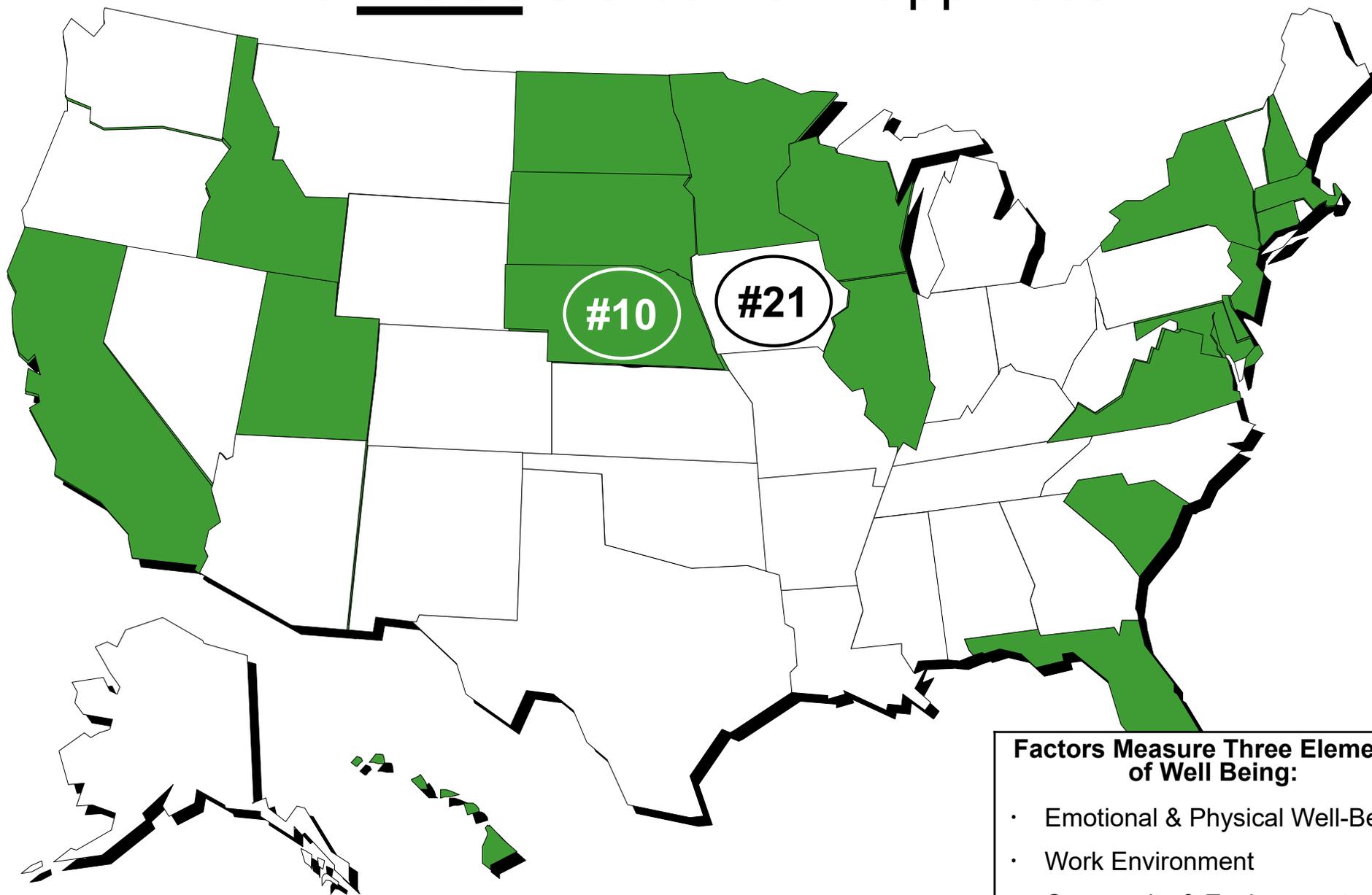
AREA DEVELOPMENT

20 Best States For Doing Business



Source: Area Development Magazine, Q3 2023

20 Best States For Happiness



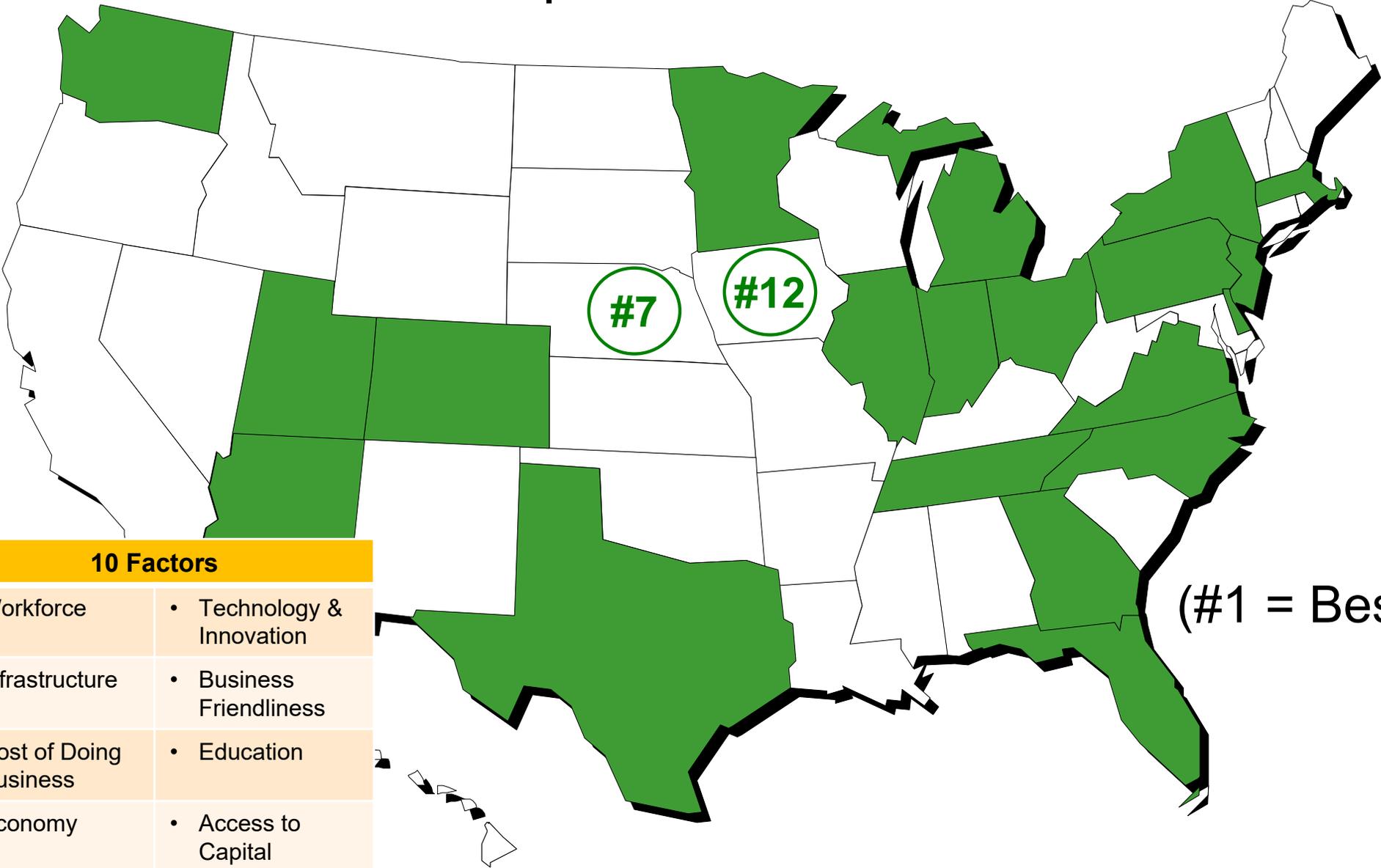
Factors Measure Three Elements of Well Being:

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

(#1 = Best)

Source: WalletHub, September 12, 2023

America's Top 20 States for Business



10 Factors

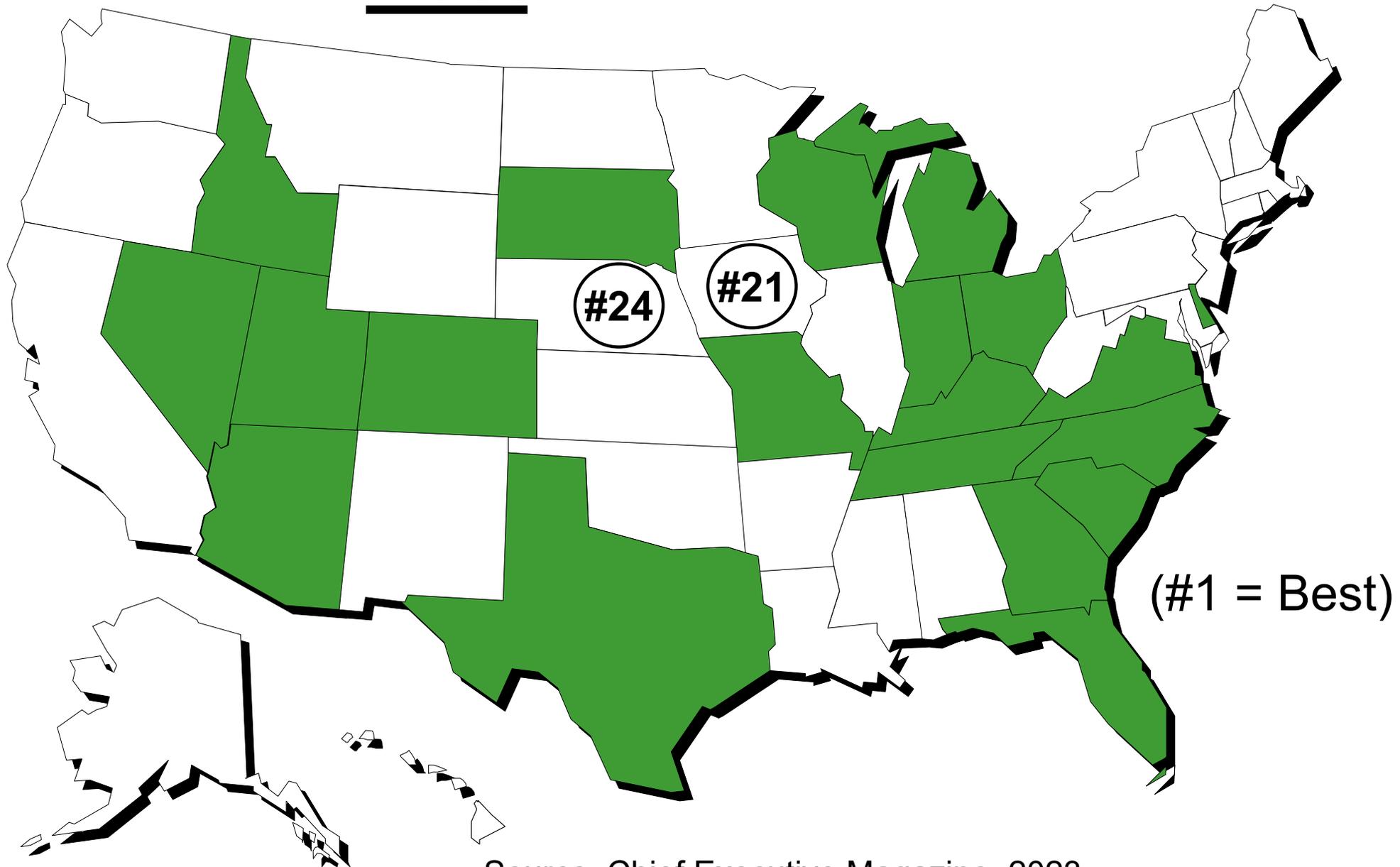
- Workforce
- Infrastructure
- Cost of Doing Business
- Economy
- Life, Health & Inclusion
- Technology & Innovation
- Business Friendliness
- Education
- Access to Capital
- Cost of Living

(#1 = Best)

Source: CNBC, July 11, 2023

CHIEF EXECUTIVE MAGAZINE

20 Best States For Business



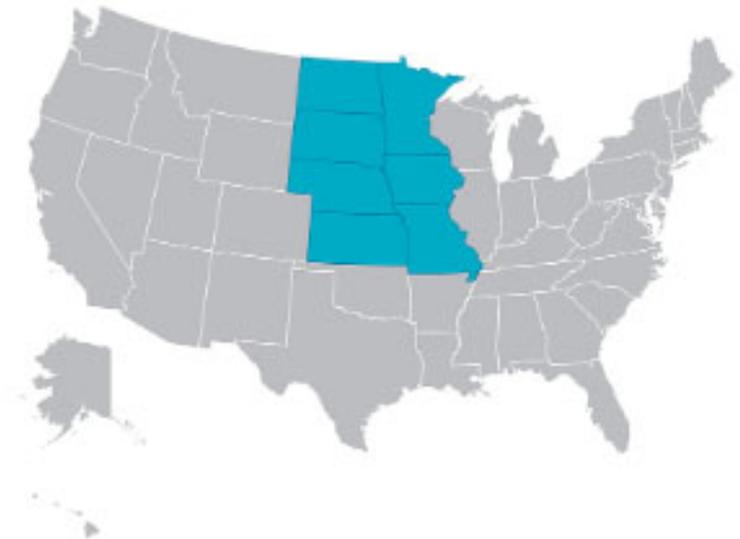
Source: Chief Executive Magazine, 2023
Based on Survey of CEOs.

SITE SELECTION

2023 Prosperity Cup – 2023 State Rankings By Region

West North Central Region

2023	2022	State
1	1	Kansas
2	5	Missouri
3	3	South Dakota
4	2	Iowa
5	7	Minnesota
6	4	Nebraska
7	6	North Dakota

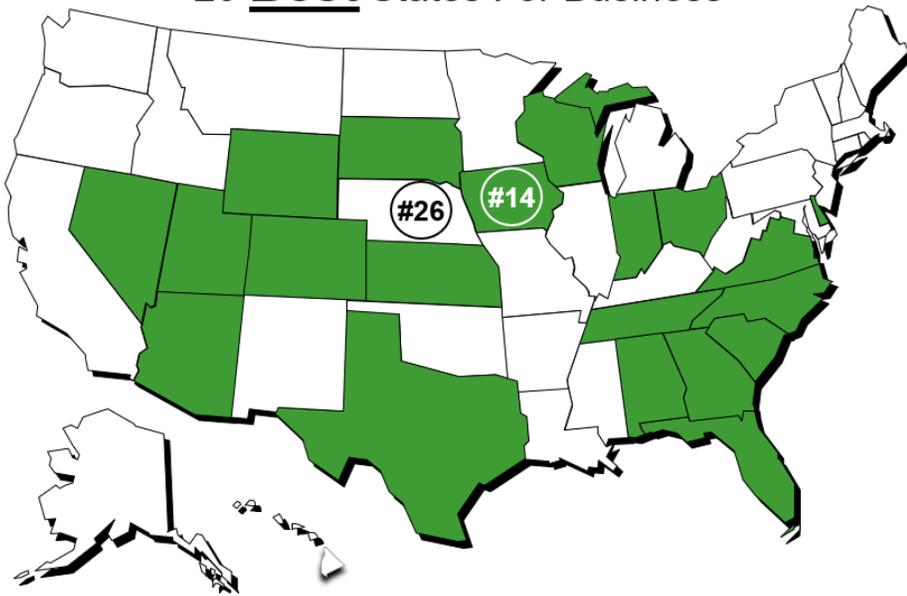


Source: Site Selection Magazine (May 2023)

CHIEF EXECUTIVE MAGAZINE

2018

20 **Best** States For Business

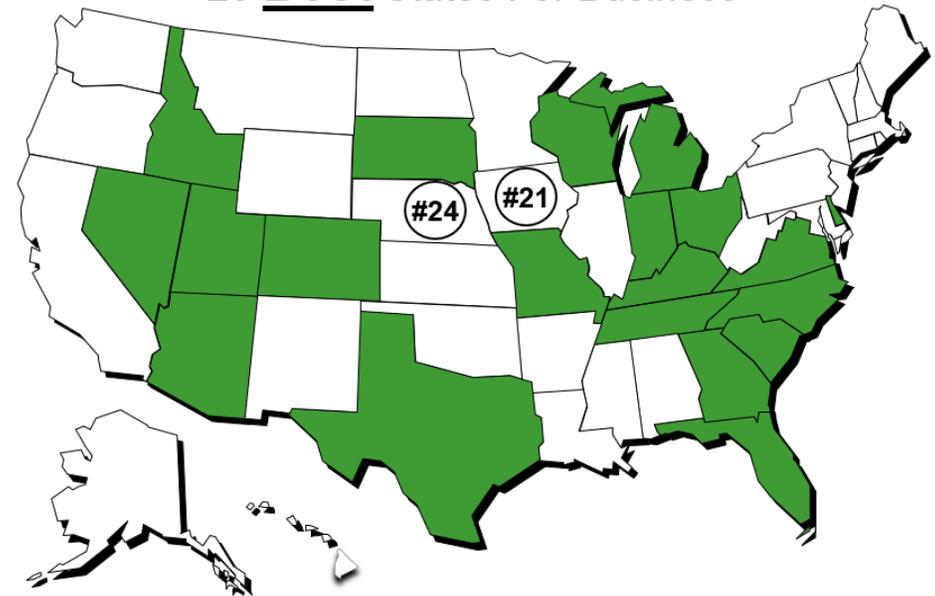


(#1 = Best)

Source: Chief Executive Magazine, 2018
Based on Survey of CEOs.

2023

20 **Best** States For Business



(#1 = Best)

Source: Chief Executive Magazine, 2023
Based on Survey of CEOs.

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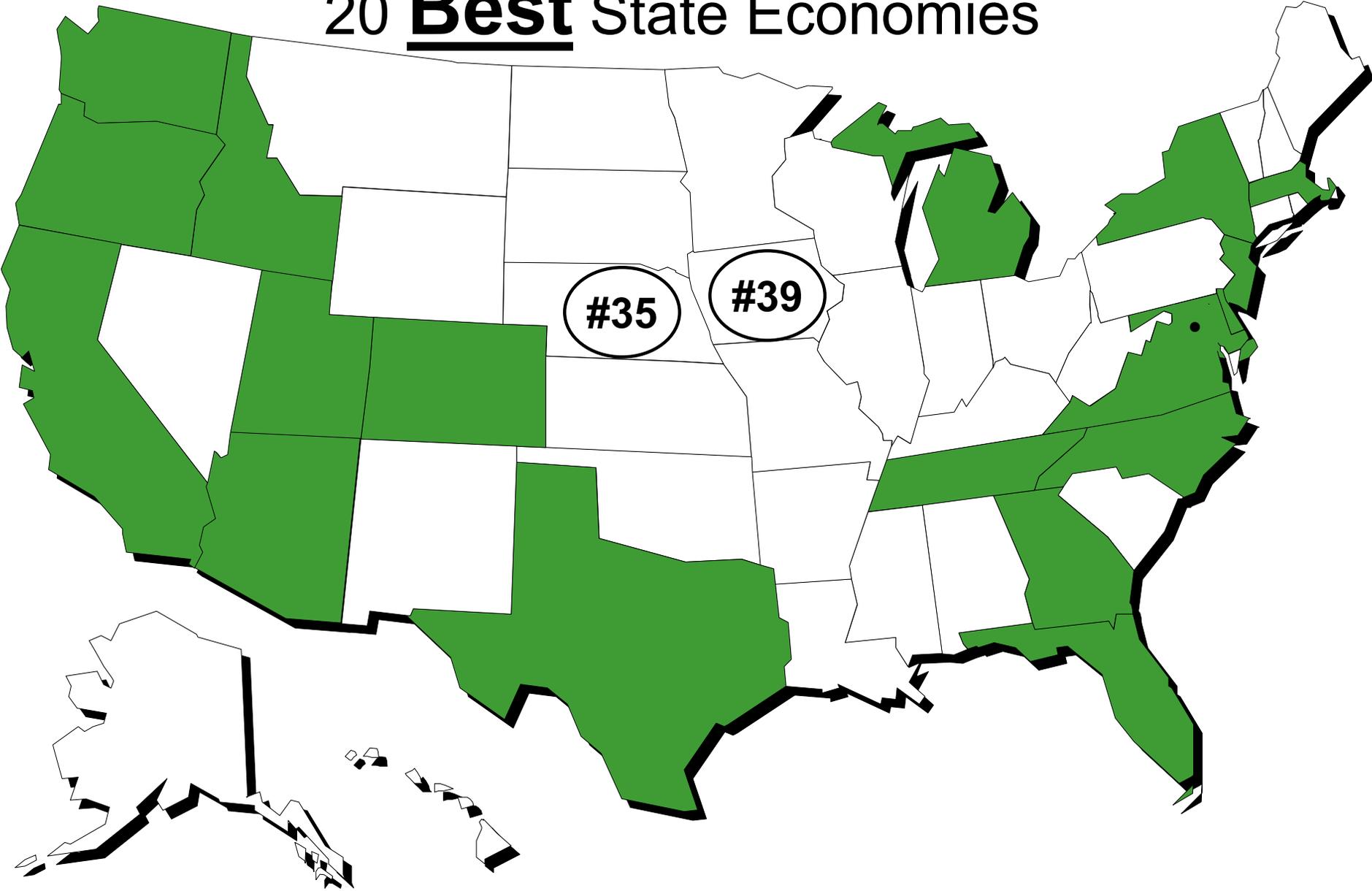
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Fiscal Report Card



20 **Best** State Economies



Source: WalletHub, June 5, 2023

(#1 = Best)

20 Worst State Economies



Source: WalletHub, June 5, 2023

(#1 = Best)

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Economic Performance Rankings

(Based on 3 policy variables)

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

(#1 = Best)

Nebraska = #25; Iowa = #30

Source: American Legislative Exchange Council, April 3, 2023

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	Maryland
2	North Carolina	42	Hawaii
3	Arizona	43	Oregon
4	Idaho	44	Maine
5	Oklahoma	45	California
6	Wyoming	46	Illinois
7	Indiana	47	New Jersey
8	North Dakota	48	Minnesota
9	Florida	49	Vermont
10	Nevada	50	New York

Nebraska = #36; Iowa = #32

(#1 = Best)

Source: American Legislative Exchange Council, April 3, 2023

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

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

2018

Economic Outlook Rankings (Based on 15 policy variables)

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

Nebraska = #28; Iowa = #29

(#1 = Best)

Source: American Legislative Exchange Council, April 17, 2018

2023

Economic Outlook Rankings (Based on 15 policy variables)

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

Nebraska = #36; Iowa = #32

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Source: American Legislative Exchange Council, April 3, 2023

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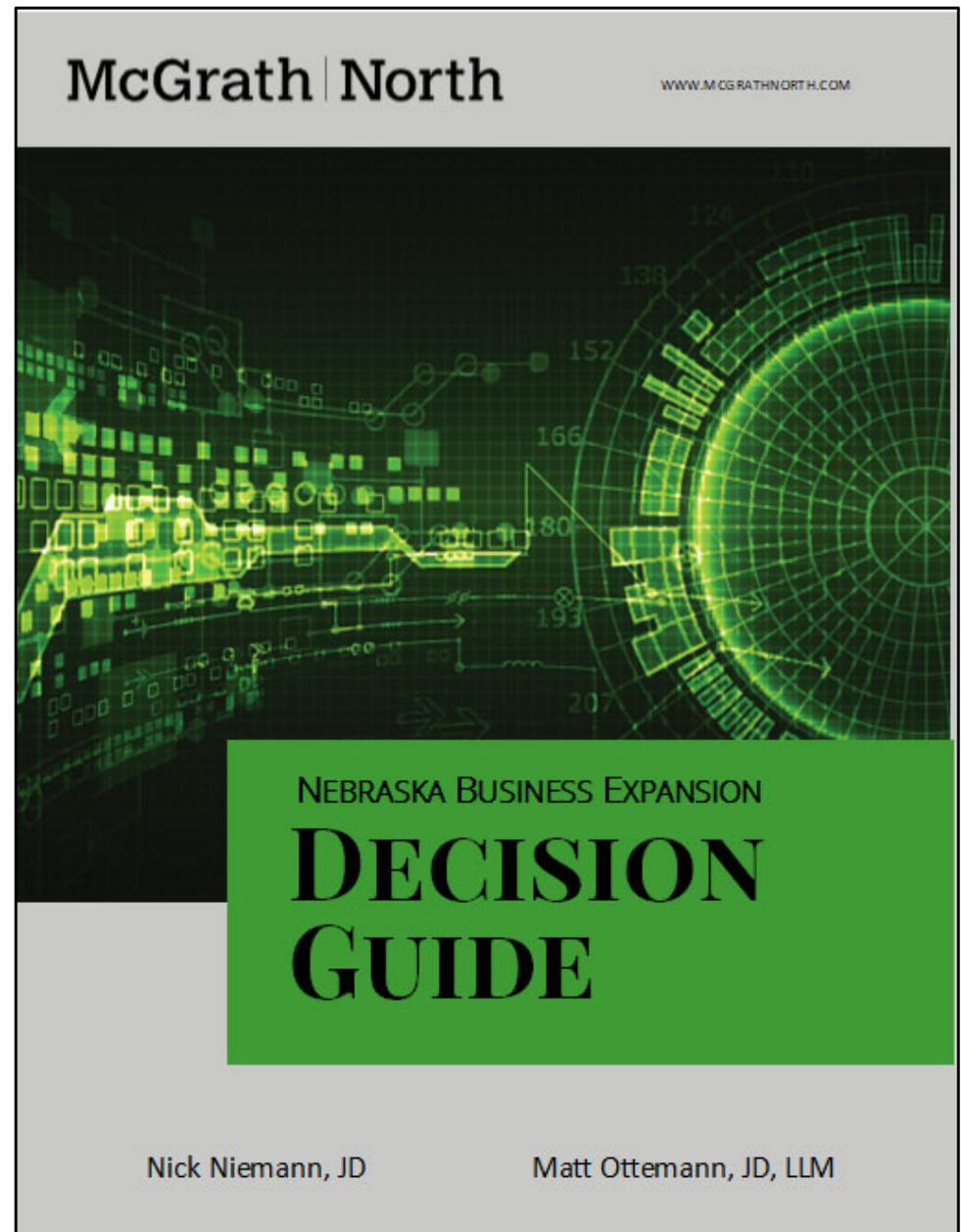
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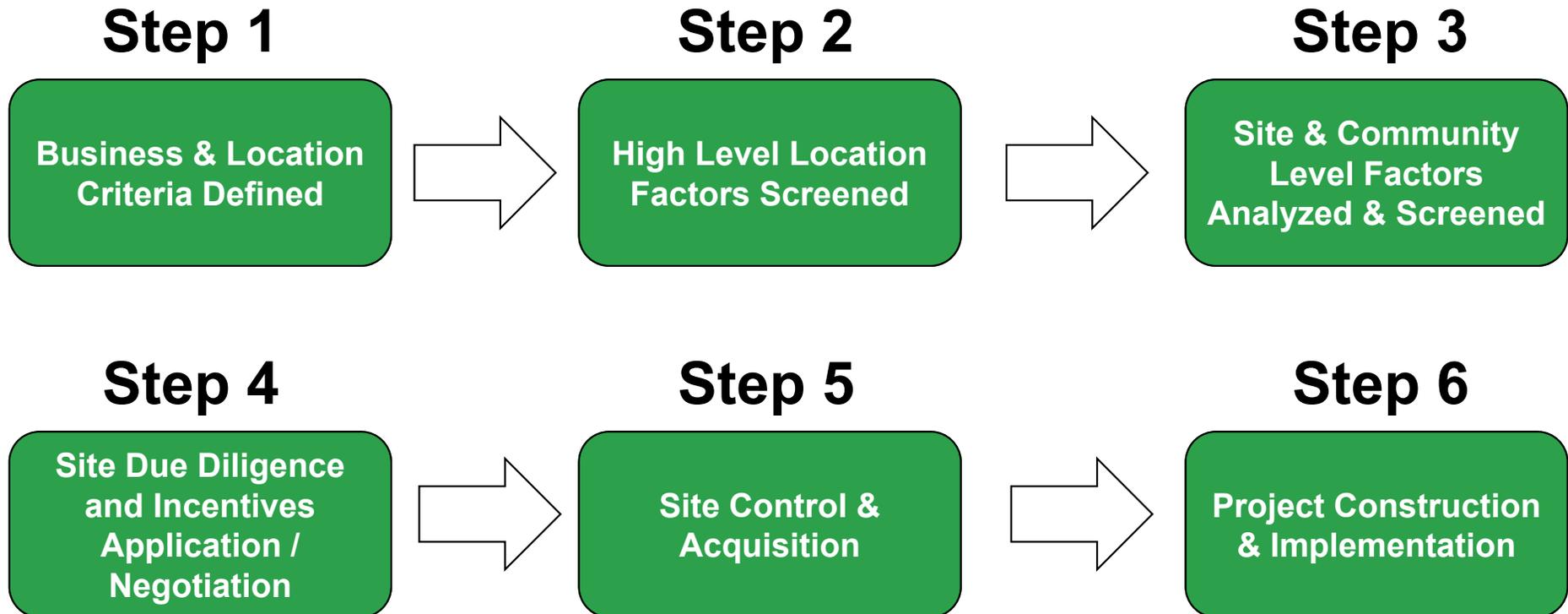
Expansion Decision Process



- **This section is based on this Guide**
- **This details how Attorneys, CPAs and other professionals are helping to grow their clients companies**



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 UPDATED 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 |
|  <u>Business State & Local Tax Scheme</u> |  <u>State & Local Incentives</u> |  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 |  <u>Personal State & Local Tax Scheme</u> |  <u>Workforce Development</u> |
|  Quality of Life | | |

SITE SELECTION

Tribal Economic Development

- Ho-Chunk, Inc. is a corporate owned by the Winnebago Tribe of Nebraska whose activities range from casinos to government contracting to real estate development.
- The operation went from five people and \$400,000 in revenue to around \$450 million and just under 2,000 employees today.
- In the process of building three off-reservation casinos in Nebraska, located in South Sioux City, Omaha and Lincoln.
- Casinos will add about 2,000 jobs.

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
- CHIPS Semiconductor Manufacturing
- Empowerment Zone Tax Incentives
- Credit for Electricity Produced from Certain Renewable Resources
- Second Generation Biofuel Producer Credit
- Historic Rehabilitation Tax Credit

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New Projects



2022 PROSPERITY CUP

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

Top 10 States		
2023	2022	State
1	1	North Carolina
2	T4	Georgia
3	7	Ohio
4	T4	Indiana
5	6	Kentucky
6	2	Texas
7	8	South Carolina
8	13	Kansas
9	3	Tennessee
10	9	Michigan

West North Central Region		
2023	2022	State
1	1	Kansas
2	5	Missouri
3	3	South Dakota
4	2	<u>Iowa</u>
5	7	Minnesota
6	4	<u>Nebraska</u>
7	6	North Dakota

Source: Site Selection Magazine, May 2023

IMAGINE NEBRASKA PROJECTS

Imagine Nebraska Act Projects 3rd & 4th Quarters 2022 Projects 1st & 2nd Quarters 2023

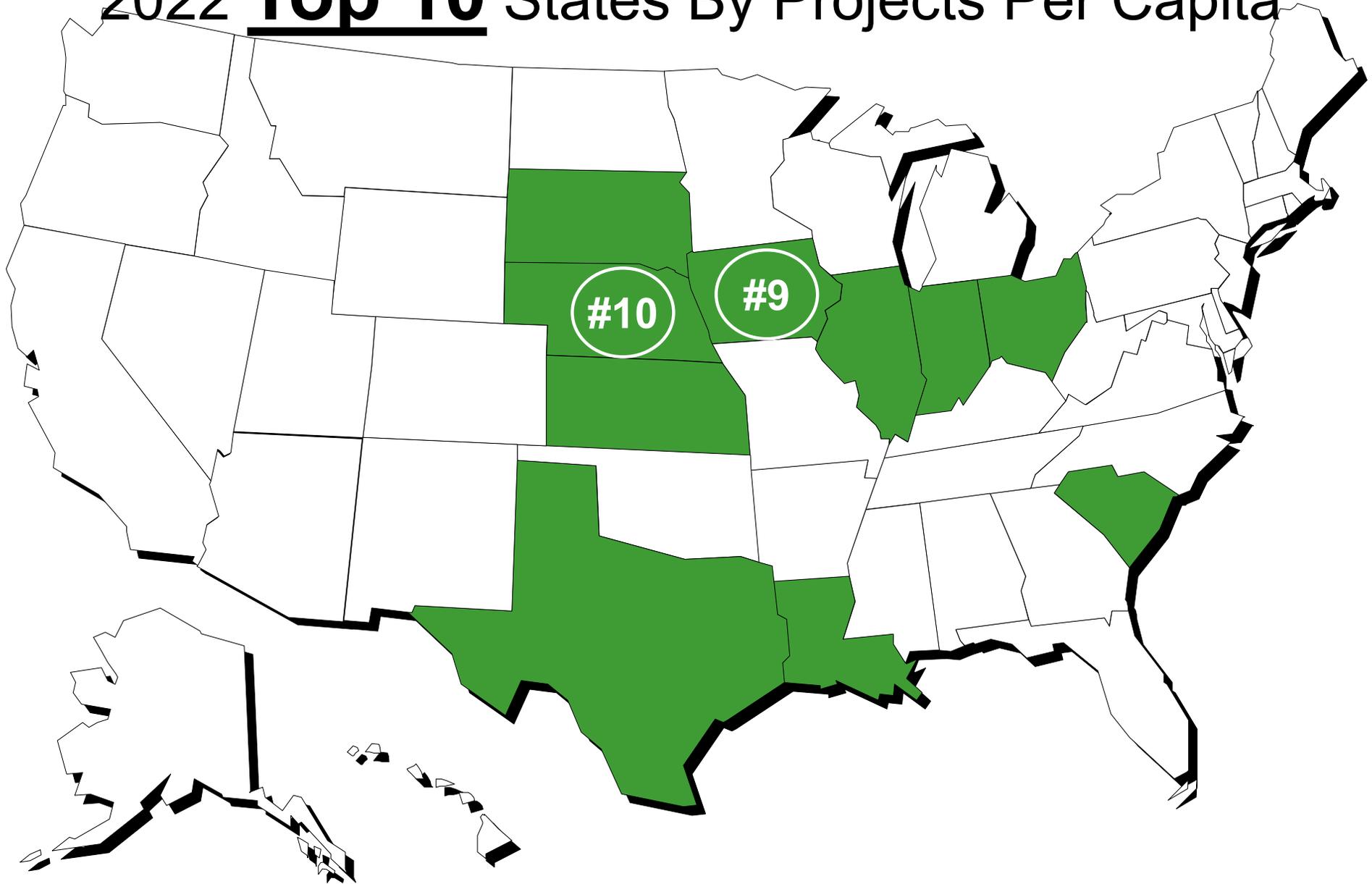
Bestorq	Mutual of Omaha Insurance Company	H&M Trucking, Inc.
Elliot Equipment Company, Inc.	Tenneco Automotive Operating Company, Inc.	Allo Communications, Inc.
Adams Industries, Inc.	Columbus Hydraulics Holdings, LLC	Royal Engineered Composites, Inc.
Hughes Mulch Product, LLC	Malnove Holding Company, Inc.	Alpaca, Inc.
Manna Pro Products, LLC	Nebraska Plastics, Inc.	Norland International, Inc.
Interlink AI, Inc.	Nestle Purina PetCare Company	Ag Processing, Inc.
Sioux City Tarp, Inc.	The Good Life MedStaff, LLC	McCain Foods USA, Inc.
Blue Cross Blue Shield of Nebraska	Phillips Manufacturing Company	Nixers Distilled Spirits, LLC
Perfect Day, Inc.	Kawasaki Motors Manufacturing Group	Wholestone Farms Cooperative, Inc.
Hughes Brothers, Inc.	Greater Omaha Packing Co., Inc.	McArthur Sheet Metal Works
Great Dane, LLC	Ash Grove Cement Company	IMSCORP & Subsidiaries
Telesis, Inc.	Peter Kiewit Sons', Inc. and Affiliates	Pacific Life Insurance Company
Sandhills Global, Inc.	IceCap Cold Storage	CrossMed Healthcare Staffing Solutions, Inc.
Metalworks, Inc.	Philro Animal Health Corporation	Wonder Meats Snyder, LLC
Omaha Printing Company	KAAPA Ethanol Holdings, LLC	Cassling Diagnostic Imagine, Inc.
Lincoln Industries, Inc.	GA Crossings & Railroad Products, Inc.	Ethos Connected, LLC

Total Jobs: 1380 Total Investment: \$1,434,000,000

(Source: Nebraska Department of Economic Development)

GOVERNOR'S CUP

2022 Top 10 States By Projects Per Capita



Source: Site Selection Magazine, Mar. 2023

(#1 = Best)

GOVERNOR'S CUP

2022 Top States By Projects Per Capita

2022 Rank	2021 Rank	State	Project Count
1	1	Kansas	138
2	3	Kentucky	212
3	4	Ohio	479
4	7	Illinois	487
5	2	South Dakota	33
6	10	South Carolina	191
7	6	Texas	1,028
8	8	Indiana	207
9	11	Iowa	97
10	5	Nebraska	58

Source: Conway Projects Database

Top States by Projects Per Capita:

#10 Nebraska



Prior Nebraska Rankings:

2021: #5

2020: #4

2019: #3

2018: #1

2017: #1

2016: #1

TOP STATES BY TOTAL PROJECTS

West North Central Region

2022	2021	State	Projects
1	1	Kansas	138
2	2	<u>Iowa</u>	97
3	3	Missouri	94
4	4	Minnesota	93
5	5	<u>Nebraska</u>	58
6	6	South Dakota	33
7	7	North Dakota	11

Source: Site Selection Magazine, March 2023

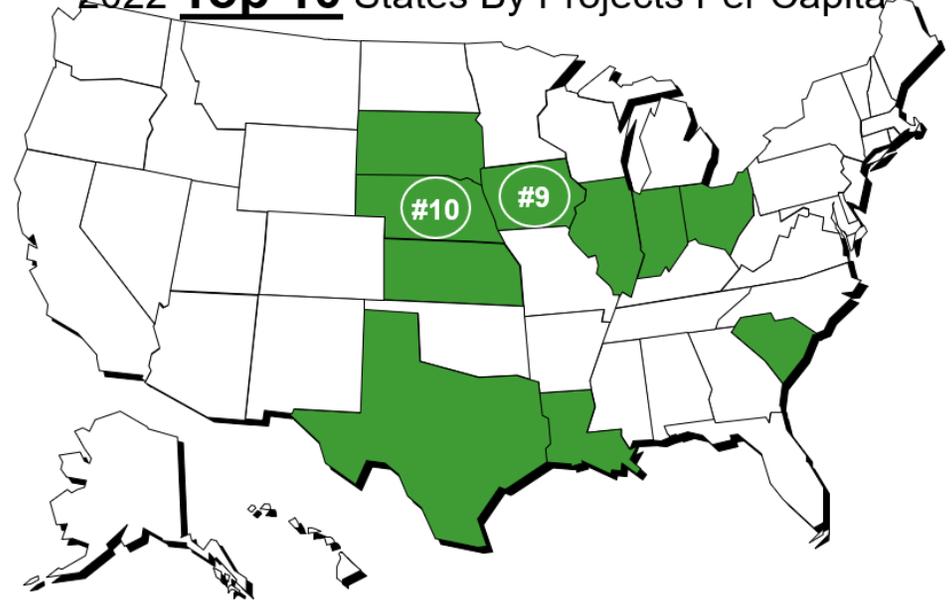
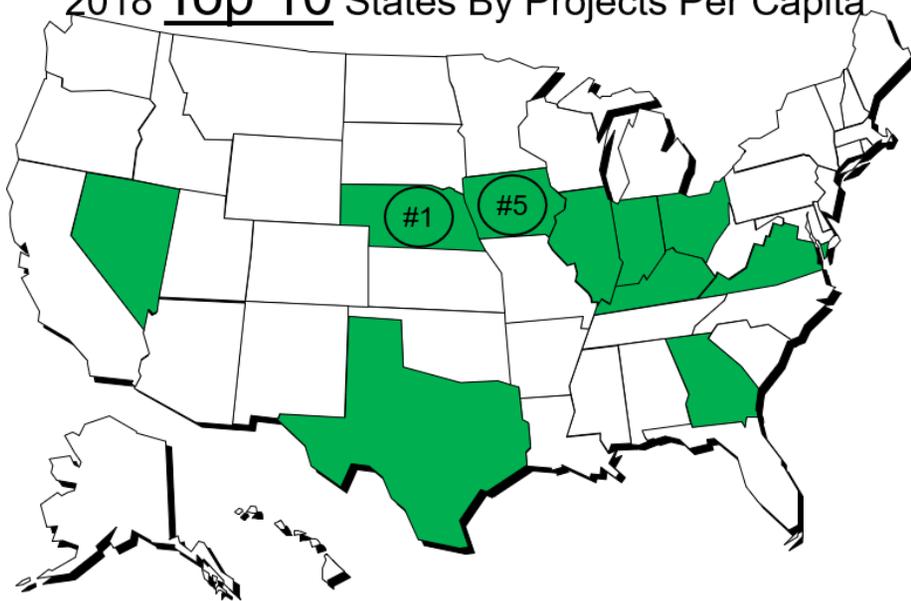
TOP STATES BY PROJECTS PER CAPITA

2018

2022

2018 Top 10 States By Projects Per Capita

2022 Top 10 States By Projects Per Capita



(#1 = Best)

(#1 = Best)

Source: Site Selection Magazine, Mar. 2019

Source: Site Selection Magazine, Mar. 2023

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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 Incentives

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 950 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 10/26/22, 100% = \$25.90. Pro rata benefit recapture if fall below thresholds before end of Performance Period. 	Wage Credit and ITC are 1% point higher for Extremely Blighted Areas.	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>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

Main Issue: Actually Getting Your Money

BUSINESS GROWTH INCENTIVES

- **Market State Income Tax Benefit**
- **Local Option Economic Development Act Grants**
- **Manufacturing Equipment Sales Tax Exemption**
- **Microenterprise Tax Credit Act**
- **Site and Business Development Act Grants**
- **City/County Infrastructure “Entitlements”**
- **Pollution Control Sales Tax Refund**
- **Nebraska Transportation Innovation Act Grants**
- **SBIR / STTR Grants**
- **Nebraska Advantage Research & Development Tax Credits**
- **Nebraska Innovation Fund Prototype Grants**
- **Nebraska Academic Research & Development Grants**
- **Imagine Nebraska Infrastructure Loan Fund**
- **Nebraska Seed Investment Program**
- **State Trade Expansion Program (STEP) Funds**
- **Community Development Block Grant (CDBG) Loan Program**
- **Tax Increment Financing**
- **Enterprise Zone Benefits**
- **New Markets Job Growth Investment Act Funding**
- **Nebraska Rural Development Act Tax Credits**
- **Nebraska Urban Redevelopment Act Tax Credits**
- **Talent Recruitment & Retention Tax Incentive**
- **Job Training & Recruitment Funding**

Changes to **ImagiNE Nebraska Act**

(LB 92 & 727) (Operative June 7, 2023)

Two new activities at qualified locations:

- Nebraska-based entities participating in the federal Creating Helpful Incentives to Produce Semiconductors (CHIPS) for America Act
- Waste treatment and disposal activities, as defined under NAICS 5622, including:
 - Waste treatments and disposal
 - Hazardous and nonhazardous waste treatment and disposal
 - Solid waste landfills, combustors and incinerators

Nebraska Advantage Rural Development Act

(LB 727) (Operative September 2, 2023)

- Minimum level of investment for the Livestock Modernization level is reduced from \$50,000 to \$10,000 for applications submitted beginning January 1, 2024.
- The annual cap of tentative tax credits that can be authorized is increased to \$2 million from \$1 million.

Nebraska Advantage Research and Development Act

(LB 727) (Operative September 2, 2023)

- Act is amended to change requirements for use of the E-Verify system for 2023 and later
- E-Verify must occur within 90 days after hire (not 3 days) or longer if allowed under E-Verify
- If no E-Verify, that employee's pay must be deducted from the qualified research expenses to calculate the credit.
- Act closes to new companies after 2033.

Good Life Transformational Projects Act

(LB 727) (Operative June 7, 2023)

- Act creates a district that applies a sales tax rate of 2.75% for transactions occurring within an approved Good Life District.
 - Not larger than 2,000 acres
- Applications must be filed no later than 2024
- Will be approved by DED based on the ability of the District to generate new economic activity, create new jobs, and promote new-to-market retail, entertainment, and dining attractions.

Good Life Transformational Projects Act

(LB 727) (Operative June 7, 2023)

- Restrictions apply based on:
 - Size of city and county that the proposed District will be located in
 - A District located in a larger city and/or county must generate larger economic benefits.
- Must demonstrate that the project will have:
 - 20% of sales from out-of-state residents or
 - At least 600,000 out-of-state visitors per year for a project located in a county with a population of at least 100,000 people.



lowa Incentives

SITE SELECTION

Iowa Intelligence Report Five Ways Iowa Is Innovating For Growth

- Enacting Transformational Tax Reform.
- Building Momentum in Biosciences.
- Improving Certified Site Readiness.
- Advancing Manufacturing.
- Investing in Our Workforce.

Net Capital Gain Exclusion (HF 2317)

- Allow an employee-owner one irrevocable lifetime election
- To exclude from state individual income tax
- Net capital gain from the sale of capital stock on one qualified corporation
- Election then applies to all subsequent sales of that stock
- Very similar to Nebraska Capital Gain Exclusion (1987 LB775)

IOWA INCENTIVES

Net Capital Gain Exclusion (HF 2317)

Qualified Corporation Requirements

- Employed individuals in Iowa for at least 10 years
- At least 5 shareholders for 10 years prior to first sale
- At least 2 unrelated shareholders for 10 years prior to first sale

IOWA INCENTIVES

Retired Farmer Lease Income Exclusion (HF 2317)

- Excludes from Individual Income Tax
- Retired Farmer's income from lease of real property held by farmer for 10 or more years
- If Farmer materially participated in farming business for 10 or more years
- Farmer must be at least 55 years old and no longer materially participating in farming
- N/A to Pass Through Income

Retired Farmer Capital Gain Exclusion on Sale of Land (HF 2317)

Revisions:

- Term “materially participated” now includes retired farmer - If 10 years or more (before election)
- Exclusion now also covers sale of Breeding Livestock (other than cattle and horses)
- Other conditions apply

IOWA INCENTIVES

Refundability of Iowa Credits (HF 2317)

- Reduces the refundability of certain credits by 5% annually, until capping at 75% refundability for tax years beginning after Jan. 1, 2027:
 - Redevelopment tax credit
 - Historic preservation tax credit
 - Third-party developer tax credit
 - Assistive device tax credit
 - Research Activities Credit (reduces to 50% refundable)

Changes Effective For Tax Years Beginning On Or After January 1, 2023

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

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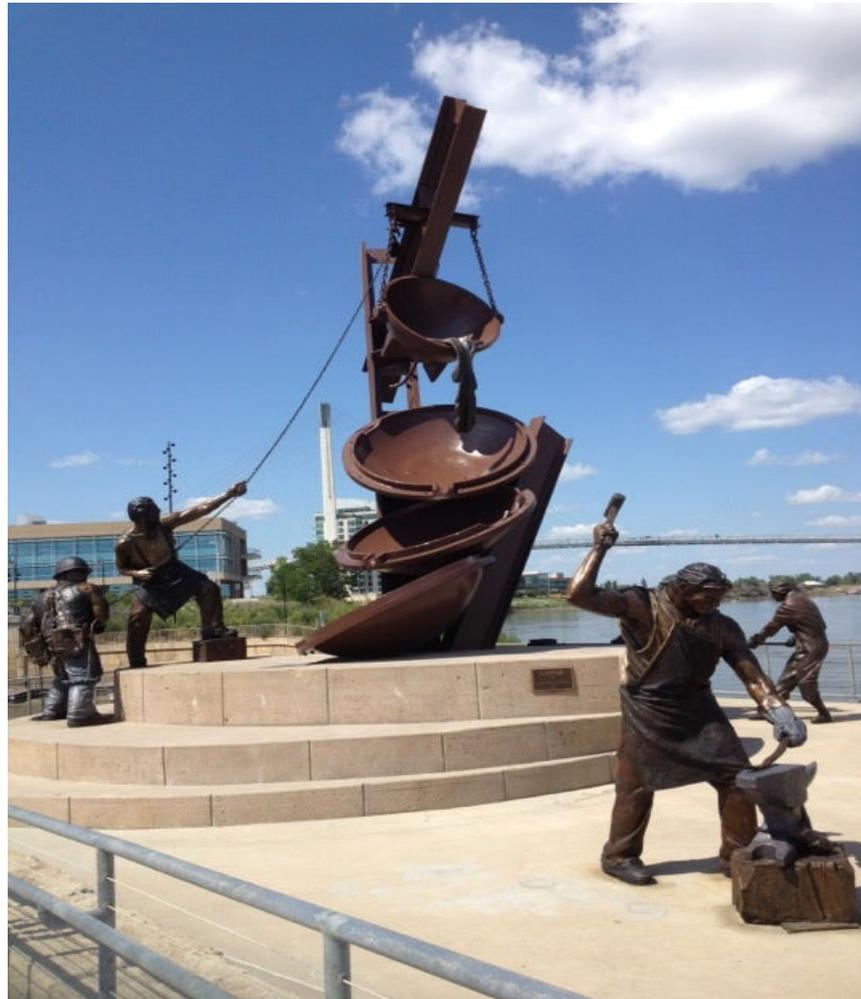
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Workforce Development



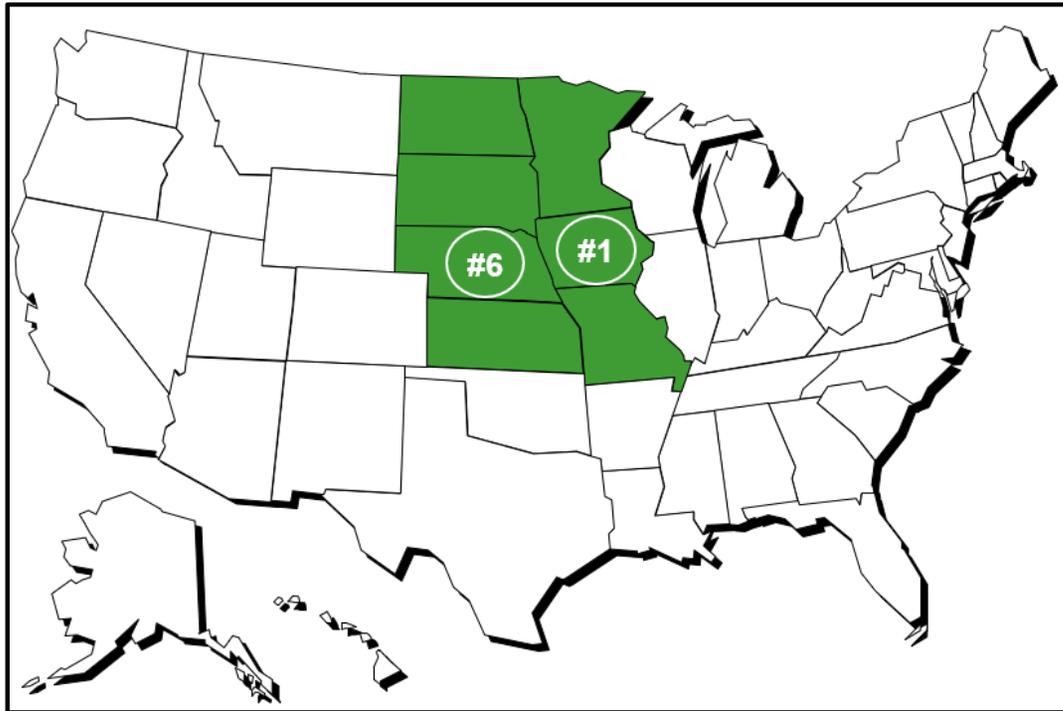
SITE SELECTION

Locations Are Working Harder To Deliver Today's Workforce

- Attracting talent is - or should be – as or more important to locations than attracting companies.
- Today it is about outdoor recreation opportunities, sense of place – particularly in the downtown area – a reasonable cost of living, vibrancy, walkability and 'cool factor'.

SITE SELECTION MAGAZINE

2023 Regional Workforce Development Rankings



(#1 = Best)

Source: Site Selection Magazine, January 2023

West North Central	2022	2021
Iowa	1	1
Kansas	2	2
North Dakota	3	3
Minnesota	4	4
South Dakota	5	5
Nebraska	6	7
Missouri	7	6

States are ranked based on their rank in the following:

1. CNBC's Top States for Business: 2021 Workforce & Education Sub-Ranking.
2. U.S. News' 2021 Best States for Education Rankings
3. ACT National Career Readiness Certificates for 2021.
4. Workforce Preparation & Development Program Expenditures.
5. Education & Workforce Development Connections 2021 Report from the Education Commission of the U.S.

SITE SELECTION

Workers Shortages Dictate Site Selection Choices Like Never Before

How Are Talent and Labor Availability Challenges Impacting Site Selection Decisions?



- 75% significant effect
- 25% some effect

SITE SELECTION

The 2023 Regional Workforce Development Rankings

How Are Talent and Labor Availability Challenges Impacting Site Selection Decisions?

West North Central	2022	2021
Iowa	1	1
Kansas	2	2
North Dakota	3	3
Minnesota	4	4
South Dakota	5	5
Nebraska	6	7
Missouri	7	6

Source: Site Selection Magazine (January 2023)

REMOTE EMPLOYEE REALITIES

Use of Remote Employees

- Many companies are allowing or encouraging remote employees
 - Cannot find employees in Nebraska, particularly in certain fields
 - Employees are wanting or demanding to work from home (or they'll find someone else to work for).

Remote Employee Taxation

- Income Tax: Nebraska's "Convenience" Rule
 - Employees are subject to Nebraska income tax, even if they do not step foot in Nebraska, if they work outside Nebraska for their own "convenience"
- May require fully remote employees to pay Nebraska income tax

WITHHOLDING TAX FOR REMOTE EMPLOYEE

Specific NDR Regulation

- Wages paid to nonresident employee
- For work performed entirely outside Nebraska
- Are **not** subject to Nebraska income tax withholding.

General NDR Regulation

- Employer must withhold Nebraska income tax if:
 1. The employer is maintaining an office in Nebraska
 2. Wages are subject to federal withholding
 3. Wages are taxable under Nebraska Revenue Act
- Ymjxj r f~hwjfyj htsknysl wjxzqx3

POTENTIAL REMOTE EMPLOYEE FIXES

Potential 2024 Legislation

- To amend “Convenience” rule
- To clear up potential withholding regulation contradictions and tie to Nebraska income tax results

Address Short Term Employees

- Create minimum time allowed to work in Nebraska without Nebraska income tax, such as:
 - Training
 - Trade show
 - Meetings

Hoping For Interim Nebraska guidance

SITE SELECTION

“How Site Selection Can Help Solve The Remote Work Puzzle”

Through effective placement of office space, coworking agreements and managed hybrid structures, a growing number of employers are realizing that productivity flourishes when workers are happier and when they like where they work.

Best U.S. Cities For Remote Workers

1. Miami-Fort Lauderdale/West Palm Beach, FL
2. Indianapolis-Carmel-Anderson, IN
3. Omaha-Council Bluffs, NE-IA
4. Tulsa, OK
5. Detroit-Warren-Dearborn, MI
6. San Antonio-New Braunfels, TX
7. Jacksonville, FL
8. Tampa-St. Petersburg-Clearwater, FL
9. Tuscon, AZ
10. Cleveland-Elyria, OH

Source: Site Selection Magazine (September 2023)

GOVERNORS WORKFORCE DEVELOPMENT WORKING GROUP

- **To develop solutions to Nebraska Workforce shortages.**
- **We have been meeting for past couple months.**
- **Anticipate 2024 Legislative Proposals.**

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Political Impact



2022 Migration Trends As Tracked By:



- Largest Net Gain of Trucks:
 1. Texas
 2. Florida
 3. South Carolina
 4. North Carolina
 5. Virginia
 6. Tennessee
 7. Arizona
 8. Georgia
 9. Ohio
 10. Idaho

Shows Where People Are Moving To

2022 Migration Trends As Tracked By:



- Largest Net Loss of Trucks:

- | | |
|------------------|---------------|
| 1. California | 6. New Jersey |
| 2. Illinois | 7. Maryland |
| 3. Michigan | 8. Arkansas |
| 4. Massachusetts | 9. Oklahoma |
| 5. New York | 10. Alaska |

Shows Where People Are Moving **From**

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National Events



TOP 20 NORTH AMERICAN DEALS

Micron Technology, Inc.
Clay,
New York
\$20 billion, 9,000 jobs

Hyundai Motor Group /SK Innovation Co., Ltd
White, **Georgia**
\$4 billion, 3,500 jobs

Wolfspeed, Inc.
Silver City,
North Carolina
\$5 billion, 1,800 jobs

GlobalWafers/ Globitech
Sherman,
Texas
\$5 billion, 1,500 jobs

Ford Motor Co.
Avon Lake,
Ohio
\$1.5 billion, 1,800 jobs

Hyundai Motor Group
Bryan County,
Georgia
\$5.54 billion, 8,100 jobs

Stellantis/LG Energy Solution
Windsor,
Ontario
\$4.1 billion, 2,500 jobs

Honda Motor Co./LG Energy Sol. Vertech
Jefferson Township,
Ohio
\$3.5 billion, 2,000 jobs

Envision AESC Japan
Bowling Green,
Kentucky
\$2 billion, 2,000 jobs

Stellantis/Samsung SDI
Kokomo,
Indiana
\$2.5 billion, 1,400 jobs

Intel Corporation
New Albany,
Ohio
\$20 billion, 3,000 jobs

Micron Technology
Boise,
Idaho
\$15 billion, 2,000 jobs

Taiwan Semi-conductor Mfg Co. (TSMC)
Phoenix, **Arizona**
\$28 billion, 1,400 jobs

Our Next Energy (ONE)
Van Buren Township,
Michigan
\$1.6 billion, 2,112 jobs

LEGO A/S
Chesterfield,
Virginia
\$1 billion, 1,760 jobs

Panasonic Corp. / Panasonic Energy Co., Ltd
De Soto, **Kansas**
\$4 billion, 4,000 jobs

Vinfast Trading and Production LLC
Moncure,
North Carolina
\$2 billion, 7,500 jobs

General Motors/LG Energy Solutions/Ultium
Lansing, **Michigan**
\$2.6 billion, 1,700 jobs

Redwood Materials
Berkeley County,
South Carolina
\$3.5 billion, 1,500 jobs

Hyundai Mobis
Richmond Hills,
Georgia
\$926 million, 1,578 jobs

SITE SELECTION

America's Best Counties By Projects Per Capita: The Top 20 (Jan. 2022 – March 2023, Min. 10,000 Pop.)

RANK	JURISDICTION	NO. OF PROJECTS	POPULATION
1	Hancock County, Ohio	32	74,861
2	Union County, South Dakota	5	17,063
3	Dakota County, Nebraska	6	21,042
18	Floyd County, Iowa	3	15,337

Source: Site Selection Magazine (July 2023)

SITE SELECTION

Where & Why

The Logistics Giants Are Expanding

Top 10 States For Logistics Facility Projects

Jan. 2018 – July 2023

STATE	PROJECTS
Texas	1,800
Illinois	1,215
Ohio	615
Georgia	540
California	519
Florida	317
North Carolina	283
Pennsylvania	276
Virginia	272
South Carolina	221

Source: Site Selection Magazine (September 2023)

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International Events



Global Best To Invest 2023

Top 10 Countries

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

Top 10 Countries Per Capita

1. United States
- T2. Canada
- T2. Ireland
4. Sweden
5. United Kingdom
6. Switzerland
7. Australia
8. Portugal
9. Germany
10. Finland

SITE SELECTION

Findings from the “Global Startup Ecosystems Report 2023” also highlight emerging and surging locations

- Tech companies have laid off hundreds of thousands of the tech workers they hired in 2021’s boom time in recent months.
- Around 135,000 workers in the U.S. based tech companies.
- The spark of these layoffs could create an explosion of startups.

SITE SELECTION

Top 30 Global Startup Ecosystems

ECOSYSTEM	OVERALL RANK	ECOSYSTEM	OVERALL RANK
Silicon Valley	1	San Diego	16
New York City	2 (tied)	Toronto – Waterloo	17
London	2 (tied)	Paris	18
Los Angeles	4	Chicago	19
Tel Aviv	5	Sydney	20 (tied)
Boston	6	Bengaluru - Karnataka	20 (tied)
Beijing	7	Stockholm	22
Singapore	8	Miami	23
Shanghai	9	Delhi	24
Seattle	10	Austin	25
Washington, D.C.	11	Sao Paulo	26
Seoul	12	Philadelphia	27
Berlin	13	Denver – Boulder	28
Amsterdam-Delta	14	Atlanta	29
Tokyo	15	Vancouver	30

Source: Startup Genome - Site Selection Magazine (July 2023)

SITE SELECTION

From Rarity To Reality

- Around the world countries are making targeted investments in rare earth operations that drive domestic supply chains and feed into clean energy goals.
- Mineral resources such as copper, nickel, lithium, cobalt, graphite and manganese are vital to producing batteries, magnets and electricity-related technologies that keep these systems intact.

SITE SELECTION

From Rarity To Reality

2023 RANK	COUNTRY	MINE PROD. (METRIC TONS)
1	China	210,000 MT
2	United States	43,000 MT
3	Australia	18,000 MT
4	Myanmar	12,000 MT
5	Thailand	7,100 MT
6	Vietnam	4,300 MT
7	India	2,900 MT
8	Russia	2,600 MT
9	Madagascar	960 MT
10	Brazil	80 MT

Source: U.S. Geological Survey - Site Selection Magazine (September 2023)

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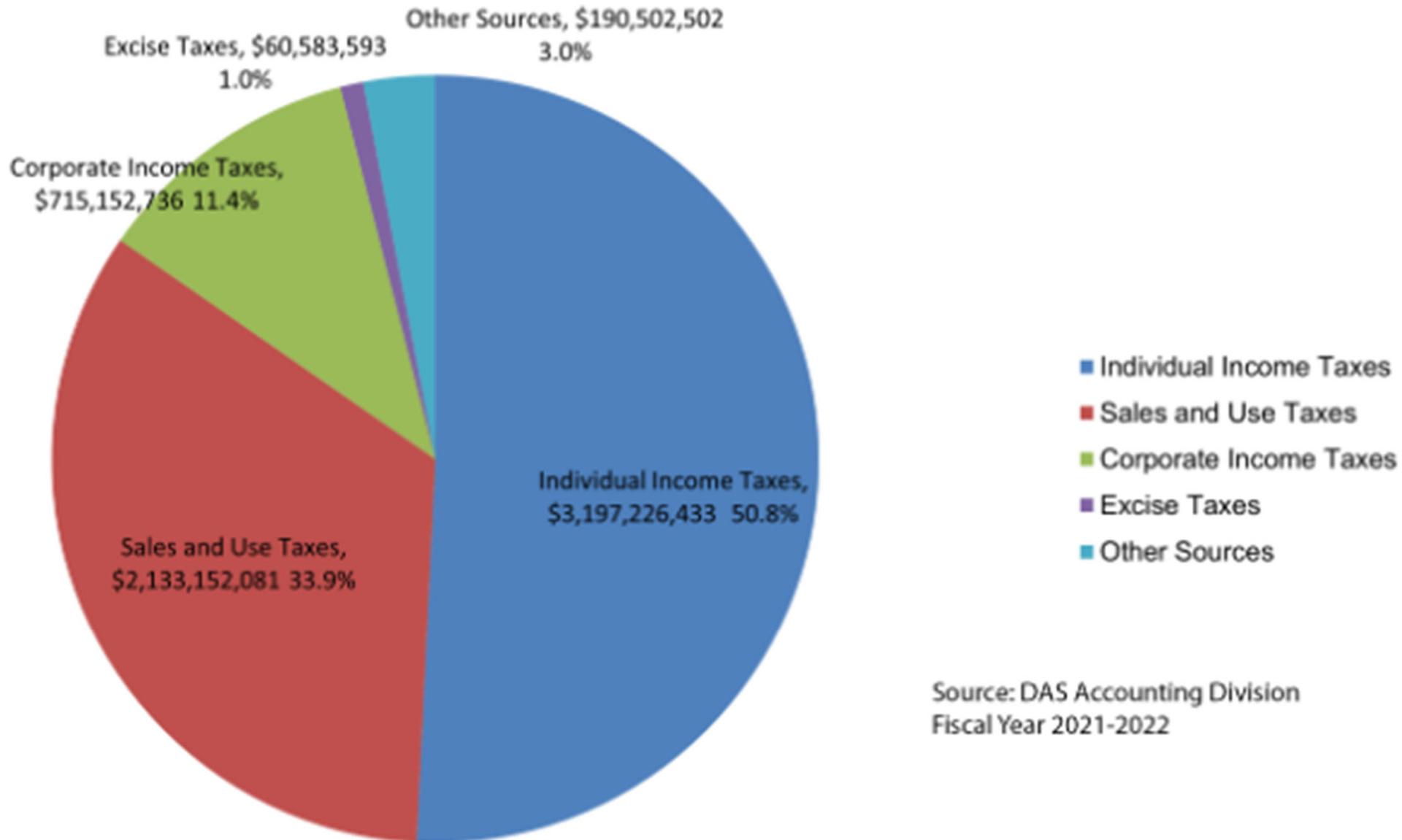


Nebraska Tax Report Card



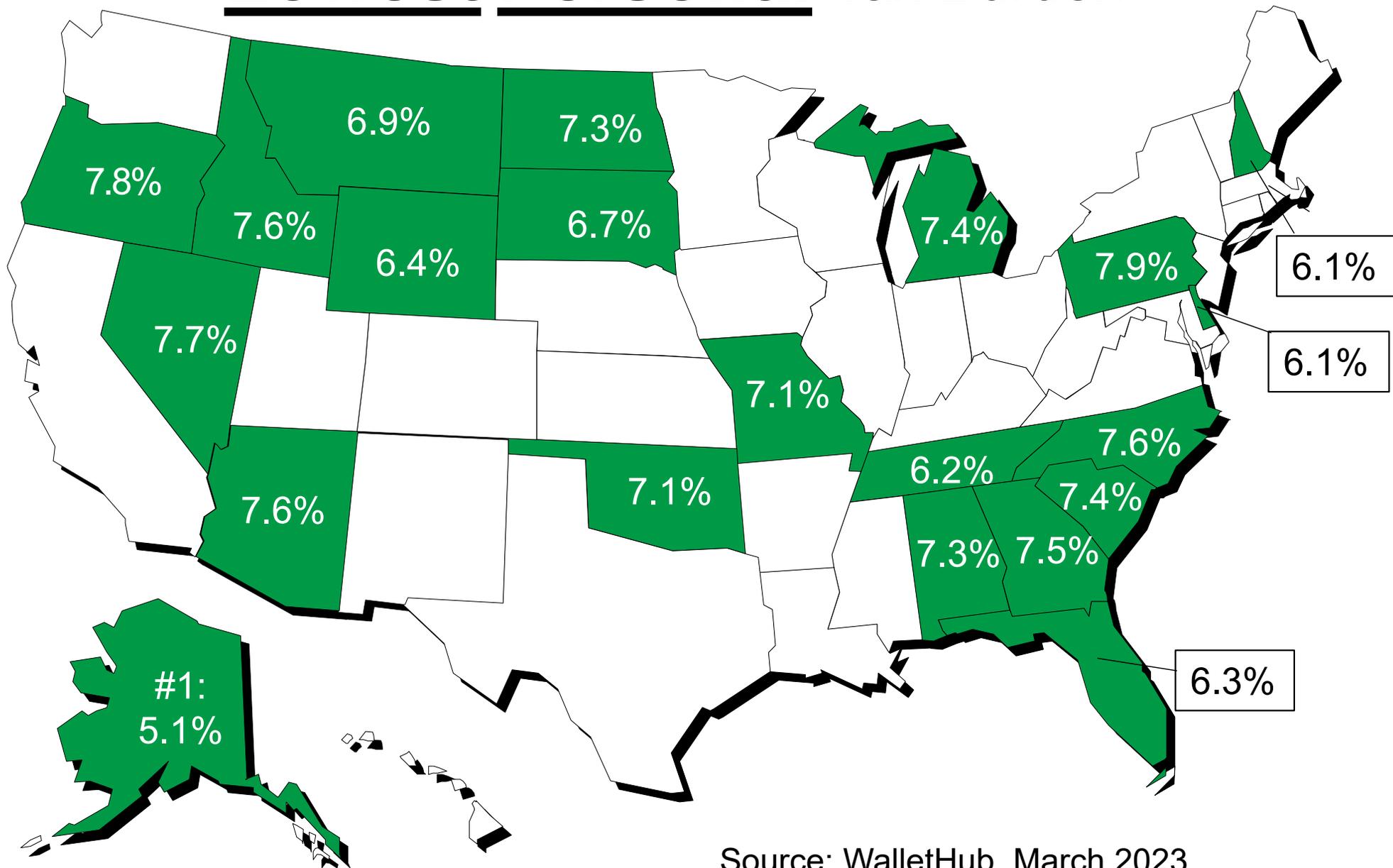
Nebraska State Tax Revenue Sources

Where the General Fund Dollars Come From



Source: DAS Accounting Division
Fiscal Year 2021-2022

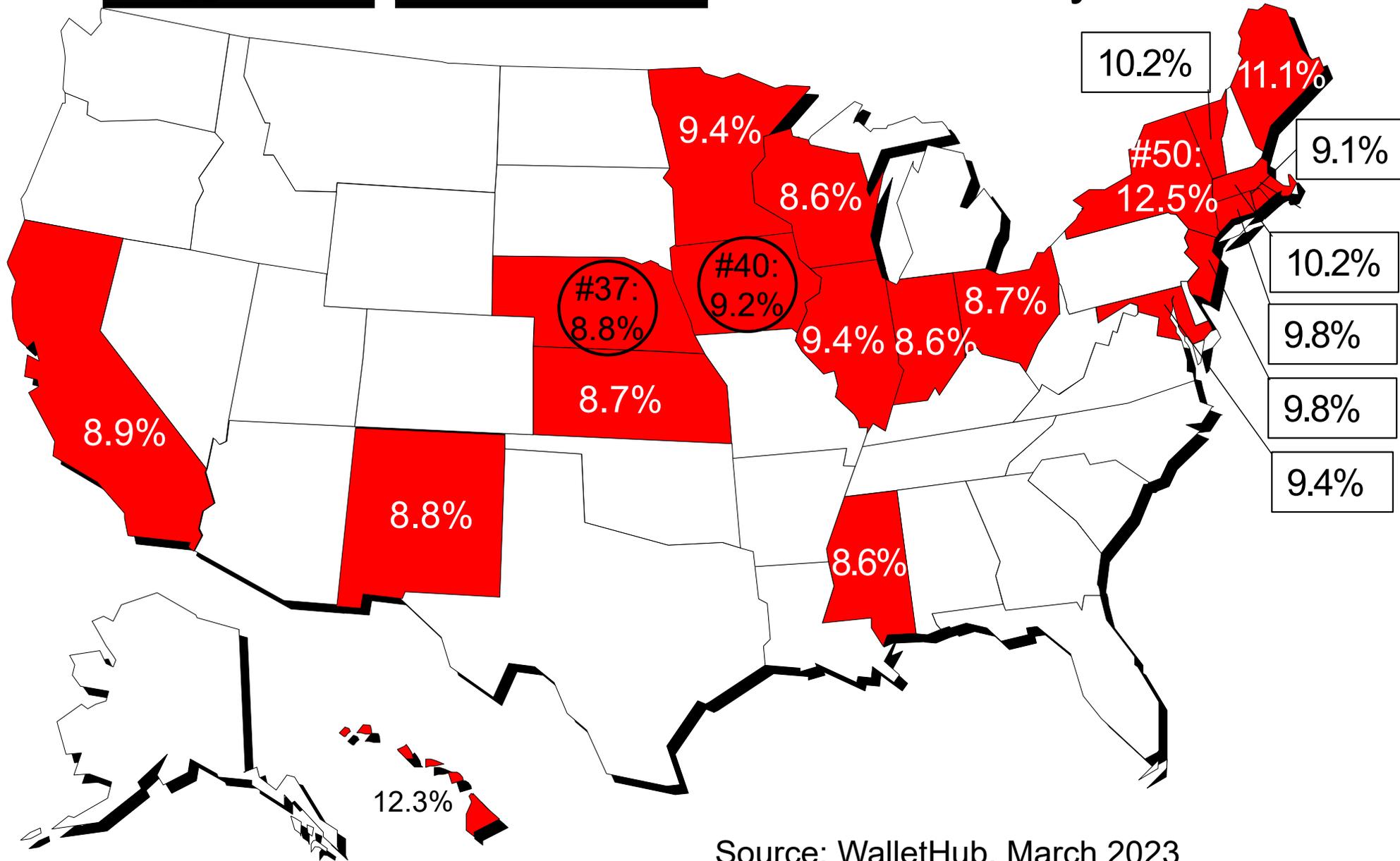
Lowest Personal Tax Burden



(#1 = Best)

Source: WalletHub, March 2023

Highest Personal Tax Burden by State

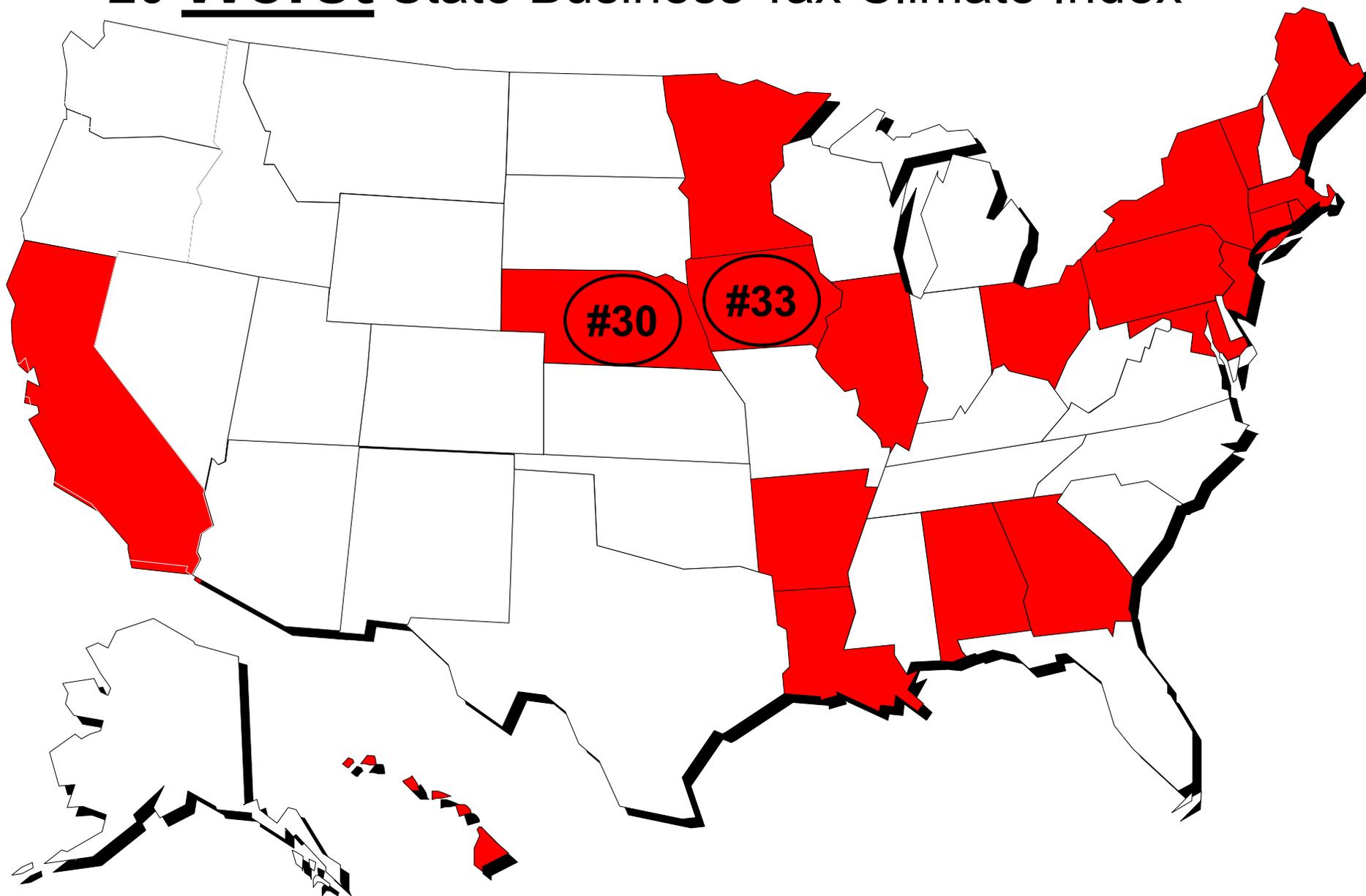


Source: WalletHub, March 2023

(#1 = Best)

TAX FOUNDATION

20 Worst State Business Tax Climate Index



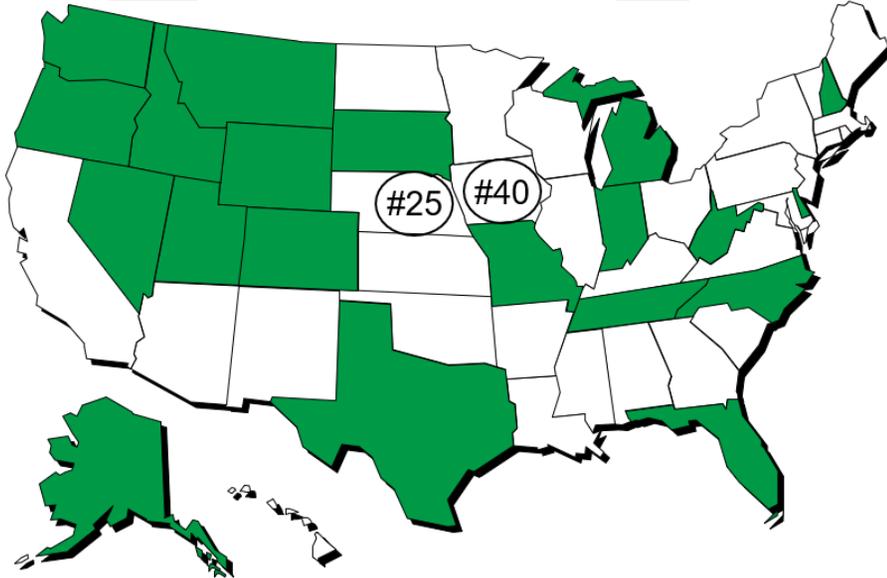
Source: Tax Foundation, October 24, 2023

(#1 = Best)

Tax Foundation Comparison

2017

20 Best States For Business Tax Climate

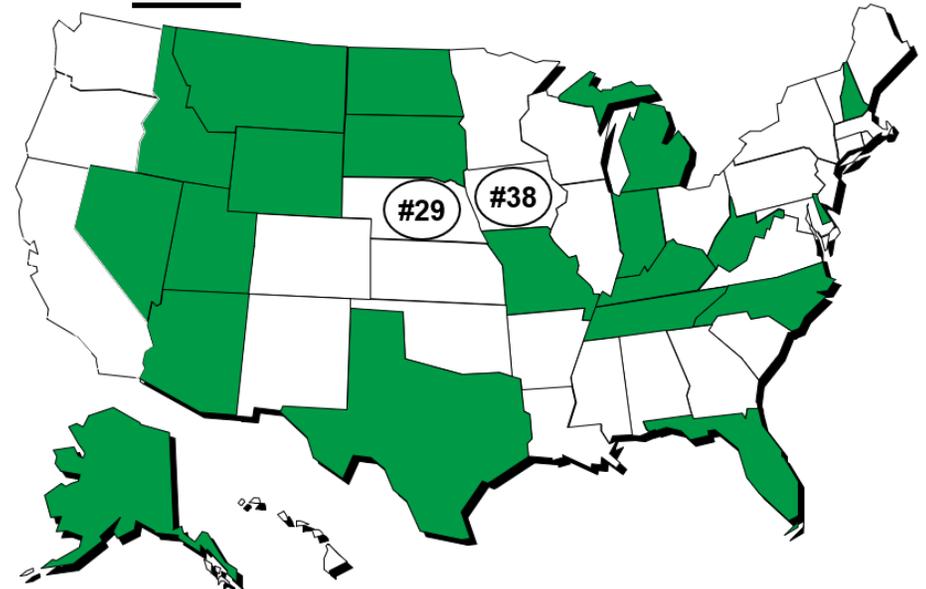


(#1 = Best)

Source: Tax Foundation (Oct. 17, 2017)

2022

20 **Best** State Business Tax Climate Index



(#1 = Best)

Source: Tax Foundation (October 25, 2022)

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Nebraska Income Tax Update



Taxation of Social Security Benefits

Prior Law: LB 873, (2022)

- Percentage of social security benefits that would be deducted from Nebraska taxable income
 - 40% for 2022
 - 60% for 2023
 - 80% for 2024
 - 100% for 2025 and beyond
- Not taxable for lower income seniors
 - \$61,760 or less AGI Married Filing Jointly
 - \$45,790 or less for other Taxpayers



Taxation of Social Security Benefits

(LB 754) (Operative for 2024 and later)

- Effective for 2024 and later, 100% of Social Security benefits are deducted from Nebraska taxable income



Federal Retirement Income Exclusion

(LB 754) (Operative for 2024 and later)

- Effective for 2024 and later, 100% of retirement income received from Federal Employees Retirement System or the Civil Service Retirement System are deducted from Nebraska taxable income



NEBRASKA INCOME TAX

Individual and Fiduciary Rate Change

(LB 754) (Operative for 2024 and later)

- Reduces maximum tax rate for individuals, trusts and estates: Now at 6.64%
 - 5.84% for 2024
 - 5.20% for 2025
 - 4.55% for 2026
 - 3.99% for 2027 and beyond
- Compare: 1987 LB773 – Max Rate 5.9%



NEBRASKA INCOME TAX

Corporate Rate Change

(LB 754) (Operative for 2024 and later)

- Reduces corporate tax rate imposed on Nebraska taxable income above \$100,000: Now at 7.25%
 - 5.84% for 2024
 - 5.20% for 2025
 - 4.55% for 2026
 - 3.99% for 2027 and beyond
- 5.58% for the first \$100,000 of Nebraska taxable income in 2024
 - Then only one rate



Pass-Through Entities Election to be Subject to Income Tax (PTET)

(LB 754) (Operative June 1, 2023)

- A partnership and S corporation may make an annual irrevocable election to be subject to Nebraska income tax.
- A separate election must be made for each tax year beginning on and after January 1, 2018.
- The election applies to all returns filed for the year covered by the election.

Pass-Through Entities Election to be Subject to Income Tax (PTET)

(LB 754) (Operative June 1, 2023)

- Income tax liability is computed at the highest individual rate on the entity's Nebraska income.
- Owners may claim a refundable credit equal to their share of the Nebraska income tax paid by an electing entity.
- Partners or shareholders may apply that credit to the subsequent tax year.

Pass-Through Entities Election to be Subject to Income Tax (PTET)

(LB 754) (Operative June 1, 2023)

After Election

- When computing the partner's or shareholder's tax liability
- Their share of the Nebraska income taxes deducted on the federal return by the partnership or S corporation
- Must be added back to Nebraska taxable income

Pass-Through Entities Election to be Subject to Income Tax (PTET)

(LB 754) (Operative June 1, 2023)

- Nonresident individual partner or shareholder will not be required to file a Nebraska income tax return if:
 - All their Nebraska source income is from electing partnerships or S corporations
 - Their share of the taxes paid by the entity satisfied their Nebraska income tax liability
 - When computing tax liability, their share of the Nebraska income tax deducted on the federal return by the entity must be added back.

Pass-Through Entities Election to be Subject to Income Tax (PTET)

(LB 754) (Operative June 1, 2023)

- For 2024 and later, electing entities must make estimated tax payments as if they were a corporation.
- An electing entity that incurs a net operating loss cannot carry the loss forward to succeeding taxable years.

Credit for Tax Paid to Another State Expanded

(LB 754) (Operative June 1, 2023)

- Credit for tax paid to another state for a resident individual, estate, or trust
- Expanded to include tax paid by a partnership or S corporation in another state
- When the partnership or S corporation is also subject to Nebraska income tax.

Adopt the Opportunity Scholarships Act

(LB 753) (Operative January 1, 2024)

- Establishes a program to provide scholarships for eligible students to attend qualified Nebraska private elementary and secondary schools
- Scholarships are funded by cash contributions made to scholarship-granting organizations
- Will qualify the donor for a nonrefundable tax credit

Adopt the Opportunity Scholarships Act

(LB 753) (Operative January 1, 2024)

- Taxpayers must notify the scholarship-granting organization of their intent to contribute and the amount to be claimed as a tax credit.
- Organization will notify DOR of the intended contribution.
- DOR will process notifications in the order received within 30 days of receipt.
- DOR will reserve the tax credits until the annual limit reaches \$25 million for 2024-2026.

Adopt the Opportunity Scholarships Act

(LB 753) (Operative January 1, 2024)

- For calendar years 2027 and after, the annual limit will be calculated based upon a model in LB 753 (up to \$100 million maximum).
- The organization will issue a receipt for the contribution made by the taxpayer to take the nonrefundable tax credit.

Adopt the Opportunity Scholarships Act

(LB 753) (Operative January 1, 2024)

- Any unused credit may be carried forward for five years after the credit was first granted.
- May only claim a credit on the portion of the contribution that was not claimed as a charitable contribution on the federal return.

Child Care Tax Credit Act

(LB 754) (Operative January 1, 2024)

- Parents or legal guardians of children 5 years old or younger may apply to DOR to receive a refundable tax credit.
- Must claim the child as a dependent for federal income tax purposes.

Child Care Tax Credit Act

(LB 754) (Operative January 1, 2024)

- The parent or legal guardian is eligible for the refundable tax credit if:
 - The child is enrolled in a licensed child care program;
 - Child receives care from an approved license-exempt provider enrolled in the child care subsidy program; or
 - Parent's or guardian's total household income is less than or equal to 100% of the federal poverty level.

Child Care Tax Credit Act

(LB 754) (Operative January 1, 2024)

- The refundable tax credit amount is based on the parent's or legal guardian's total household income. The credit will equal:
 - \$2,000 per child, if the total household income is no more than \$75,000; or
 - \$1,000 per child, if the total household income is more than \$75,000 but no more than \$150,000.
 - Zero, if the total household income is more than \$150,000.

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Nebraska Sales Tax Update



Buyer-Based Exemption

(LB 727) (Operative July 1, 2026)

- Beginning July 1, 2026, a construction contractor may purchase materials tax-exempt based on the buyer-based exemption of the contractor's client.
- Buyer-based exemption means an exemption based on who purchases a product.
- The provisions relating to purchasing agent appointments were adjusted to accommodate this.

Agricultural Machinery & Equipment Exemption

(LB 727) (Operative October 1, 2023)

- Exemption was expanded to include baling wire and twine
 - Purchased for use in commercial agriculture
 - To bail livestock feed or bedding.
- Changes the exemption for net wrap by requiring the net wrap to be used in baling of livestock feed or bedding.

Exemption for Governmental Projects Expanded

(LB 727) (Operative July 1, 2023)

- A new sales tax exemption was established
 - For a nonprofit corporation making a lease-purchase agreement, financing lease, or other instrument
 - For a governmental unit's expenditures towards a project
 - Paid in whole or in part with redevelopment bonds

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Nebraska Property Tax Update



Special Valuation

(LB 727) (Operative June 7, 2023)

- Requirements for real property to receive special valuation are changed so that the land must only be agricultural or horticultural and consist of five acres or more.
- As of January 1, 2023, land within the corporate boundaries of any sanitary and improvement district, city, or village is no longer excluded from special valuation.

Tax Deeds and Notice to Property Owners

(LB 727) (Operative June 7, 2023)

- Notice due to property owners associated with the purchase of delinquent taxes and tax deeds is increased to better protect owner's rights.

Homestead Exemption

(LB 727) (Operative January 1, 2024)

- Veterans who are eligible for homestead exemption because they are 100% permanently disabled are no longer required to file a homestead exemption on an annual basis.
- Instead, these veterans must only file a homestead exemption along with the required certification from the VA in their first year of application and in years divisible by five after.

TIF Financing

(LB 531) (Operative June 7, 2023)

- Designation of extremely blighted is valid for 25 years unless the designation is removed by specified procedures.
- If an area has carried a substandard and blighted or extremely blighted designation for more than 30 years, a TIF project cannot be approved until an analysis of the existing projects has occurred.

Refundable Income Tax Credit (Property Tax Incentive Act)

(LB 243) (Operative September 2, 2023)

- School District Tax Credit Amounts:
 - 2024: \$560 million \pm % Growth in Real Property Values from Prior Year (Prior Law)
 - 2025-2028: Prior Year Credit + % Growth in Real Property Values from Prior Year (Prior Law)
 - 2029: Prior Year Credit + % Growth in Real Property Values from Prior Year \pm \$75 million (New Law)
 - 2030 & Later: Prior Year Credit \pm % Growth in Real Property Values from Prior Year

Refundable Income Tax Credit (Property Tax Incentive Act) (LB 243) (Operative September 2, 2023)

- Community College Tax Credit Amounts:
 - 2023: \$100 million
 - 2024: All Community College taxes levied

Refundable Income Tax Credit (Property Tax Incentive Act)

How many credits are being wasted?

- Sep 2022: 40% of taxpayers failed to claim
- Sep 2023: 23% of taxpayers failed to claim

School District Property Tax Limitation Act

(LB 243) (Operative January 1, 2024)

- Limits the annual increase in a school district's property tax request authority to 3%
 - Adjustments for increases in school district growth, students with limited English proficiency, and students in poverty.
- Does not apply to that portion of a school district's property tax request needed to pay approved bonds.

School District Property Tax Limitation Act

(LB 243) (Operative January 1, 2024)

- School districts can exceed their property tax request with approval from 60% of voters
- School may also increase growth percentage by a vote of at least 70% of the school board.
 - This increase is limited (with higher limits for smaller school districts).

Property Tax Credit Act

(LB 243) (Operative September 2, 2023)

- Minimum Tax Credit Amounts were amended from \$275 million for all years to:
 - 2023: \$360 million
 - 2024: \$395 million
 - 2025: \$430 million
 - 2026: \$445 million
 - 2027: \$460 million
 - 2028: \$475 million

Property Tax Credit Act

(LB 243) (Operative September 2, 2023)

- Minimum Tax Credit Amounts were amended from \$275 million for all years to:
 - 2029: Prior Year Credit + % Growth in Real Property Values from Prior Year + \$75 million
 - 2030 & Later: Prior Year Credit + % Growth in Real Property Values from Prior Year

Community College Levy Authority

(LB 243) (Operative September 2, 2023)

Fiscal Year 2024-2025 and Later:

- Community colleges may only levy for bond payment and a capital improvement fund
- If the state does not provide full funding for community colleges, the college can have an election to authorize a levy to generate revenue equal to what the state funding would have been.

Community College Levy Authority

(LB 243) (Operative September 2, 2023)

Fiscal Year 2024-2025 and Later:

- In addition, if aid is less than what was provided in the previous year:
- Community college board of governors may levy to generate revenue to make up the difference in aid funding.

GOVERNORS WORKFORCE DEVELOPMENT WORKING GROUP

- **To develop solutions to high property taxes.**
- **We have been meeting for past couple months.**
- **Anticipate 2024 Legislative Proposals.**

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Iowa Tax Update



Pass-Through Entity Tax

(HF 352) (Effective 05/11/23, Made Retroactive to 1/1/23)

- Iowa enacted an entity-level tax election for pass-through entities that allows a partner or shareholder to claim a credit against the individual and corporate income taxes paid.
 - Taxpayers have to make a separate election for each tax year.
 - This election is irrevocable once made and is binding on the taxpayer and all partners or shareholders.

Withholding on Retirement Income

(SF 181) (Effective 02/20/23, Made Retroactive to 1/1/23)

- Income tax withholding is only required if pension or other retirement income is subject to Iowa income tax.

Employer Child Care Tax Credit

(SF 181) (Effective 02/20/23, Made Retroactive to 1/1/23)

- For purposes of the Employer Child Care Tax Credit
- Amount of qualified employer expenditures related to child care
- That may be used in calculating the tax credit is limited
- To include only qualified expenditures made in Iowa.

Tax Filing Status

(SF 565) (Effective 06/01/23, Made Retroactive to 1/1/23)

- For tax years beginning on or after January 1, 2023
- Iowa requires taxpayers to use the same filing status for Iowa individual income tax purposes that they use for federal income tax purposes.

Settlement Authority

(SF 565) (Effective 1/1/24)

- Under prior law, the DOR may compromise and settle doubtful claims for taxes or refunds.
- Iowa expanded the settlement authority of DOR to include the settlement of any taxes, penalties, and interest.
- In the case of doubtful liability, doubtful collectability, economic hardship, or to promote effective tax administration.

Estimation of Tax

(SF 565) (Effective 1/1/24)

- Amends Iowa law to authorize the DOR to estimate the tax due for a taxpayer who fails to file a return, or files a false or fraudulent return, based on information the DOR can obtain.
- The DOR would then be required to issue a notice of assessment to the taxpayer.

Property Tax Assessment Fix

(SF 181) (Effective 02/20/23, Made Retroactive to 1/1/22)

- Iowa tax changes in 2013 and 2021 caused multi-residential properties (e.g. apartments) to be taxed at the same rate as other residential
- But Iowa did not change a formula designed to cap values for homes and farms
- This mistake would have cost owners of Iowa residences \$130 million in additional tax
- The formula was updated, but this will reduce local government budgets

Levy Limitations

(HF 718) (Effective 7/1/24)

- Iowa implemented structural property tax reform by:
 - Automatically reducing tax rates when assessments rise,
 - Imposing property tax assessment limits
 - Requiring local governments to regularly notify owners of current and budget year property tax rates,

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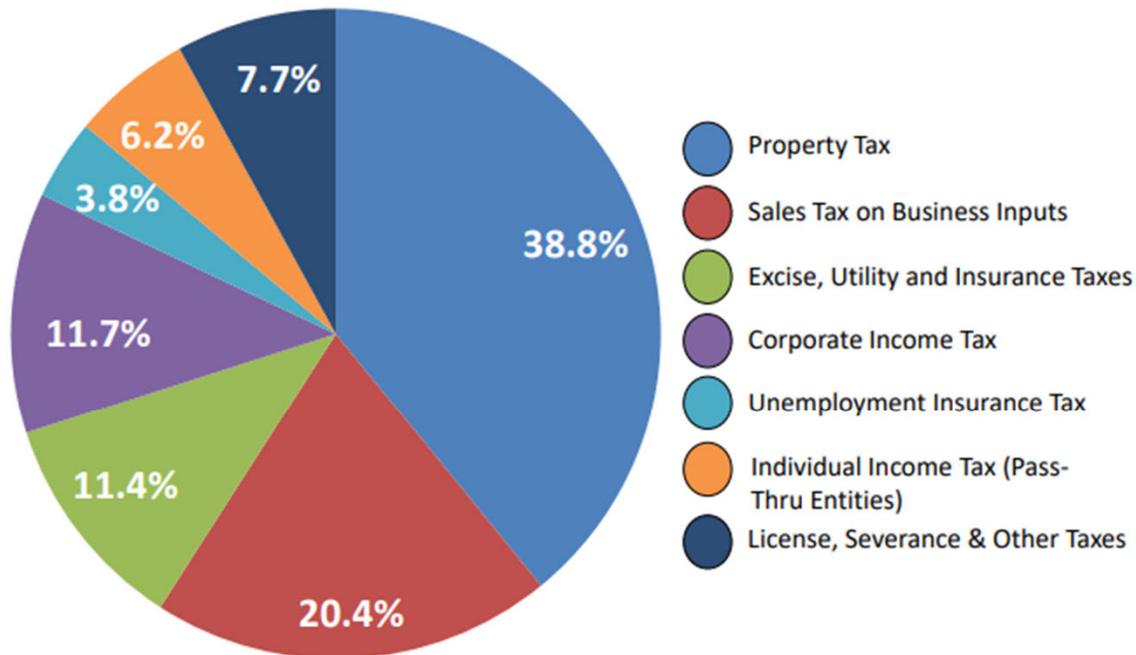


National Tax Update



STATE AND LOCAL BUSINESS TAX BURDEN STUDY

U.S. State and Local Business Taxes by Type, FY21



Source: Total State and Local Business Taxes: State-by-State Estimates for Fiscal Year 2021, study prepared by Ernst & Young LLP for the State Tax Research Institute and the Council On State Taxation (December 2022)

How Much Do Businesses Pay?

- Businesses paid more than \$951 Billion in U.S. state and local taxes, an increase of 13.6% from the prior year
- Business tax revenue accounted for 43.6% of all state and local tax revenue.

Source: State Tax Research Institute and the Council On State Taxation (December 2022)

U.S. CONSTITUTIONAL CHALLENGE TO IRC 965 INCOME

Moore v. United States

U.S. Supreme Court (Cert. Granted 06/26/2023)

Issue

- Does the one-time IRC 965 tax violate the 16th amendment because it is a “direct tax” that has not been apportioned among the states?

Facts

- Moores owned an 11% investment in a corporation that supplied modern tools to farmers in India. This was a quasi charitable undertaking.
- The corporation had retained earnings, but distributed no profits to its owners.
- Under IRC 965, the Moores were taxed on the corporation’s retained earnings.

U.S. CONSTITUTIONAL CHALLENGE TO IRC 965 INCOME

Moore v. United States

U.S. Supreme Court (Cert. Granted 06/26/2023)

Arguments

- The Moores have argued that Sec. 965 is not a tax on income because it fails the realization requirement
- In addition, the Moores have argued that Sec. 965 was unconstitutional because the tax was not apportioned among states in accordance with their population.

Notes

- Case is viewed as a potential test case for wealth tax impositions on federal level.
- Oral arguments are scheduled for December 5, 2023.

Expansion of Combined Reporting

Legislation Proposed But Not Enacted

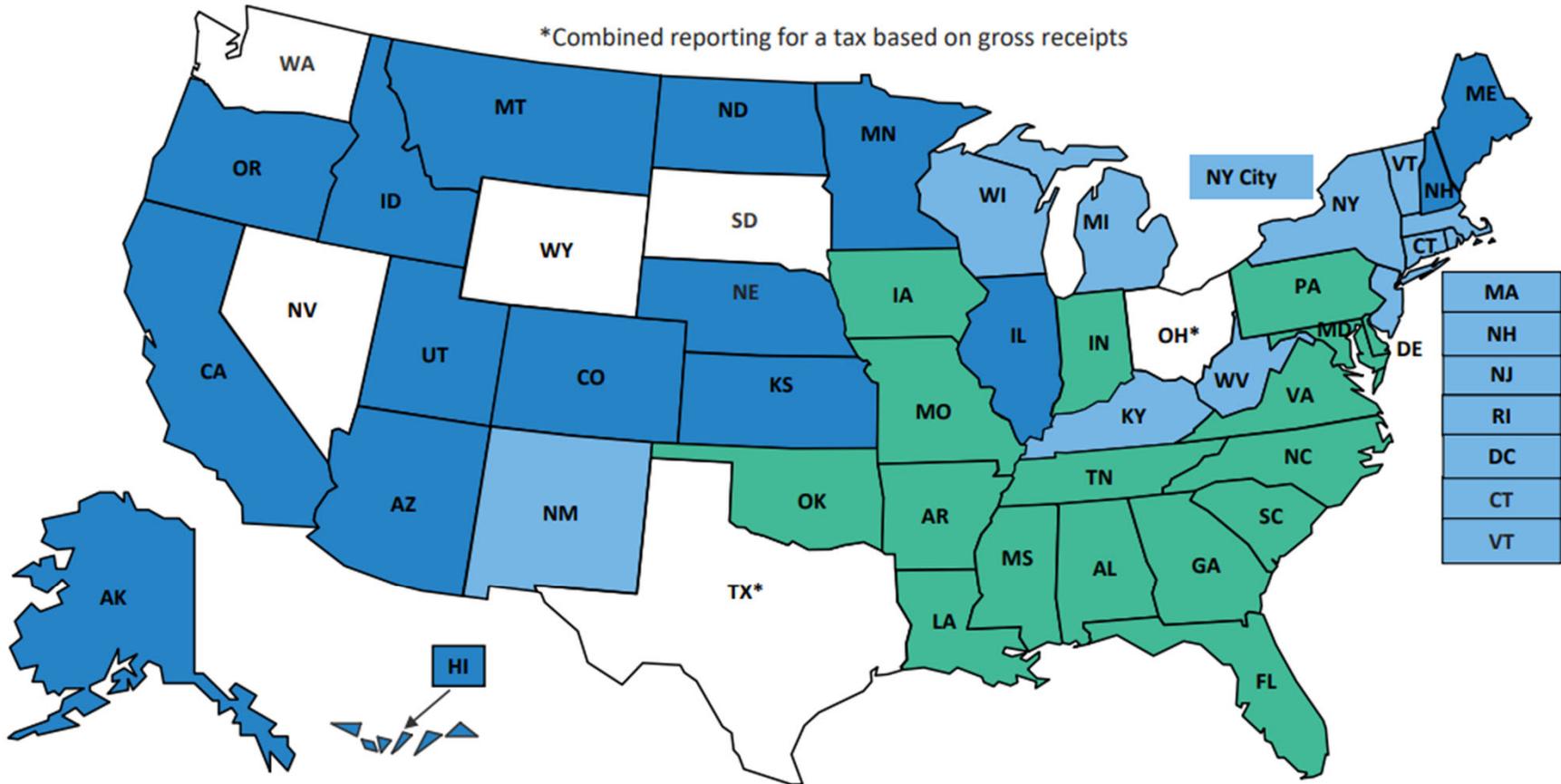
- Florida: Water's Edge
- Maryland: Water's Edge
- Hawaii: Worldwide
- Oregon: Worldwide
- Minnesota: Worldwide
 - Enacted 50% tax on GILTI and certain dividends
- New Hampshire: Worldwide (now Water's Edge)
 - Still pending
- Pennsylvania: Water's Edge
 - Still pending

COMBINED REPORTING

Disclaimer: This information should be used for general guidance and not relied upon for compliance.

Source: Council On State Taxation

- Combined reporting/consolidated return required prior to 2004
- Combined reporting/consolidated return adopted for 2004 or later
- Separate return state
- No income tax



COST Scorecard on State Tax Administration

(December 28, 2022)

Nebraska Grade: B-

Negatives:

- Business Inputs Exemption
- Taxation of Software and Digital Products
- Simplification and Uniformity
- Sales Tax Process

COST Scorecard on State Tax Administration

(December 28, 2022)

Iowa Grade: B-

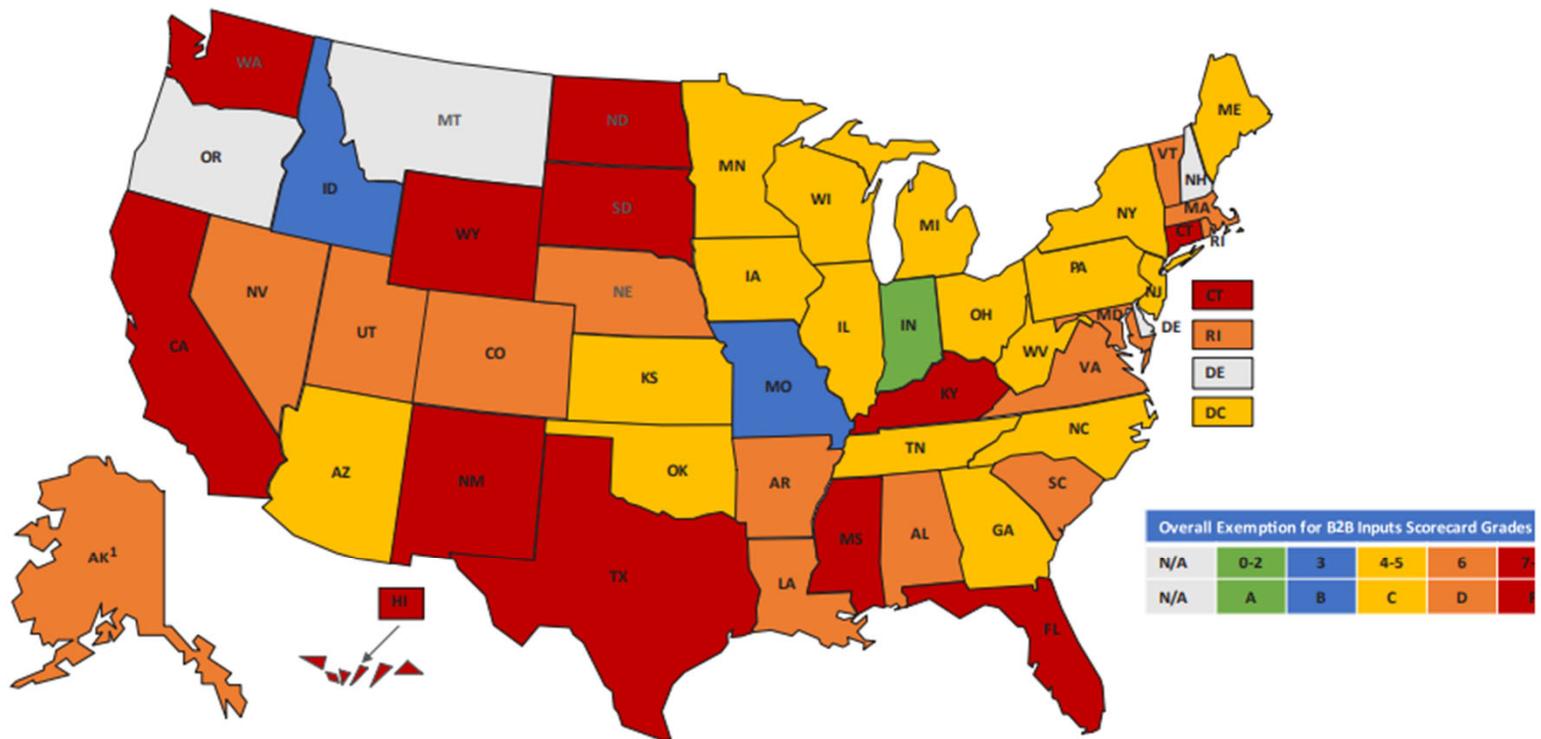
Negatives:

- Business Inputs Exemption
- Simplification and Uniformity
- Central Administration
- Sales Tax Process
- Reasonable Payment/Credit Administration

COST Scorecard on State Tax Administration

(December 28, 2022)

Exemption for Business Inputs: Overall Grades



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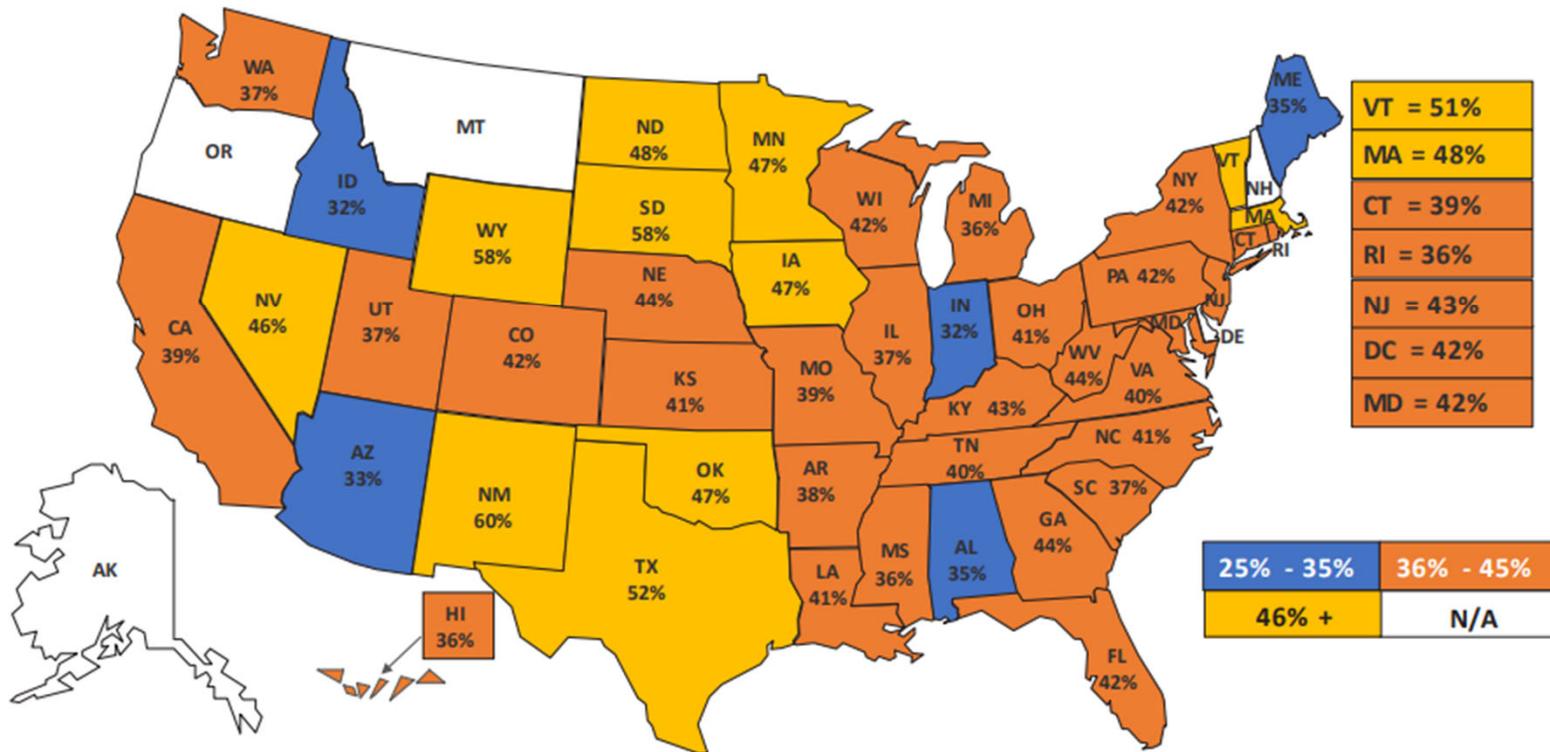
Source: Council On State Taxation (COST)

¹AK - Data is based on local municipalities since Alaska does not have a state-wide sales tax

COST Scorecard on State Tax Administration (December 28, 2022)

Business Inputs Make Up 42% of All State and Local Sales Taxes

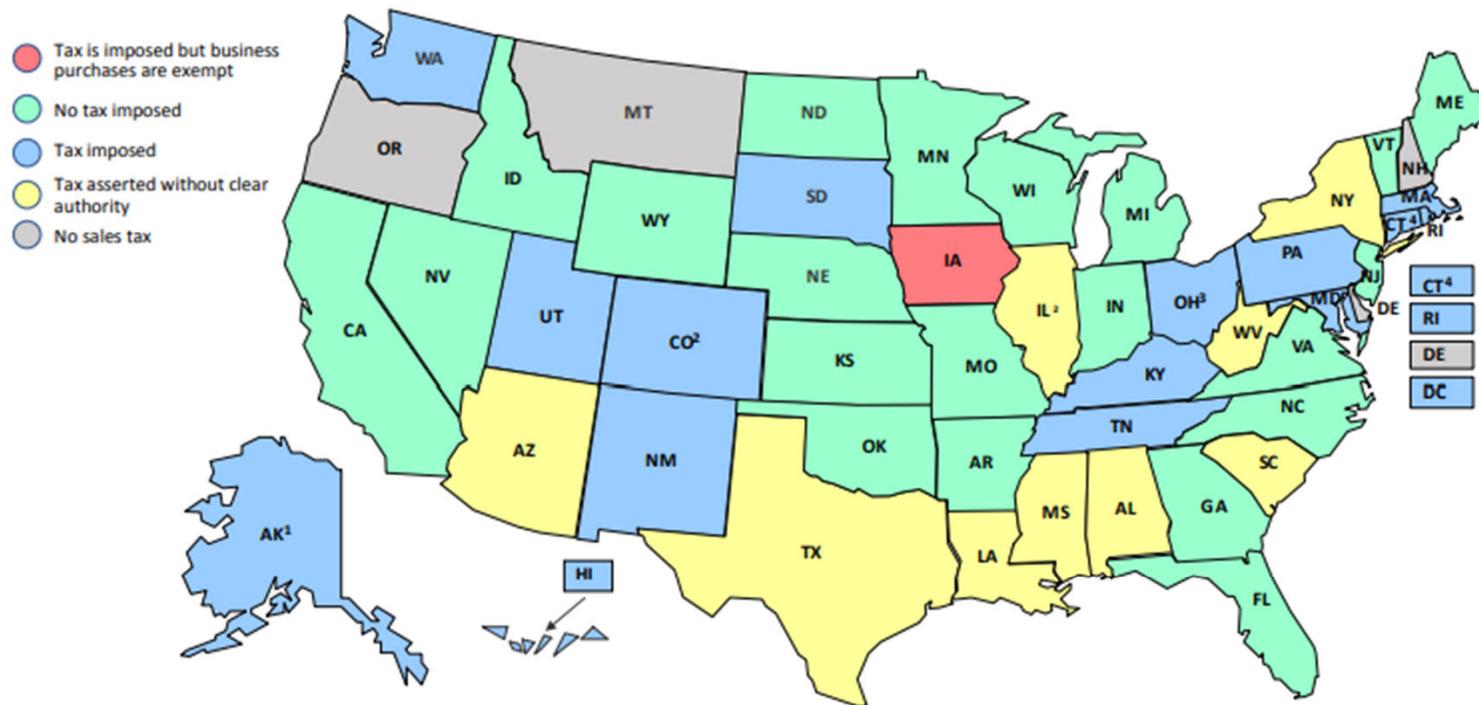
Business Inputs Share of Total Sales Tax Collected



COST Scorecard on State Tax Administration

(December 28, 2022)

Tax on Digital Software Accessed Remotely (SaaS)



Disclaimer: This information should be used for general guidance and not relied upon for compliance.

Source: Council On State Taxation (COST)

¹AK - Data is based on local municipalities since Alaska does not have a state-wide sales tax

²CO/IL - State does not impose a tax, but tax may be imposed by some localities

³OH - Tax only applies to businesses

⁴CT - Electronically delivered software is taxed at 1% rate for businesses

ADP, LLC v. Arizona Dep't of Revenue

(AZ Ct. of Appeals Jan. 31, 2023)

- The Arizona Court of Appeals allowed AZ DOR to subject to sales tax SAAS software used in HR functions.
- All the taxpayers' customers used the same software code and servers, which were maintained outside of Arizona, but the software was configured to each customer's needs.
- The Appeals' Court held sales tax did apply because the software constituted TPP.
 - While the taxpayer may have once been offering human resources services, it had changed to renting human resources software.
- On September 12, 2023, the AZ Supreme Court denied review of case.
- Arizona has had a number of unique sales tax precedents that supported the AZ decision.
 - May not be cited in other states

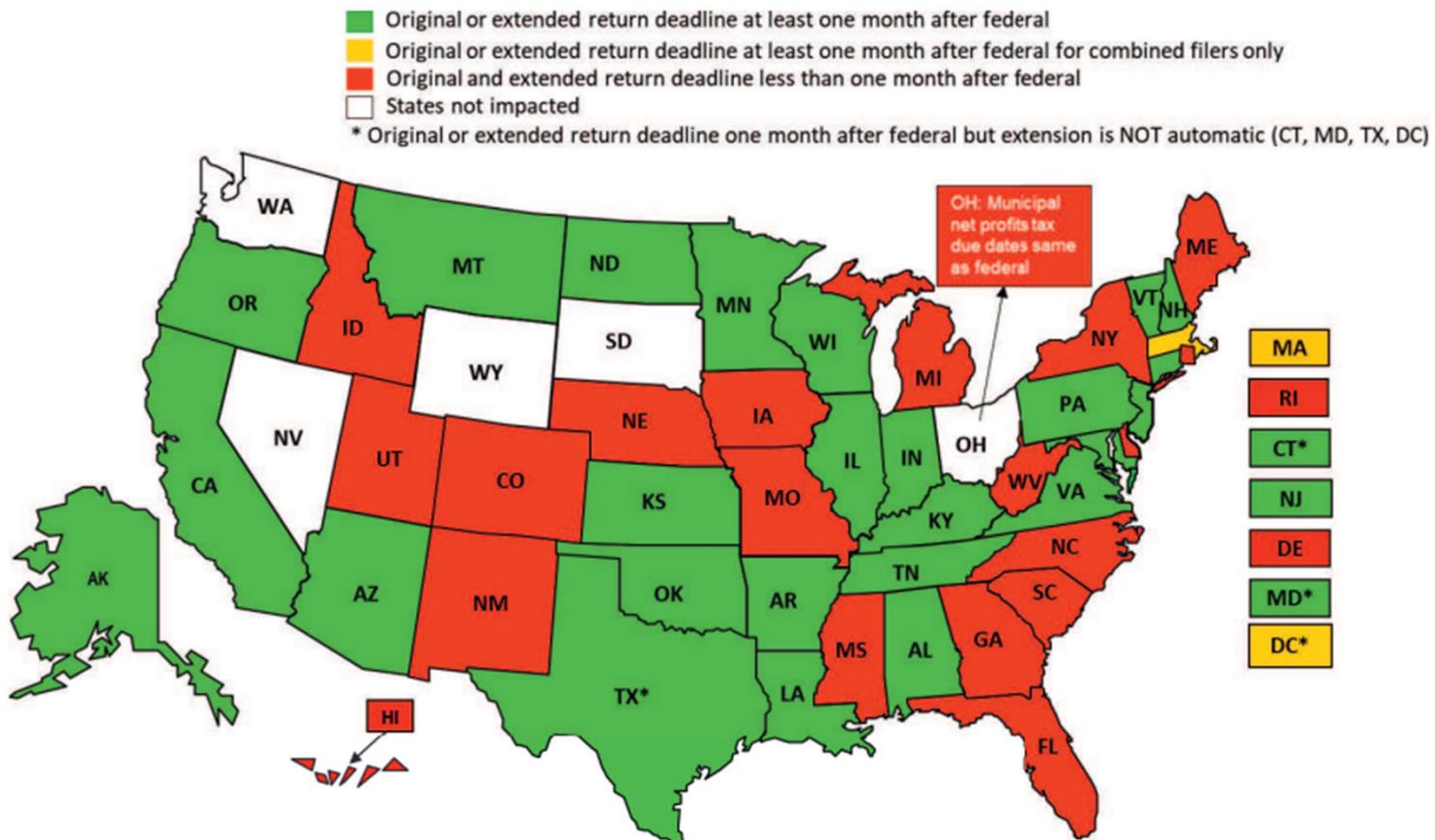
Digital Advertising and Data Services

- Proposals across 15 states from 2020 to 2023 would have established new regimes imposing taxes on “Big Tech.”
- Three categories of tax proposals:
 1. Digital advertising services: Tax on apportioned gross revenue from digital advertising services
 - Connecticut, Louisiana, Maryland, Massachusetts, Montana, New York, Texas, Washington, West Virginia
 2. Social media advertising: Tax imposed on social media companies’ gross revenue advertising services or number of users
 - Arkansas, Connecticut, Indiana
 3. “Data mining” services: Tax on companies selling personal information or data, akin to a severance tax
 - District of Columbia, Massachusetts, New York, Oregon, Washington, West Virginia

TAX ADMINISTRATION

COST: Five State Tax Policy Changes That Would Modernize Laws & Ease Administration & Compliance

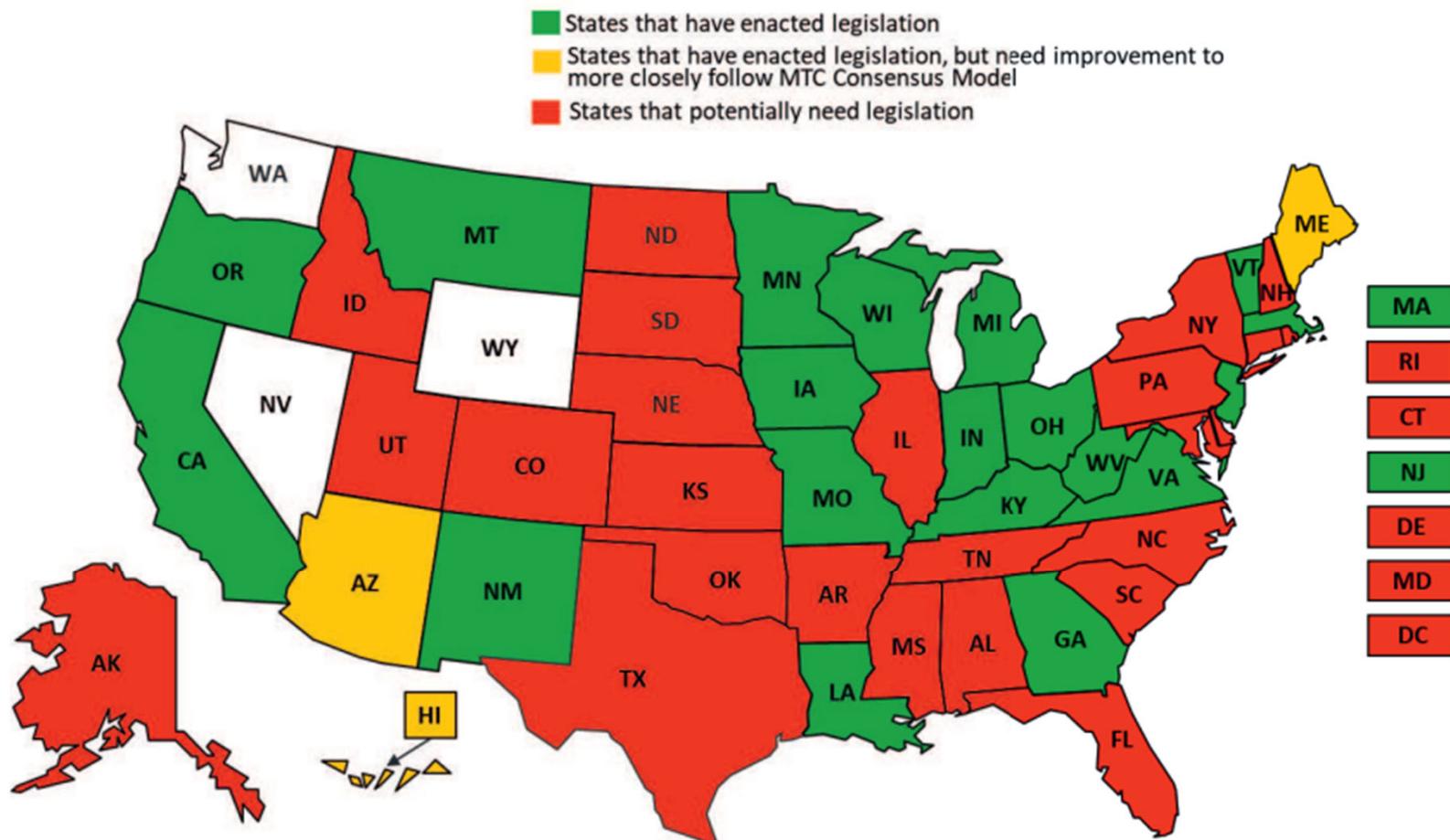
1. Provide at least one month after Federal Extended Deadline for Corporate Taxpayers to file State Tax Returns



TAX ADMINISTRATION

COST: Five State Tax Policy Changes That Would Modernize Laws & Ease Administration & Compliance

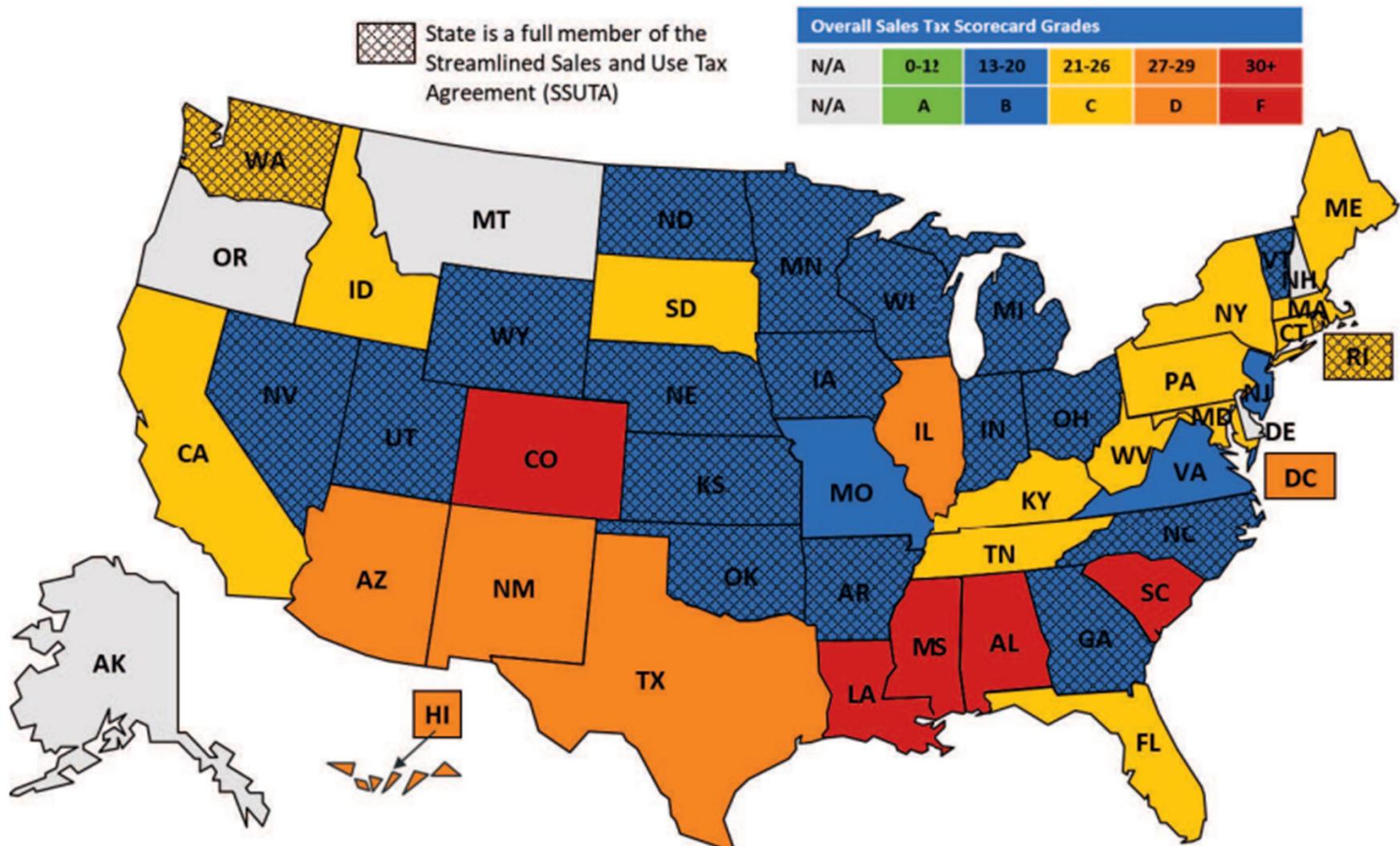
3. Improve Taxpayer Reporting of Federal Tax Adjustments By Incorporating the New MTC Consensus Model



TAX ADMINISTRATION

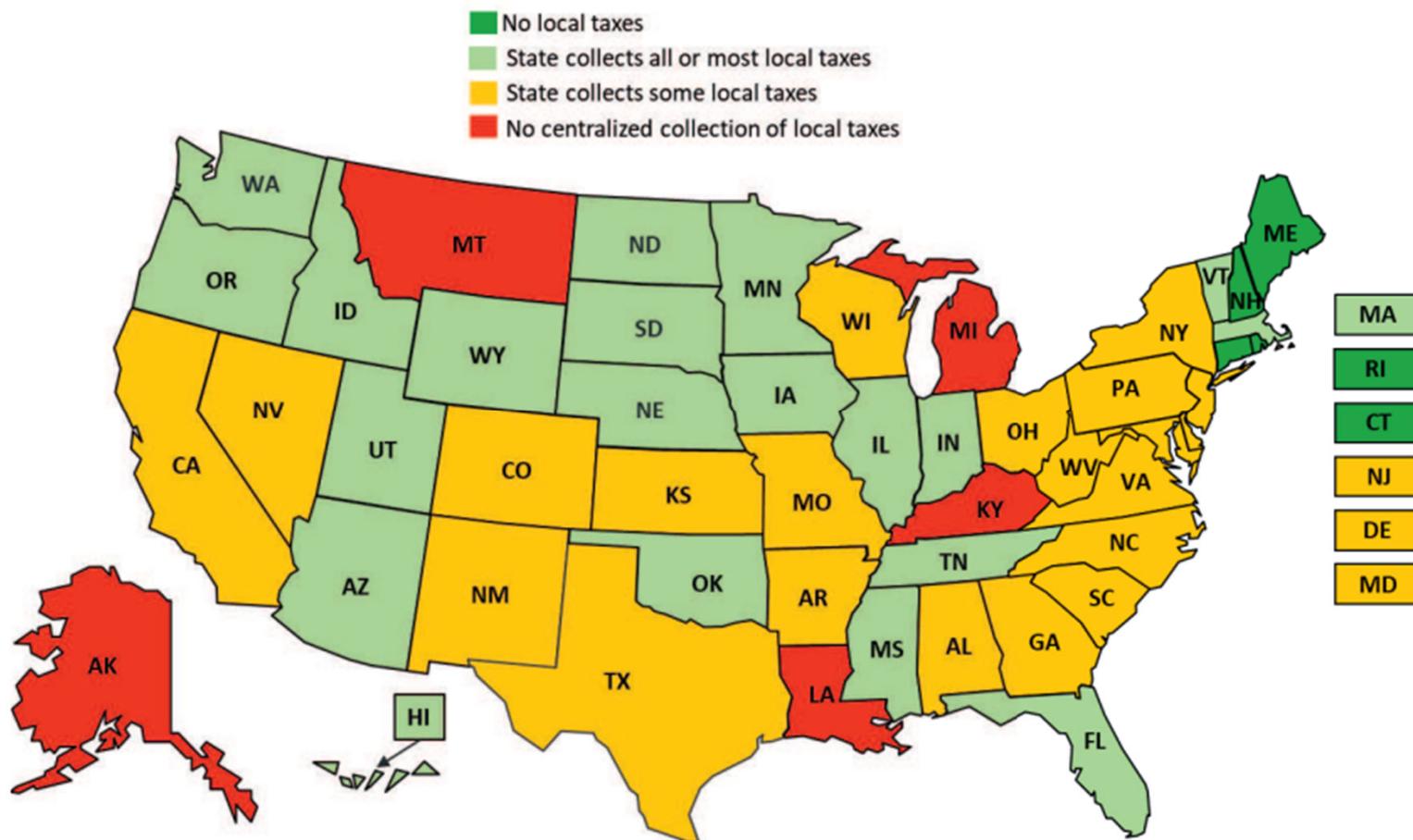
COST: Five State Tax Policy Changes That Would Modernize Laws & Ease Administration & Compliance

4. Participate in the Streamlined Sales Tax Project



COST: Five State Tax Policy Changes That Would Modernize Laws & Ease Administration & Compliance

5. Centrally Administer Local Taxes and Improve Local (and State as Necessary) E-Filing and Electronic Payment Processes



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New Cases



Precision Castparts Corp.

v. Dep't of Revenue

Neb. Court of Appeals

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

Precision Castparts Corp.

v. Dep't of Revenue

Neb. Court of Appeals

PCC's Position

- Nebraska's dividends-received deduction is available for both dividends and "deemed dividends" (As Part of Subpart F)
- 965 Income inclusions are "deemed dividends"
- Therefore, 965 Income is eligible for Nebraska's dividends-received deduction

Precision Castparts Corp.

v. Dep't of Revenue

Neb. Court of Appeals

Tax Commissioner Ruling

- PCC filed as request for Declaratory Order
- Tax Commissioner denied request, claiming that 965 Income Inclusions did not qualify as “dividends” or “deemed dividends”

NEBRASKA INCOME TAX

Precision Castparts Corp.

v. Dep't of Revenue

Neb. Court of Appeals

Appeal to District Court

- PCC filed appeal to Lancaster County District Court
- Lancaster County District Court agreed with Tax Commissioner, finding that 965 Income Inclusions did not qualify as “dividends” or “deemed dividends”

Appeal to Neb. Court of Appeals

- PCC filed appeal to Neb. Court of Appeals
- PCC has asked Neb. Supreme Court to hear this case

Cabela v. Dep't of Revenue

Lancaster County District Court (Filed 3/23/22)

Background

- Appeal of Tax Commissioner Decision holding that sale of Cabela's Inc. stock held in Cabela's Family, LLC was not eligible for Nebraska special capital gains exclusion
- Most case records sealed by Judicial Order
 - After objection by Department of Revenue
- Parties settled case in May 2023

Welch v. Dep't of Revenue

Douglas County District Court (Filed 11/03/2023)

Facts

- Taxpayer overpaid his 2019 tax liability, but did not file Nebraska tax return until August 21, 2023
- On return, claimed a refund of tax overpayment
- NDR denied claim for refund, claiming it exceeded three year statute of limitations for filing claims

NEBRASKA SALES TAX

NPPD v. Dep't of Revenue

Lancaster County District Court (Decided 3/16/23)

Background

- NPPD leases Electric Distribution Systems owned by municipalities
- NDR assessed Nebraska use tax on the lease payments, alleging they were for a lease of personal property
- In prior years, NDR had treated NPPD's electrical distribution systems as real estate

NEBRASKA SALES TAX

NPPD v. Dep't of Revenue

Lancaster County District Court (Decided 3/16/23)

Tax Commissioner Analysis

- Held that Electric Distribution Systems were personal property, not fixtures
- Held that NDR was not bound by its prior treatment of Electric Distribution Systems
 - But did abate penalties for NPPD based on prior treatment

Case Pending

Note:

- In 2019, Nebraska legislature specified that electrical distribution systems constituted real property (LB 218)

NEBRASKA SALES TAX

NPPD v. Dep't of Revenue

Lancaster County District Court (Decided 3/16/23)

District Court Decision

- Held that Electric Distribution Systems were real property
- Held that Electric Distribution Systems were not fixtures and thus were not “trade fixtures”
 - Instead they were “improvements”
- NDR did not appeal

NEBRASKA SALES TAX

Crow v. Dep't of Revenue

Lancaster County District Court (Decided 12/29/22)

Background

- In 2007, Company was assessed Nebraska use tax on purchases of items used in its business
- In 2011, Company went out of business
- In 2021, DOR issued Demand for Payment to Mr. Crow as a responsible officer of the Company
 - Claimed Mr. Crow willfully failed to pay taxes

NEBRASKA SALES TAX

Crow v. Dep't of Revenue

Lancaster County District Court (Decided 12/29/22)

DOR Arguments

- Between 2007-2011, Mr. Crow knew about the DOR's Assessment
- While it was under protest, he still paid other creditors but not the DOR
- This resulted in DOR's claim that he willfully failed to pay Nebraska taxes

NEBRASKA SALES TAX

Crow v. Dep't of Revenue

Lancaster County District Court (Decided 12/29/22)

District Court Decision

- Knowledge of tax assessment was sufficient to create corporate officer liability
- This is true even where the Corporation's liability was protested and protest was not resolved
- Court noted that NDR's deficiency determination had a "presumption of correctness"

Case Appealed

- Decision was appealed and will be heard by Neb. Supreme Court

NEBRASKA SALES TAX

Battaglia v. Dep't of Revenue

Lancaster County District Court (Decided 06/02/2023)

District Court Decision

- Members in a Manager-Managed LLC did not have personal responsibility for an LLC's failure to pay sales taxes
- Where they did not have actual knowledge that sales taxes were due
- Court held that imposition of personal liability would effectively make LLC members (or corporate officers or directors) strictly liable for taxes

Case Not Appealed

- NDR did not appeal decision

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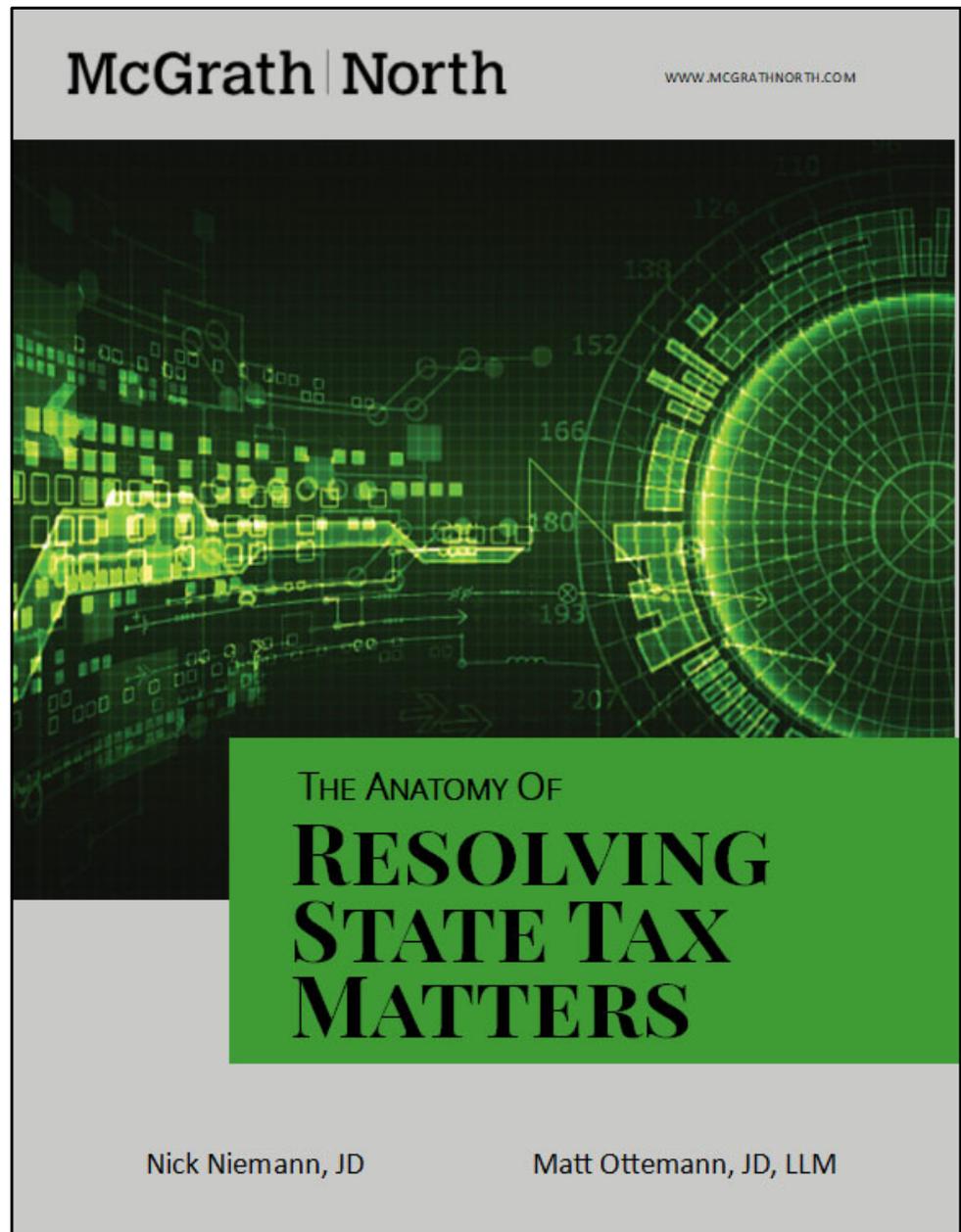


Audits & Appeals

NEBRASKA
Good Life. Great Service.

DEPARTMENT OF REVENUE

**This section
is based on
this:**



TAX REFUND CLAIMS & AUDIT & APPEAL BEST PRACTICES

Before

(the Claim or Audit)

- Planning to Avoid Issue
- Know When to Keep the Statute Open
- Determine the Team Needed
 - Inside Tax Professional
 - Outside CPA
 - Outside State & Local Tax Counsel
- Know When to Engage
- Think 6 Steps Ahead
- Preserve Evidence
- Protect Privileges & Work Product

During

(the Claim or Audit)

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

After

(the Claim or Audit:
the Appeal)

- Protest or Claim = Initial Legal Pleading
- Pay or Not
 - Income vs. Sales Tax
- Request Formal Hearing
- Rules of Evidence or Not
- 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
- Taxability of Remote Employee Income

Property Tax

- Valuation of Centrally Assessed Companies
- Classification of Real v. Personal
- Property Equalization
- Property Valuations

Sales Tax

- Sourcing
- Combined Goods & Services Transactions (*Enterprise Decision*)
- Taxability of Cloud Computing Services
- Security Services
- Custom Software Development
- Data Centers
- Exemption Eligibility
- Tangible Personal Property v. Real Property
- Service vs. TPP

Corporate Income Tax

- Sec. 965 / GILTI Income
- Allocable v. Apportionable Income
- Inclusion of Subsidiaries in Unitary Tax Return
- Remote Employee Withholding
- Apportionment Factor Issues
- Affiliated Group Issues
- Special Apportionment Requests
- Corporate Reorganizations
- Market State Apportionment

SAMPLE OF NEBRASKA TAX ISSUES WE ARE SEEING

Incentives

Application Issues and Project Design

- Which Program
- Project Entities
- Qualified Business
- Project Activities Description
- Commitment
- Employees
- Coordinate with State & Local “Entitlements”
- E-Verify

Multiple Locations

- Locations
- Multiple Sites

Contract With State

- Legal Contract

Claiming Benefits

- Filing Claims

Qualified Property

- Eligible Property
- Relevant Dates
- Software as Eligible Asset

Real Property Construction

- Contract Terms

Incentive Optimizing

- Compliance
- Equipment

Statutory Limits

- Prohibited Actions

Resolving Issues

- Project Issues

Business Sale

- Project Transfer

Procedure

- Late or Missed “Notices of Deficiency”
- Assessment v. Refund Claim
- Declaratory Order v. Specific Case
- Challenge to Regulation
- Challenge to Guidance Document
- Pre-Transaction Rulings
- Guidance Rulings
- Discovery
- Evidence
- NDR Failure to Properly Mail
- “Balance Due Notice” = Notice of Deficiency?
- Settlement Strategy

TODAY'S AGENDA

60TH ANNUAL GREAT PLAINS
FEDERAL TAX INSTITUTE
DECEMBER 2, 2022

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**STATE TAX, INCENTIVES
AND ECONOMIC
DEVELOPMENT
UPDATE AND IMPACT**

Nick Niemann, JD | Matt Ottemann, JD, LLM

Business Climate

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

Tax Changes

- Nebraska Tax Report Card
- Nebraska Income Tax Update
- Nebraska Sales Tax Update
- Nebraska Property Tax Update
- Iowa Tax Update
- National Tax Update

Resolution

- New Cases
- Audits & Appeals

What Next

- A Look Ahead to 2023
- Closing Thoughts

TODAY'S AGENDA



A Look Ahead to 2023



NEBRASKA INCOME TAX

Potential Nebraska Legislature Tax and Incentives Legislation

2023:

- Commercial Software Exemption
- Property Tax Credit Funding
- Remote Employee Taxation & Withholding
- “Security” Services Definition
- E-Verify Impact Clarification on Incentives (e.g. R&D Credit)
- Speed Up the Income Tax Rate Reductions (and go for 3.9%)

2023 - 24

- TEEOSA Reform (e.g. convert to per pupil outlay)
- State Tax Administration and Appeals Processes

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CLOSING THOUGHTS

THE “LIFE OF A BUSINESS” PERSPECTIVE

- STATE TAXES & INCENTIVES -

1. Starting / Redesigning Your Business

- Entity Selection
- Business Model

2. Hiring Employees

- Withholding
- Classification
- E-Verify For Incentives

3. Buying / Leasing Assets

- Asset Classification For Property Tax
- Purchase Design For Sales Tax

4. Purchasing Services

- Bundled Transactions
- Contract Terms

5. Marketing and Selling Products / Services

- Tax Collection
- Taxable Product/Service
- Nexus

6. Additional Capital / Partners

- Tax Benefits For Investment
- Incentive Eligibility

7. Business Expansion Project

- Site Selection
- Incentives
- Tax Increment Financing

8. Growing Your Business

- Physical / Economic Nexus
- Apportionment

9. Acquiring Additional Businesses

- Tax On Purchased Assets
- Exposure For Tax Liabilities

10. Technology & E-Commerce

- Software Development
- Affiliate / Economic Nexus
- Cloud Computing

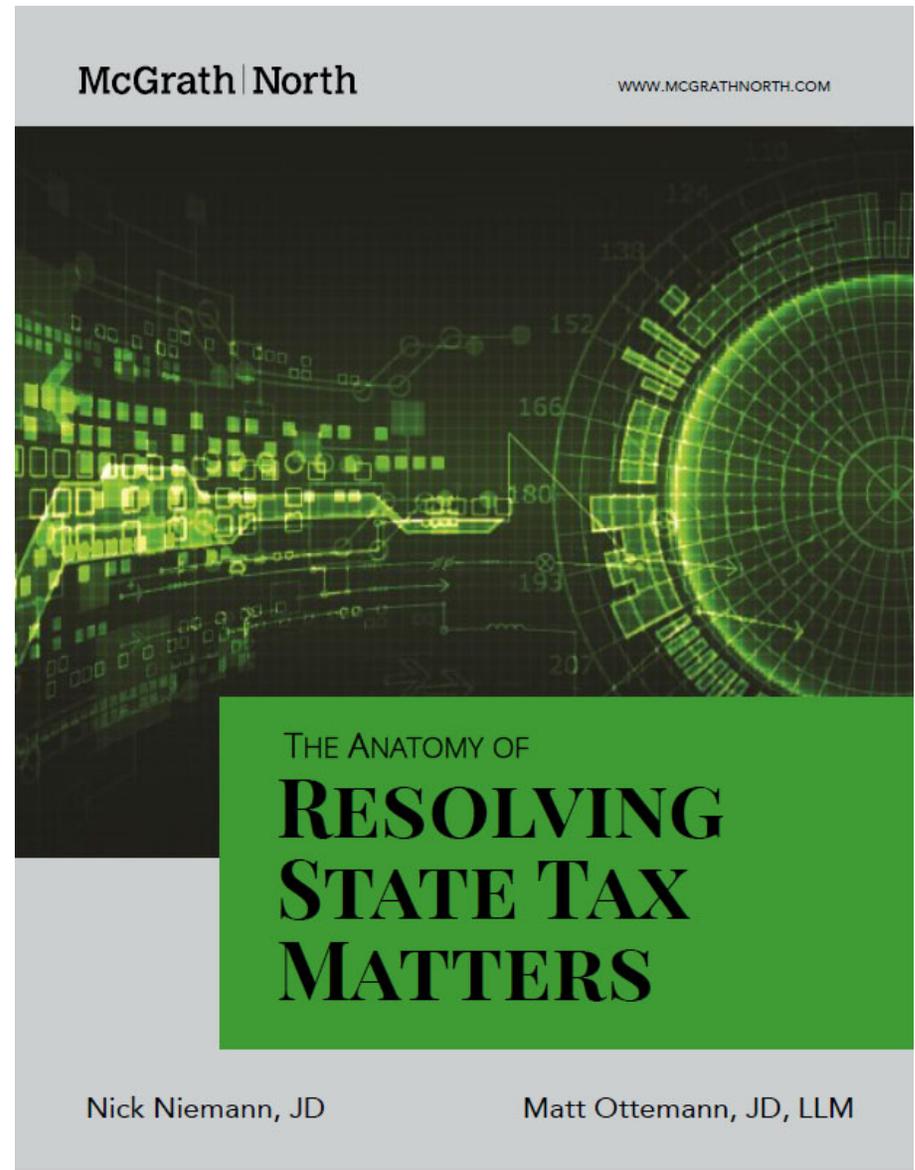
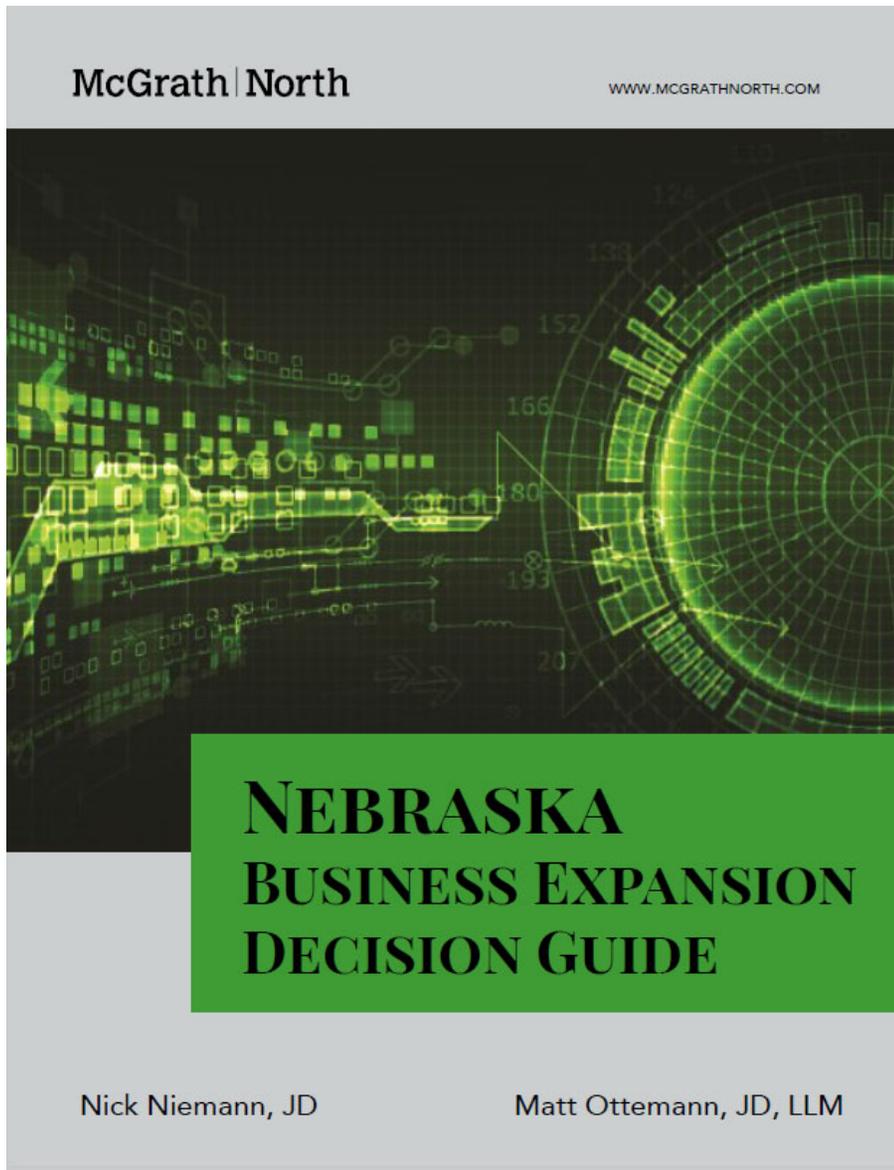
11. Resolving Tax Disputes

- Procedural Requirements
- Refund Claims
- CPA / State Tax Attorney

12. Selling Your Company

- Capital Gains Exclusion
- Tax Exposure Relief

MORE INFORMATION IN THESE 2 BRIEFINGS



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



Thank You!



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 - School of Law 1981 (Magna Cum Laude)
 - Adjunct Faculty – State Tax
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- “Lawyer of the Year” – Best Lawyers (Omaha) – Litigation & Controversy - Tax
- “Lawyer of the Year” – Best Lawyers (Omaha) - Tax
- Chambers USA – America’s Leading Lawyers for Business (Nebraska, Tax-Band 1)
- Martindale Peer Review Rating – AV Preeminent (5.0 out of 5)
- Principal designer and drafter of most of Nebraska’s main 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.
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 - Adjunct Faculty – Estate Planning / Estate & Gift Tax
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- 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

Disclaimer

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