

State Tax, Incentives And Economic Development Update



**58th Annual Great Plains
Federal Tax Institute
December 4, 2020**

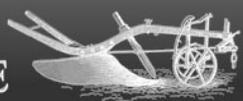


**Nick Niemann, JD
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McGrath | North**
ATTORNEYS



OUR APPROACH TODAY WILL BE...

Great Plains
FEDERAL TAX INSTITUTE



Nebraska and Iowa

State Tax, Incentives and Economic Development

Current Developments
2020

- Review New¹ State Tax, Incentive and Economic Development Matters ...
- ... Through the Actions of Detective Gadgets, Inc.²
- ... To View The 2020 Changes With Some Context and Perspective

1. Developments reported from 11/2019 to 11/2020
2. Detective Gadgets is NOT a real company

OUR APPROACH TODAY WILL BE...

Great Plains
FEDERAL TAX INSTITUTE



Nebraska and Iowa

State Tax, Incentives and Economic Development

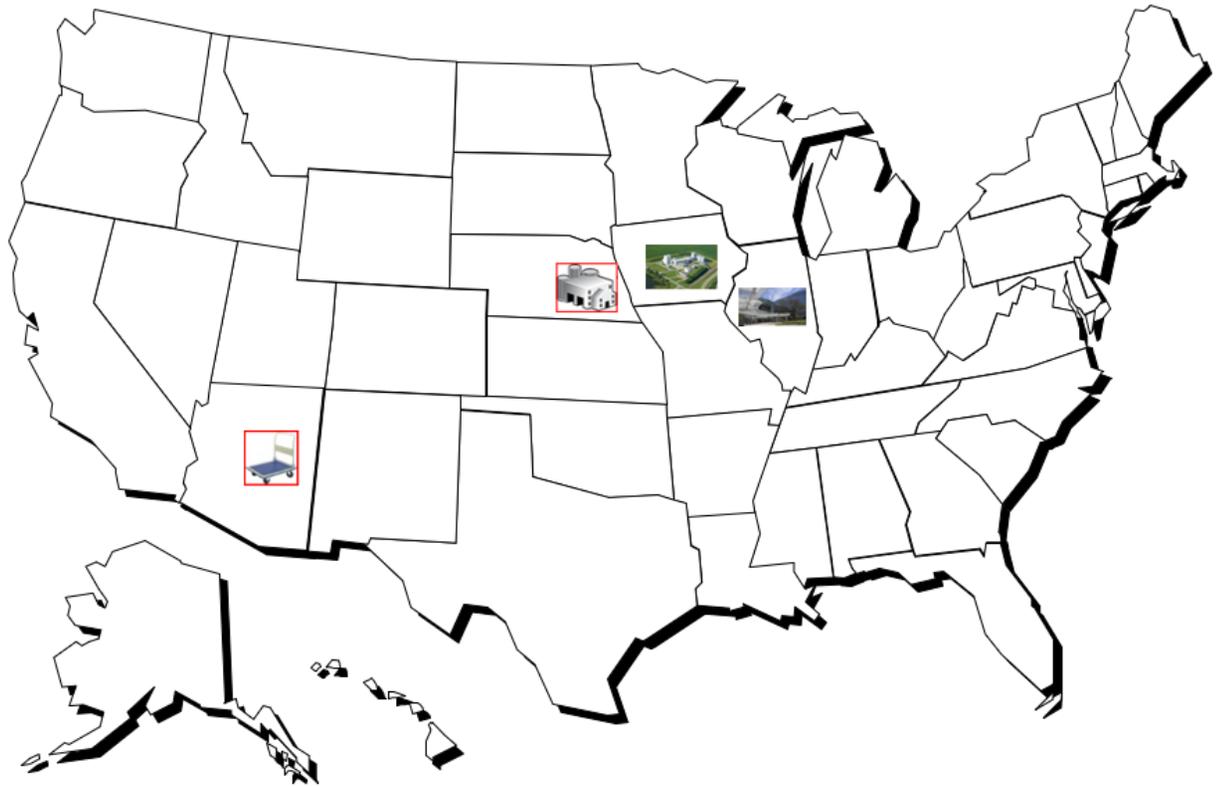
Current Developments
2020

- Review Key 2020 Events And Issues That Have An Impact On State Taxes And Incentives...
- ... And What You Should Be Looking Out For In 2021

What Is Detective Gadgets?

- It produces 25 of 2020's Top 60 new gadgets, such as:
 - The “Get Off The Couch You Lazy Bum” Fitness Tracker
 - The “Yes, Even You Can Speak 50 Foreign Languages” Automatic Translator
 - The Simpli-Awesome MiniMax Pocket Binoculars
 - The Nano Nano Super Powers Battery Pack
 - The “Oh Yeah, I Can See You” Video Doorbell
 - The Marriage Saver Instant Snore Stopper
 - The “So Easy Even Your Husband Can Do It” Robot Vacuum Cleaner
 - The Social Media Addict Wi-Fi Multi-Extender
 - The “I Can’t Help It. It’s So Beautiful” Bug Zapper
 - The Million Dollar Smile Blue Light Teeth Whitener

Where Is Detective Gadgets?



Multiple Businesses / Locations

- Headquartered in Illinois
- Distribution Facility in Arizona
- Manufacturing Facility in Nebraska
- R&D Facility in Iowa
- Detective Gadget National Retail Stores and Internet Sites

It Is
Considering
Certain
Expansion and
Site Selection
Options

DETECTIVE GADGETS HAS BEEN READING...

“State business climates are exceedingly competitive in 2020”

Site Selection Magazine, Nov. 2020

“The evidence is clear that competitive tax rates, thoughtful regulations, and responsible spending lead to more opportunities for all Americans. ”

American Legislative Exchange Council, Aug. 2020

“Millions are fleeing high-tax states to pursue a low-cost American Dream”

New York Post, Jan. 2020

“Unfunded state pension liabilities total \$4.9 trillion or \$15,080 for every man, woman and child in the United States. ”

American Legislative Exchange Council, June 2020

In 2021, Detective Gadgets Wants To:



- Consider Impact of Fiscal Climate In Nebraska and Iowa vs. U.S.
- Review Impact of Business Climate In Nebraska and Iowa vs. U.S.
- Consider The Impact Of COVID-19 On Its Nebraska Incentives
- Consider Moving Its Headquarters to Nebraska in 2021
- Evaluate the Tax Costs of Being in Nebraska and Iowa
- Help Its Executives Determine Where To Reside
- Analyze Impact of Key State and Local Issues From Around The Country
- Deploy The Best Defense Strategy For Its Present NDR Audit

Detective Gadgets Wants To:



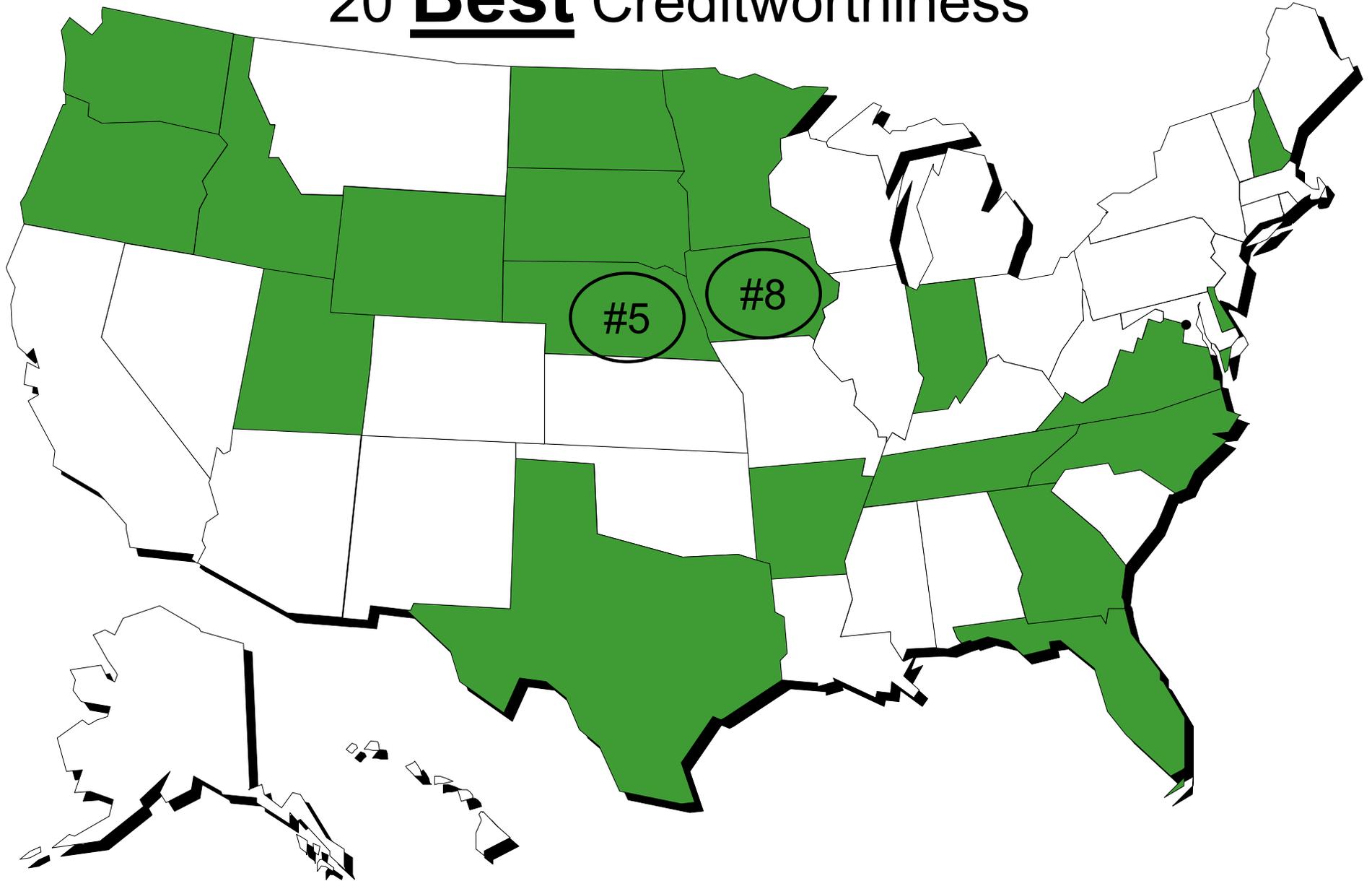
Consider Impact of Fiscal Climate In Nebraska and Iowa vs. U.S.

Because:

- Detective Gadgets believes that, if it remains or locates in a state in poor fiscal condition, that state will likely need to raise tax rates in future years
- Detective Gadgets also believes that a state with a poor economic outlook will likely lose people – potential employees and customers

BARRON'S MAGAZINE

20 Best Creditworthiness



Source: Barron's Magazine, Aug. 31, 2020

(#1 = Best)

20 Worst Creditworthiness



Source: Barron's Magazine, Aug. 31, 2020

State of the State Creditworthiness

6 Separate Items

- Debt and Unfunded Liabilities as % of GDP
- Jobless Rate
- Rainy Day Fund as % of Revenue
- FY20/FY21 Revenue Shortfall Estimate
- Moody's / S&P Rating
- Yield Spread Over AAA

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Economic Outlook Rankings

(Based on 15 policy variables)

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

#1 = Best

Nebraska = #36; Iowa = #27

Prepared by: American Legislative Exchange Council, August 12, 2020

Economic Outlook Rankings

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

Economic Performance Rankings

(Based on 15 policy variables)

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

#1 = Best

Nebraska = #19; Iowa = #25

Prepared by: American Legislative Exchange Council, August 12, 2020

Economic Performance Rankings

3 Policy Variables

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

SITE SELECTION MAGAZINE

2020 Prosperity Cup

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

Top 10 States



2020 RANK	2019 RANK	STATE
1	3	Texas
2	5	Georgia
3	2	Indiana
4	10	Michigan
5	7	Ohio
6	4	North Carolina
7	6	Tennessee
8	9	Alabama
T9	8	Kentucky
T9	1	Virginia

West North Central Region

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

Source: Site Selection Magazine, May 2020

Detective Gadgets' Conclusions On:



Consider Impact of Fiscal Climate In Nebraska and Iowa vs. U.S.

- Nebraska and Iowa both have good fiscal discipline
- Because Nebraska and Iowa's Fiscal Condition and Economic Performance are at or above average, Nebraska and Iowa made the first cut for Detective Gadgets' proposed expansion and company moves.

In 2021, Detective Gadgets Wants To:



- Consider Impact of Fiscal Climate In Nebraska and Iowa vs. U.S.
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Detective Gadgets Wants To:

- Review Impact of Business Climate In Nebraska and Iowa vs. U.S.

Because:

- Detective Gadgets wants to remain or locate in a cluster of similar companies. A cluster generally requires a good business climate to create.
- Detective Gadgets' executives believe that the company will benefit from location in a strong local economy that attracts talent.

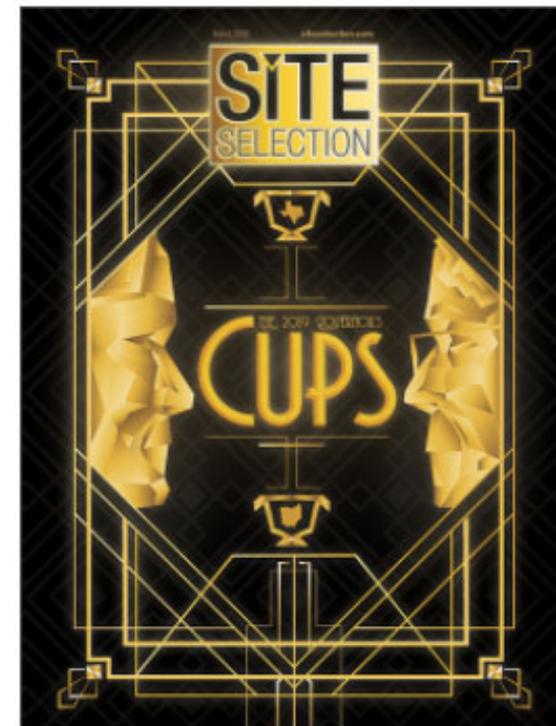
2019 Site Selection Top States by Projects Per Capita: #3 Nebraska #5 Iowa



The graphic features a dark background with a gold geometric pattern. At the top, the year '2019' is displayed in a gold box, followed by the title 'Top States by Projects Per Capita'. Below this is a table with four columns: '2019 Rank', '2018 Rank', 'State', and 'Project Count'. The table lists the top 10 states. At the bottom, the source is cited as 'Conway Projects Database'.

2019 Rank	2018 Rank	State	Project Count
1	3	Ohio	448
2	2	Kentucky	164
3	1	Nebraska	70
4	4	Illinois	423
5	5	Iowa	98
6	14	Alabama	150
7	10	Texas	859
8	8	Indiana	194
9	6	Georgia	296
10	17	Louisiana	110

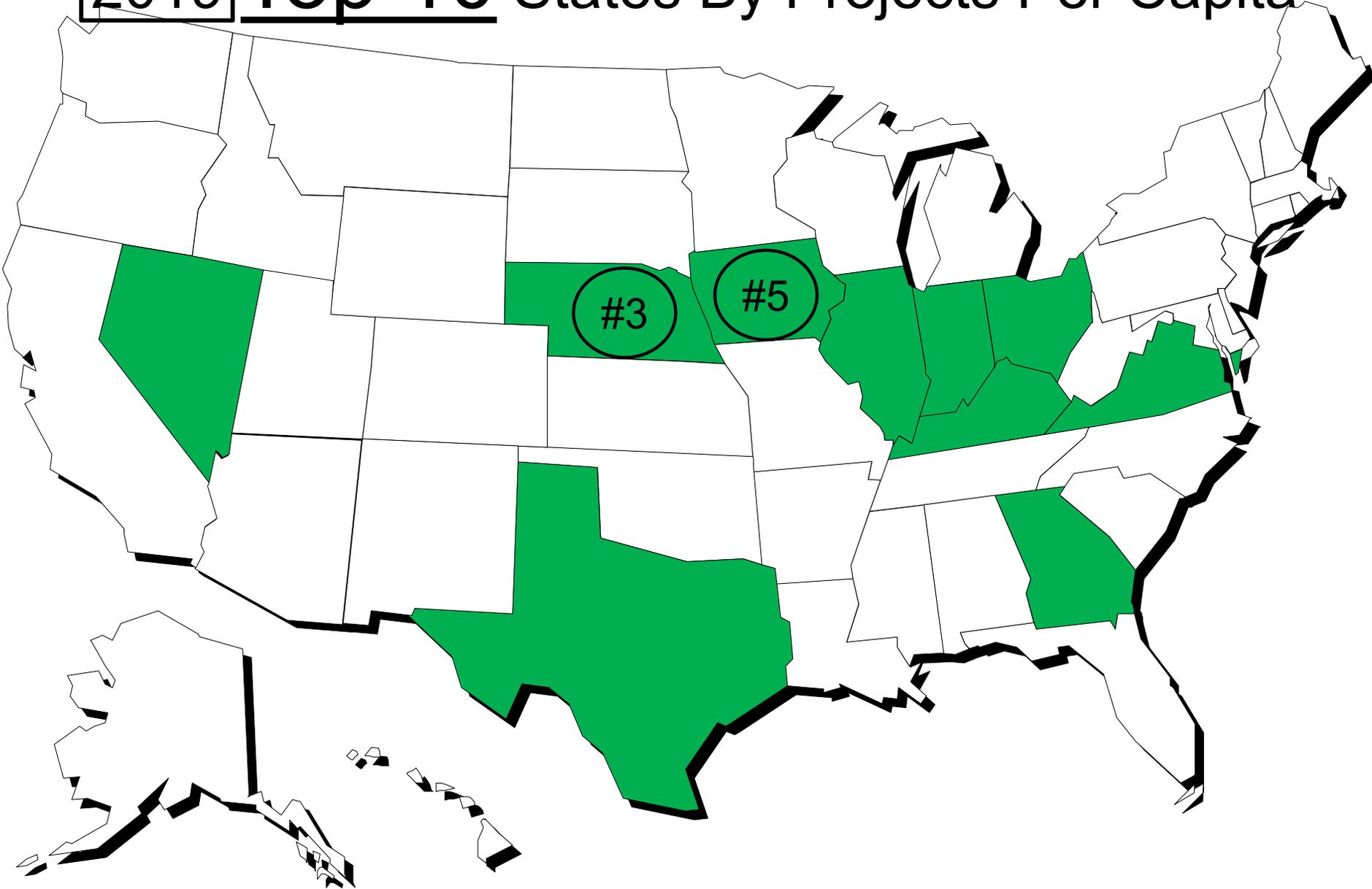
Source: Conway Projects Database



2019 Project Data Reported in March 2020

SITE SELECTION MAGAZINE

2019 Top 10 States By Projects Per Capita

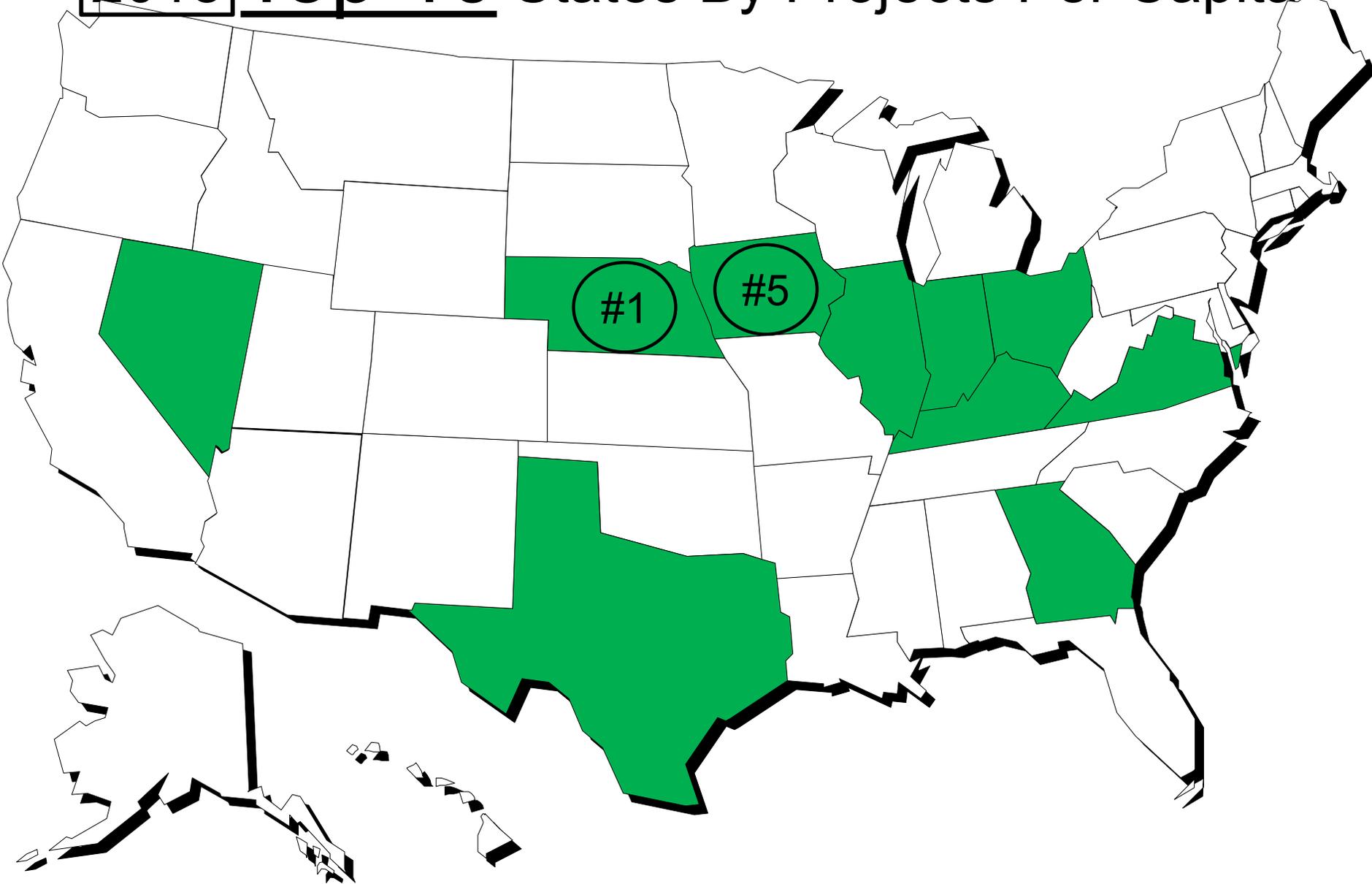


Source: Site Selection Magazine, Mar. 2020

(#1 = Best)

SITE SELECTION MAGAZINE

2018 Top 10 States By Projects Per Capita

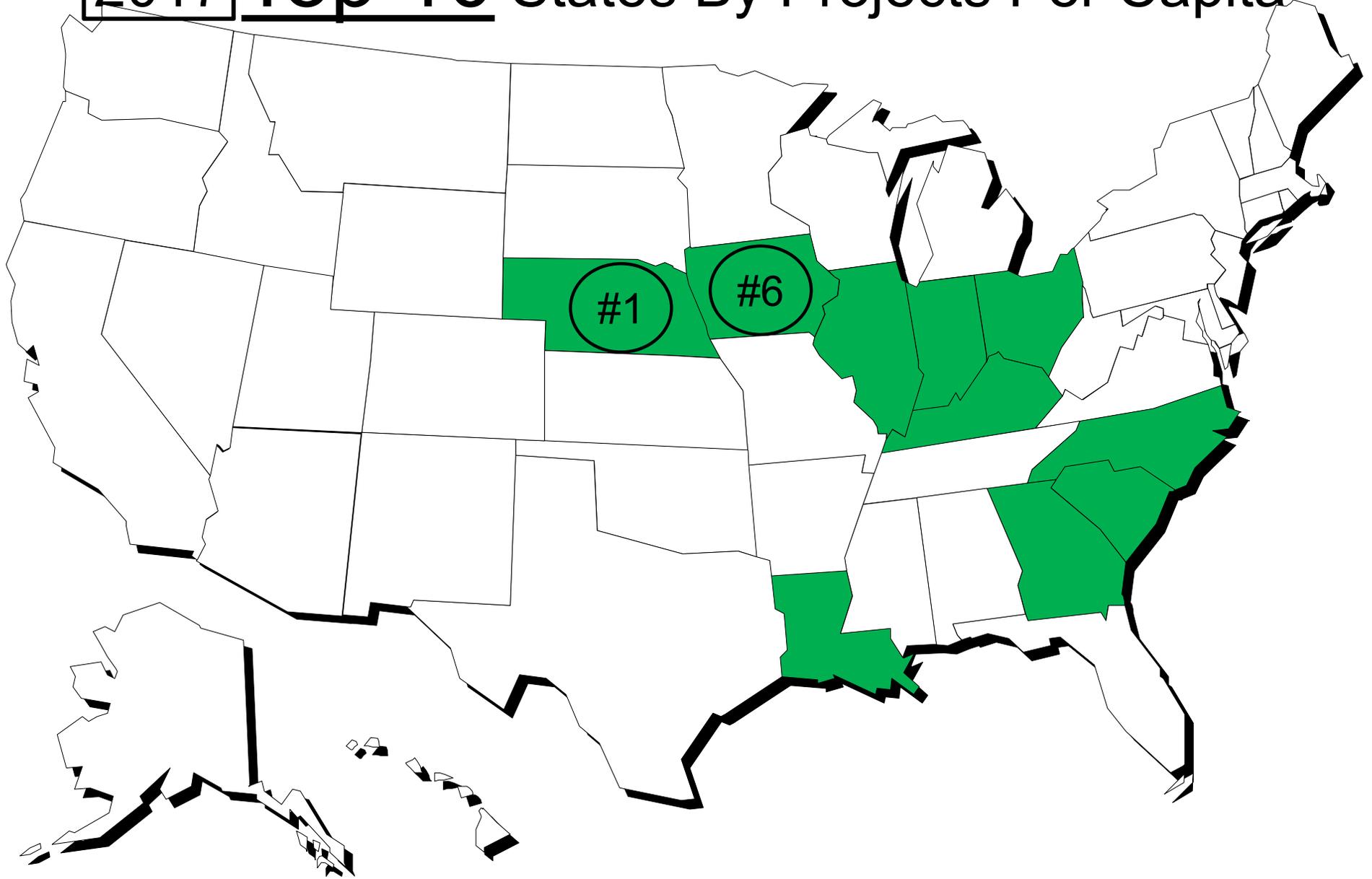


Source: Site Selection Magazine, Mar. 2019

(#1 = Best)

SITE SELECTION MAGAZINE

2017 Top 10 States By Projects Per Capita

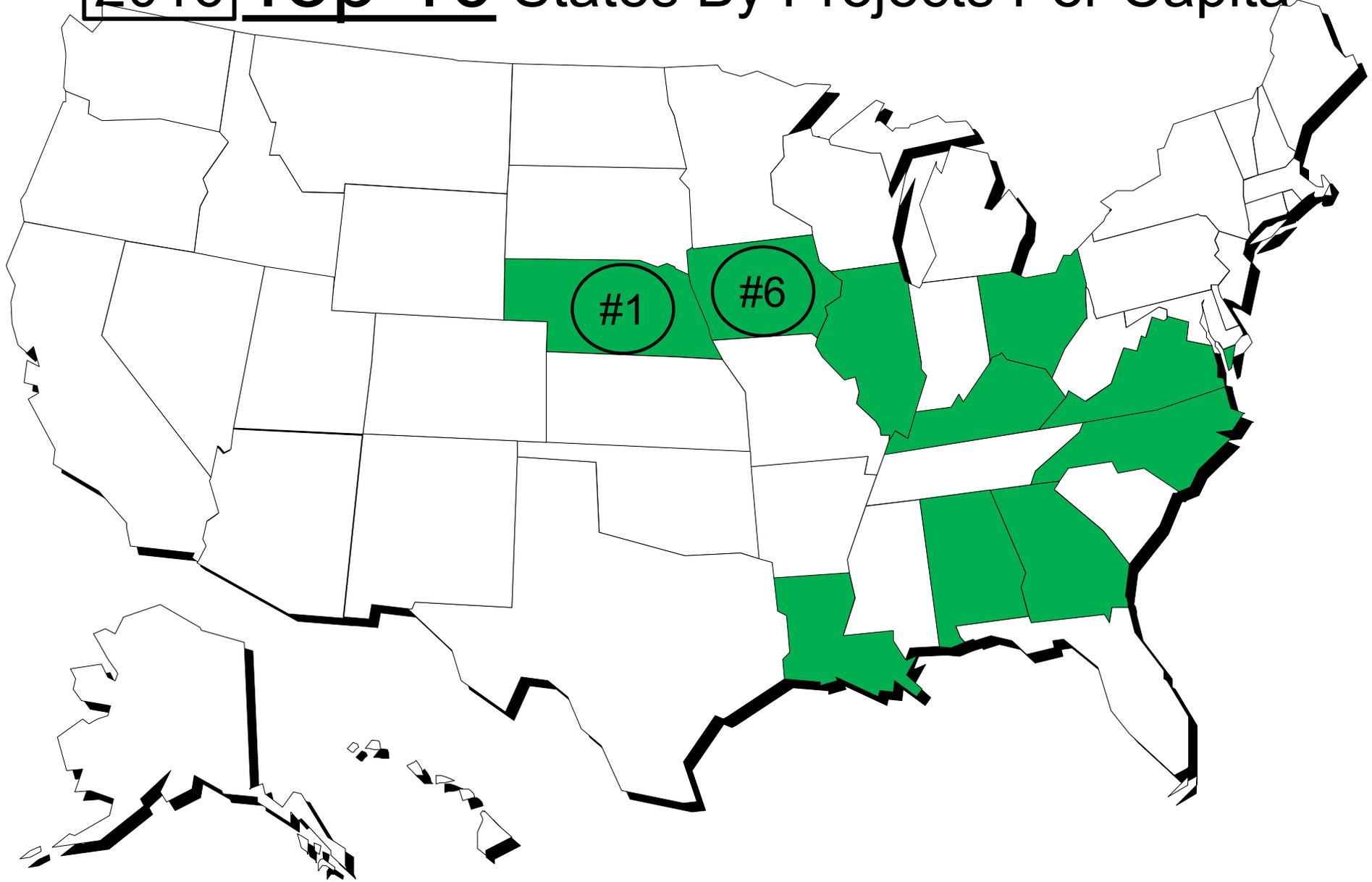


Source: Site Selection Magazine, Mar. 2018

(#1 = Best)

SITE SELECTION MAGAZINE

2016 Top 10 States By Projects Per Capita



Source: Site Selection Magazine, Mar. 2017

(#1 = Best)

SITE SELECTION MAGAZINE

Top 10 Metros: Population 200,000 to 1 Million (United States)

Rank	Metro	State	Projects
1	Dayton-Kettering	Ohio	38
2	Baton Rouge	LA	35
3	Allentown-Bethlehem-Easton	PA-NJ	34
3	<u>Omaha-Council Bluffs</u>	<u>Neb. - Iowa</u>	34
5	<u>Des Moines-West Des Moines</u>	<u>Iowa</u>	31
6	Greensboro-High Point	N.C.	28
7	Lexington-Fayette	KY	25
8	Toledo	OH	24
9	Montgomery	AL	23
10	Chattanooga	TN-GA	19
10	Greenville-Anderson-Mauldin	S.C.	19

Source: Site Selection Magazine, Mar. 2020

SITE SELECTION MAGAZINE

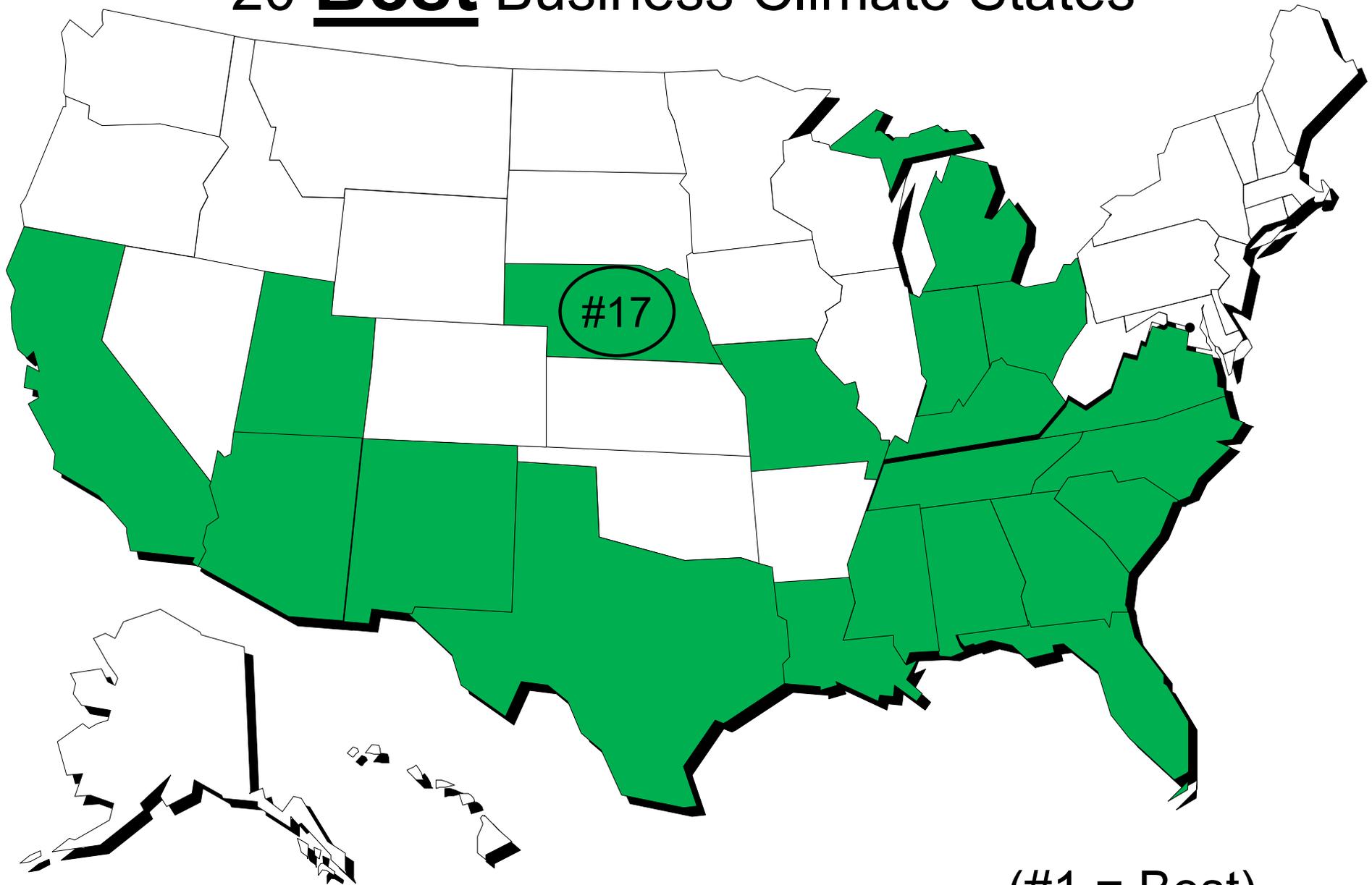
Selected Corporate Facility Projects in 2019 (Nebraska)

Rank	Company	City	Investment	Jobs
1	Google	Papillion	\$600 M	30
2	Great Plains Beef	Lincoln	\$360 M	40
3	JBS USA Food Co.	Grand Island	\$95 M	
4	Linkedin Corp.	Omaha	\$70 M	540
5	Carson Group Holdings	Omaha	\$50 M	150
6	Scoular Co.	Seward	\$50 M	100
7	1623 Farnam	Omaha	\$35 M	
8	Centris Federal Credit Union	Omaha	\$30 M	
9	Carson Group Holdings	Omaha	\$30 M	

Source: Site Selection Magazine, January 2020

SITE SELECTION MAGAZINE

20 Best Business Climate States

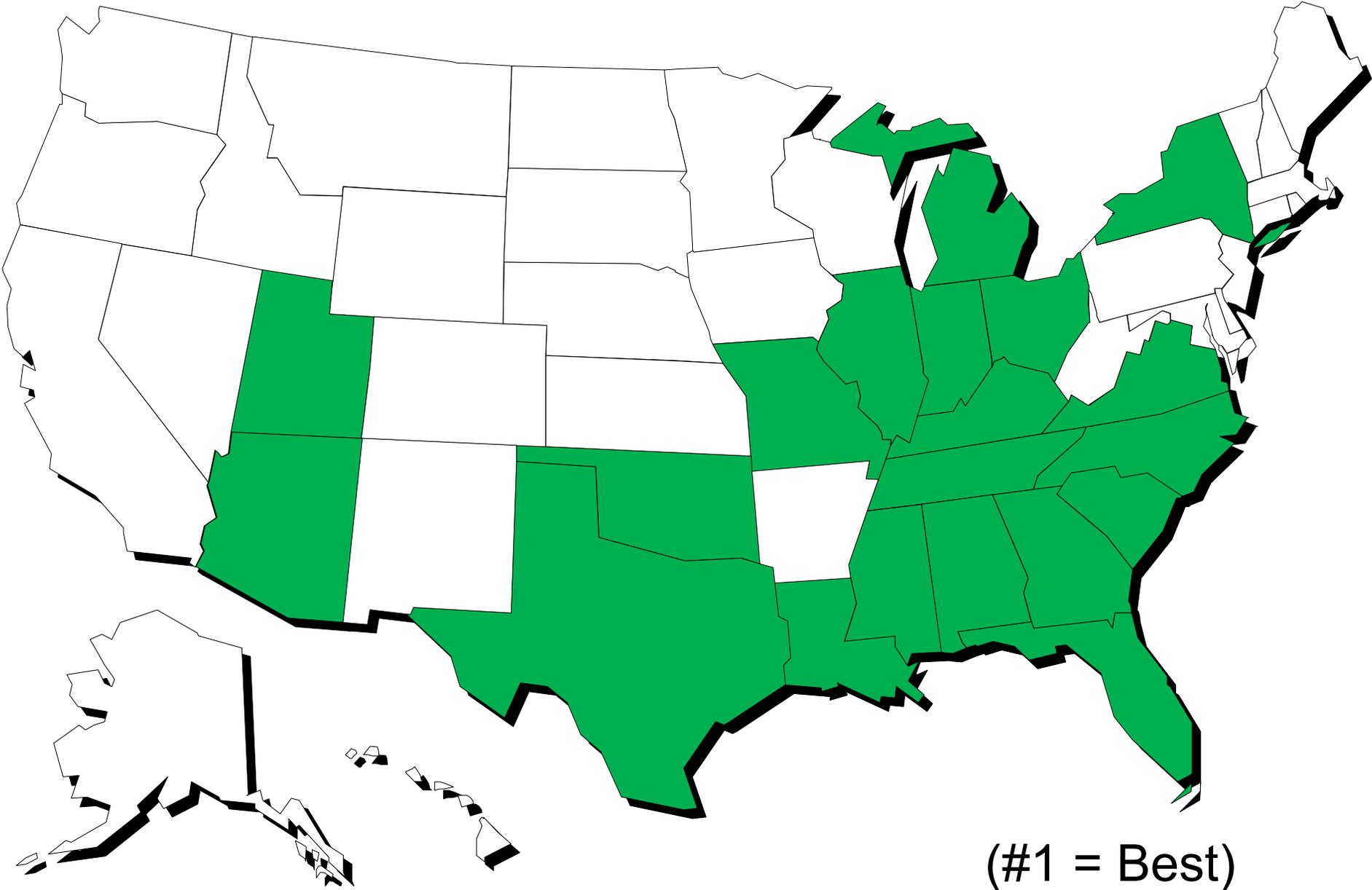


(#1 = Best)

Source: Site Selection Magazine, Nov. 2020

AREA DEVELOPMENT

20 Top States For Doing Business

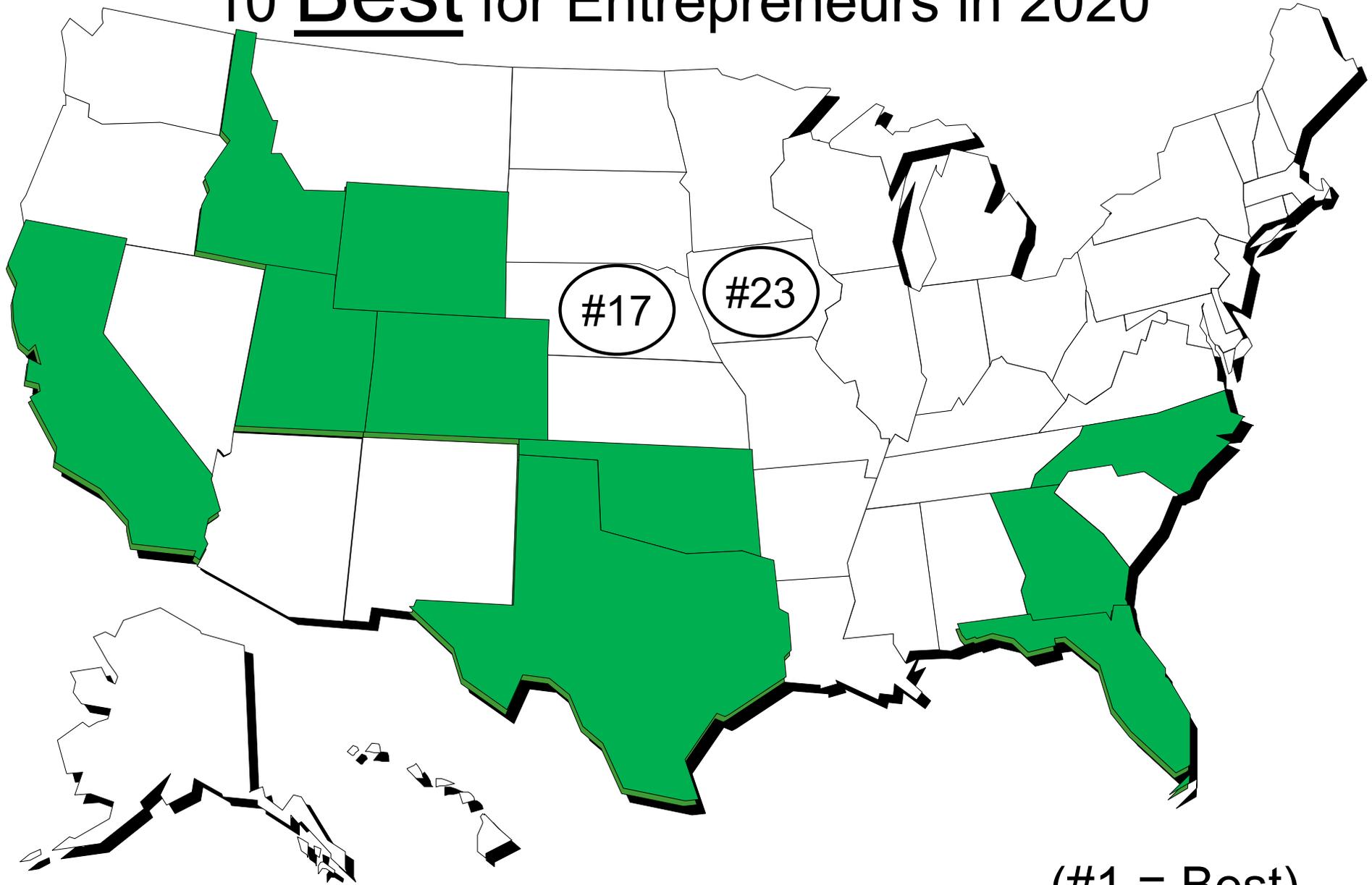


(#1 = Best)

Source: Area Development Magazine, Q3 2020

FORBES MAGAZINE & SEEK BUSINESS CAPITAL

10 Best for Entrepreneurs in 2020

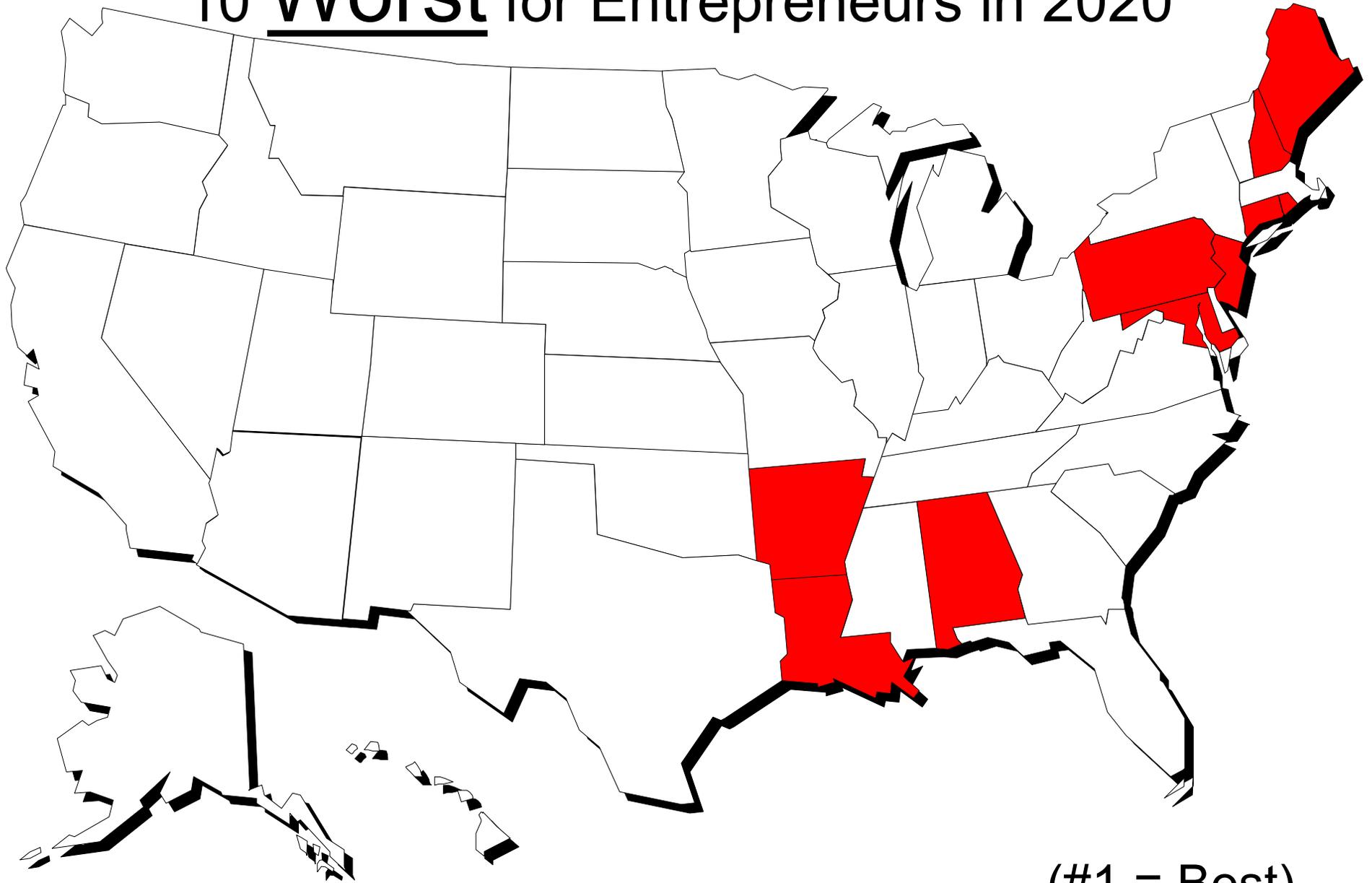


(#1 = Best)

Source: Forbes Magazine and Seek Business Capital, Nov. 2019

FORBES MAGAZINE & SEEK BUSINESS CAPITAL

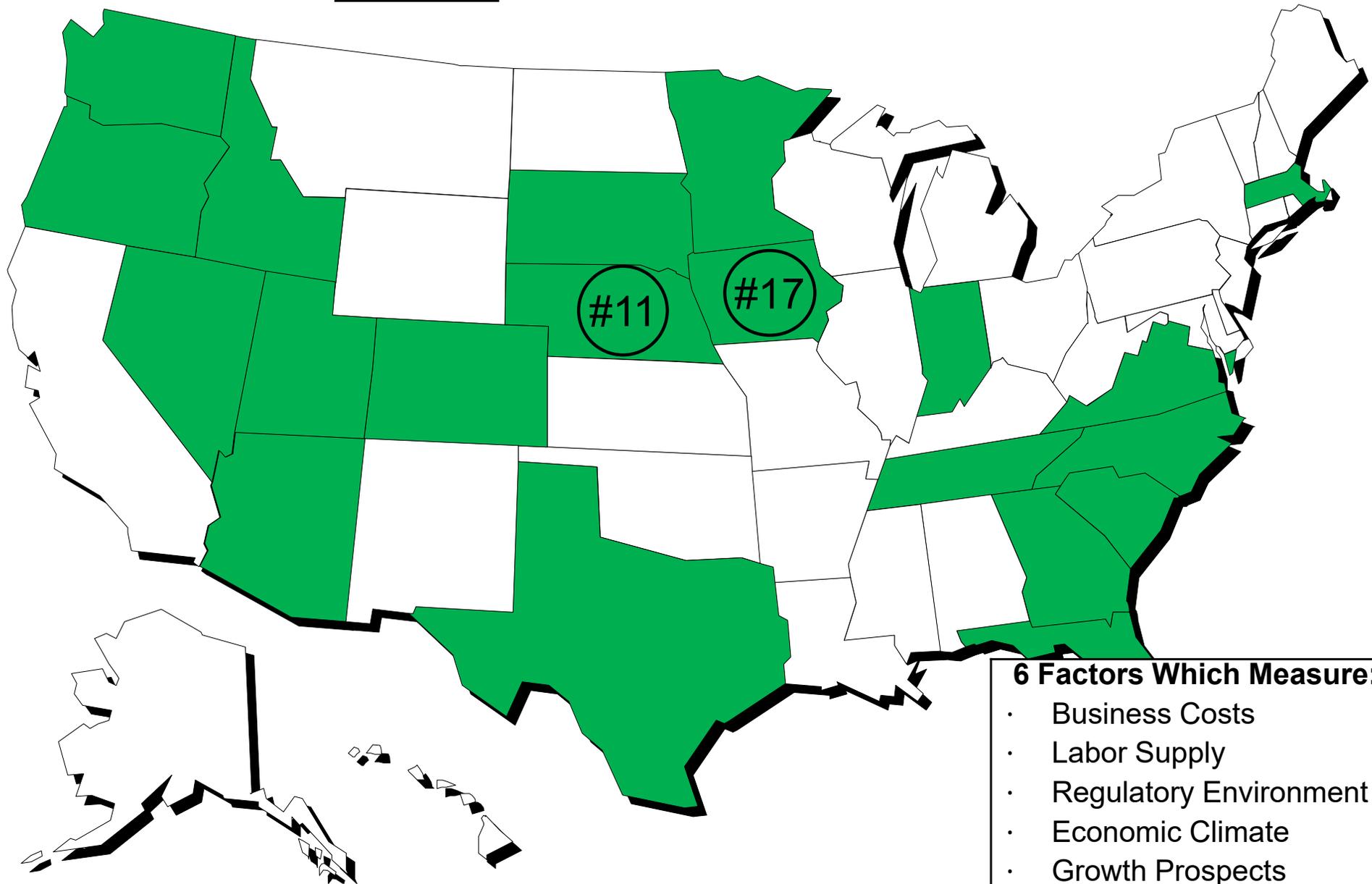
10 Worst for Entrepreneurs in 2020



(#1 = Best)

Source: Forbes Magazine and Seek Business Capital, Nov. 2019

20 Best States For Business



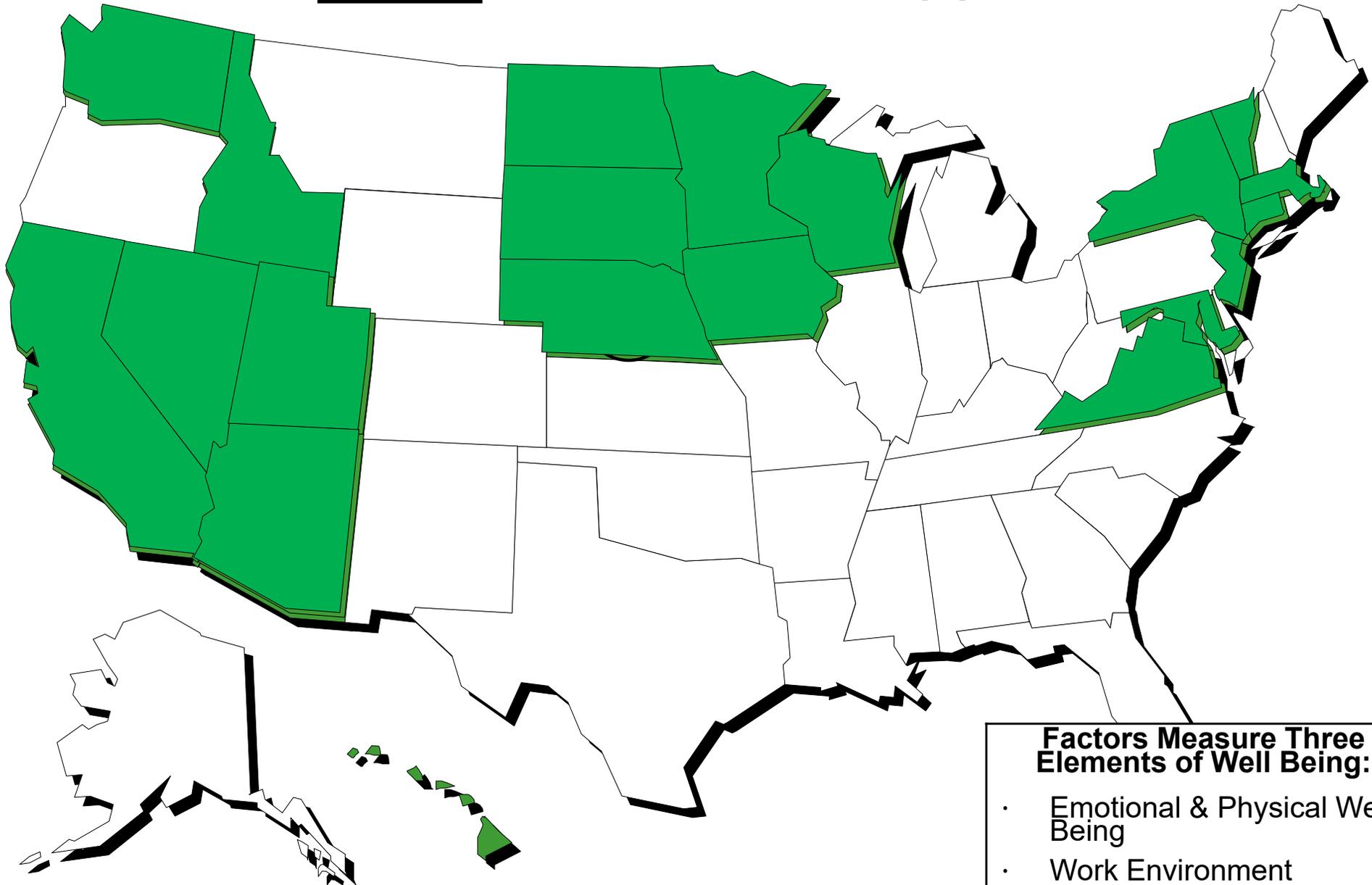
(#1 = Best)

Source: Forbes Magazine, Dec. 19, 2019

6 Factors Which Measure:

- Business Costs
- Labor Supply
- Regulatory Environment
- Economic Climate
- Growth Prospects
- Quality of Life

20 Best States For Happiness



(#1 = Best)

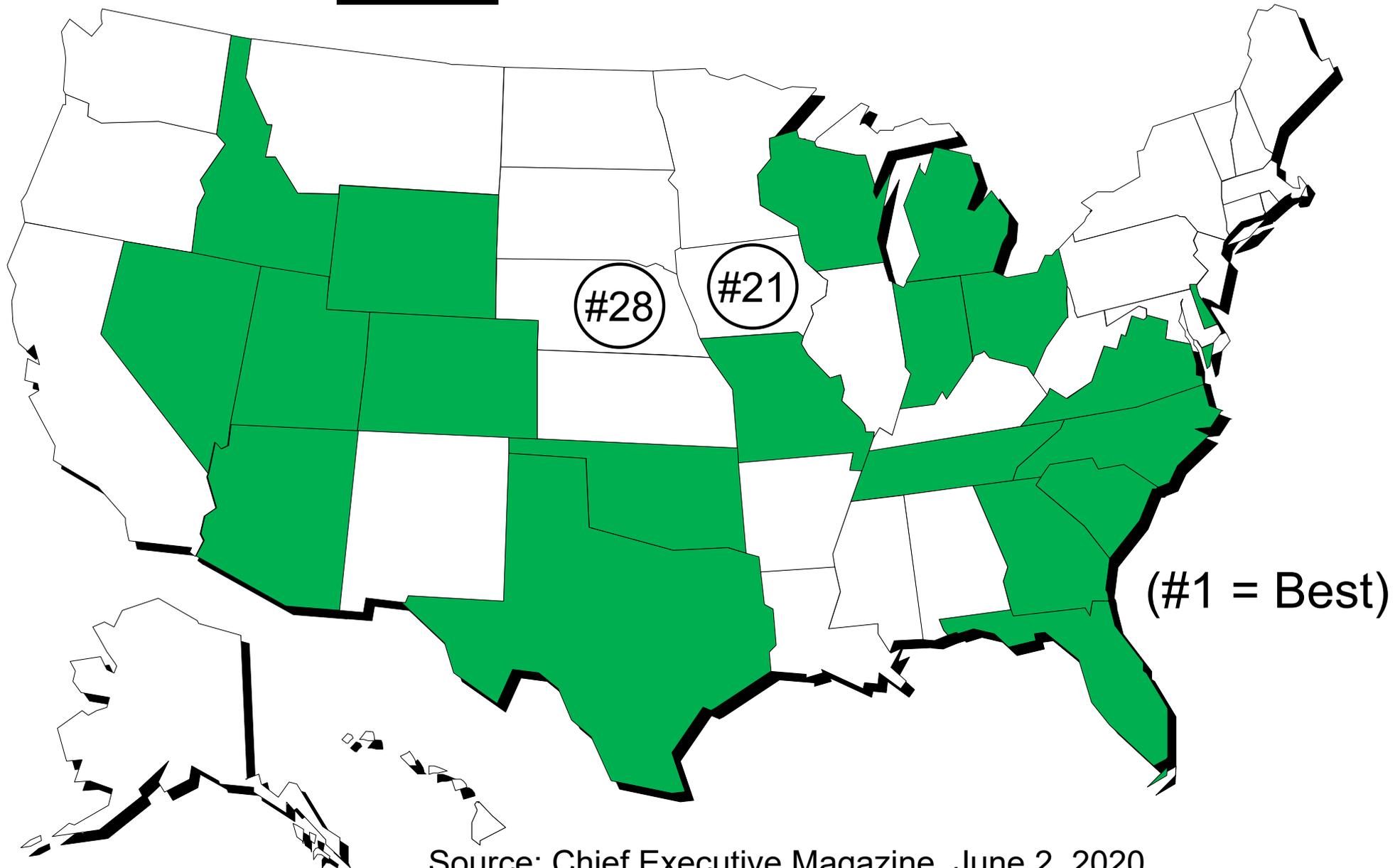
Source: WalletHub, September 2020

Factors Measure Three Elements of Well Being:

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

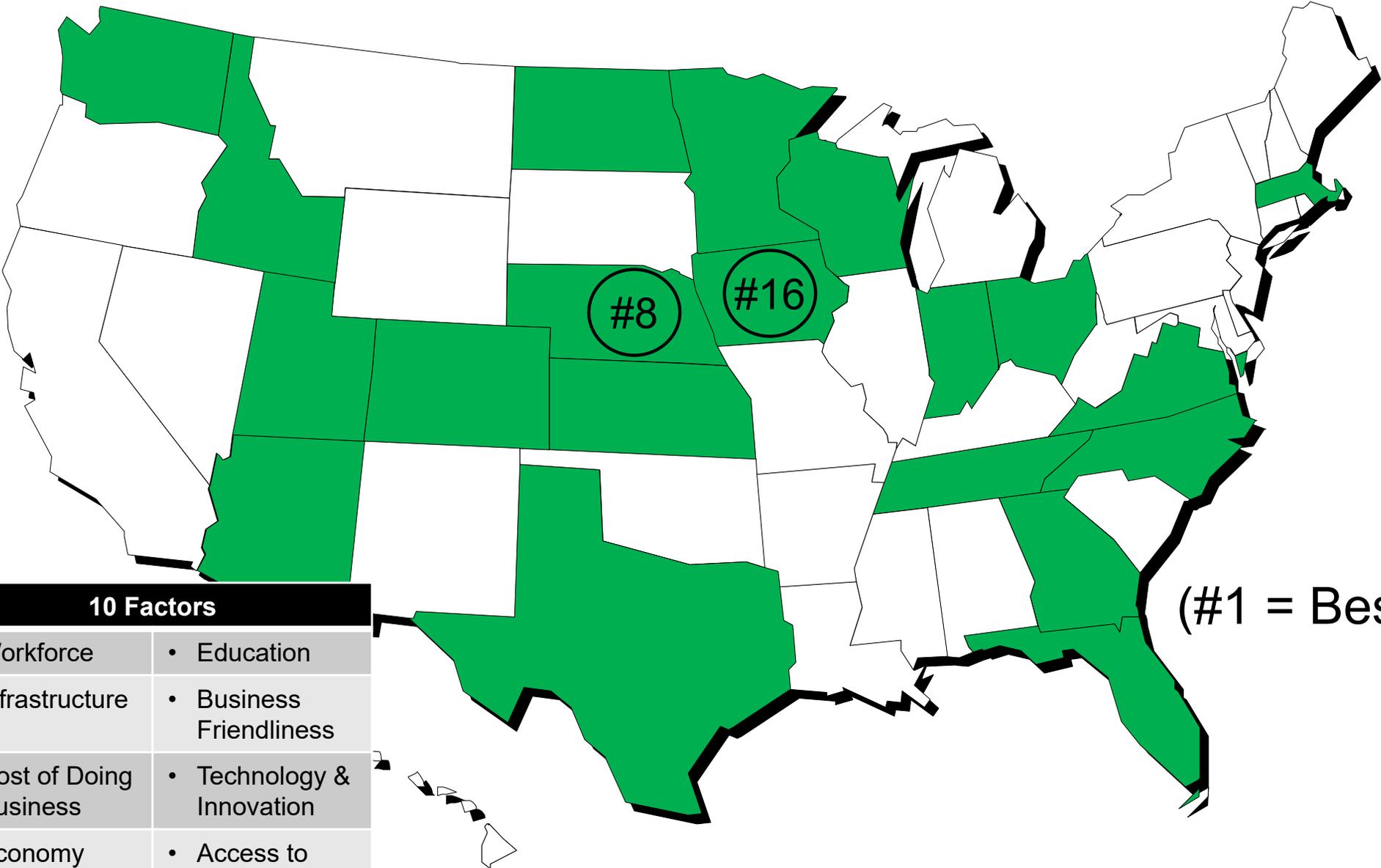
CHIEF EXECUTIVE MAGAZINE

20 Best States For Business



Source: Chief Executive Magazine, June 2, 2020
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 |
| • Quality of Life | • Cost of Living |

Source: CNBC, January 27, 2020

Detective Gadgets' Conclusions On:



Review Impact of Business Climate In
Nebraska and Iowa vs. U.S.

- Nebraska and Iowa have been consistently attracting new economic development projects, which Detective Gadgets believes will help its business grow.
- Both states look promising for Detective Gadgets' sites.

In 2021, Detective Gadgets Wants To:



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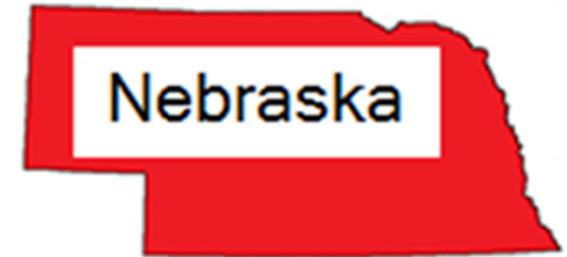
Consider The Impact Of COVID-19 On Its Nebraska Incentives

Because:

- Detective Gadgets has kept its workforce stable, but many workers are telecommuting and working from home.
- Detective Gadgets does not want to lose its incentives because of COVID-19 staffing changes.

Administrative Rulings

Incentives

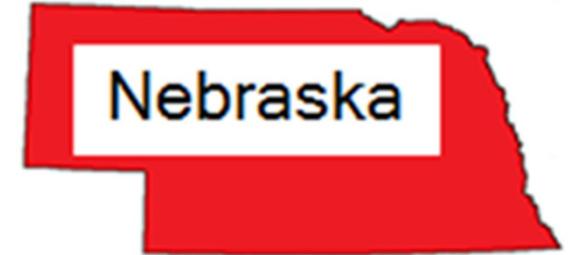


GIL 29-20-1 Tax Incentives: Effect of the COVID-19 National Emergency on Recapture Under the Nebraska Advantage Act (April 22, 2020)

- Nebraska law excuses a project holder's failure to maintain required levels, if due to "act of God or national emergency"
 - Called "triggering event"
- To avoid recapture, must show that failure to maintain required levels was "caused by the triggering event"
 - Cannot be within project holder's control

Administrative Rulings

Incentives

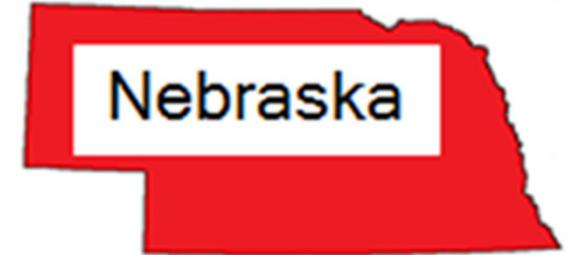


GIL 29-20-1

- To have failure be “caused by the triggering event”, must show that failure was **direct result** of forces beyond its control
- Government order to cease or reduce operations
- Directed health measure preventing business from continuing as usual

Administrative Rulings

Incentives

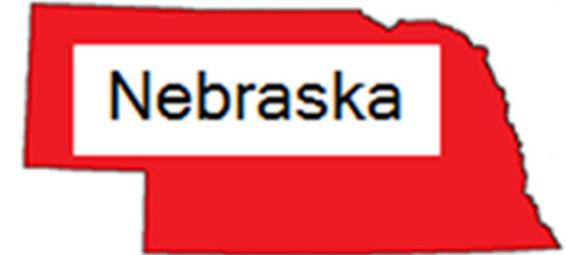


GIL 29-20-1

- Does not include reductions where operations are not profitable
- Or on the basis of a financial hardship

Administrative Rulings

Incentives

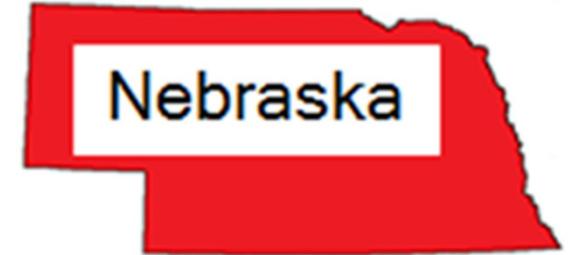


GIL 29-20-2 Tax Incentives: Treatment of Alternative Employment Arrangements Due to the COVID-19 National Emergency for Purposes of Calculating Employment Levels Under the Nebraska Advantage Act (May 28, 2020)

- Sets rules for alternative employment arrangements, made necessary by COVID-19
- Applies from March 13, 2020 through January 1, 2021, or 30 days after end of declared emergency, whichever is later

Administrative Rulings

Incentives

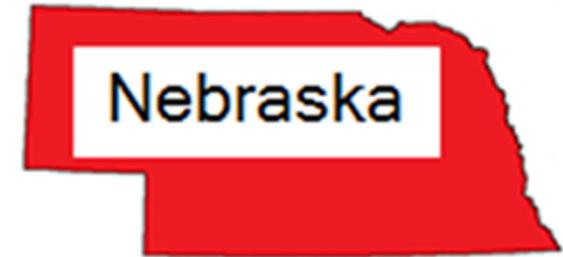


GIL 29-20-2 (May 28, 2020)

- While GIL is applicable, DOR will not require employers to track the location of workers displaced by the pandemic

Administrative Rulings

Incentives

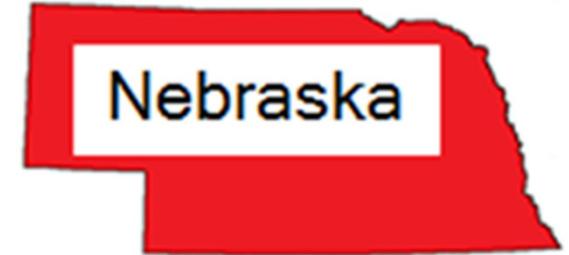


GIL 29-20-2 (May 28, 2020)

- Will consider all employees who worked at project prior to March 13, 2020 as continuing to work at that location
 - Even if employer has allowed or required employees to work from home
- Employees hired after March 13, 2020, who work from home and begin work at project location by the date the GIL expires, will be treated as working at project from hire

Administrative Rulings

Incentives

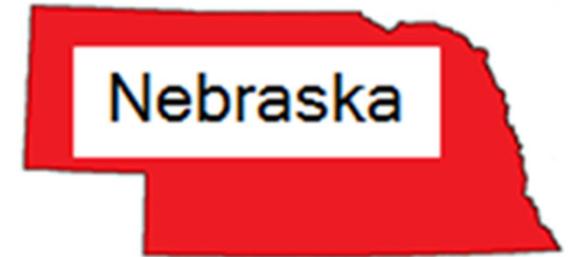


GIL 29-20-2 (May 28, 2020)

- In those circumstances, employer should withhold Nebraska income tax
- Employee will have Nebraska source income
- Employer should track employee hours as though performing work at the project

Administrative Rulings

Incentives

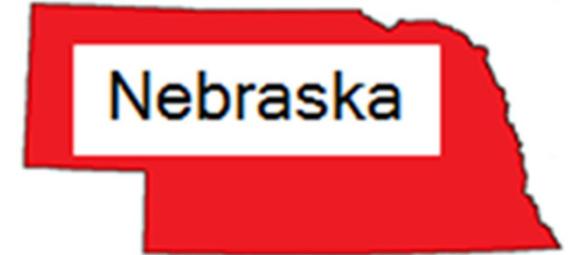


GIL 29-20-2 (May 28, 2020)

- Some employers asked employees not to report to work, but continued to pay them (DOR labels “Ready-to-Work”)
- Pay is treated like vacation or sick pay
- Hours count toward calculation of employment

Administrative Rulings

Incentives

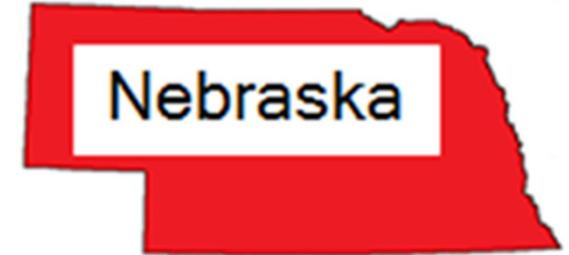


GIL 29-20-2 (May 28, 2020)

- If reduced pay:
- Hours count toward calculation of employment if paid at least required weekly wage
- Furloughed workers who are paid benefits, but not wages, cannot be included in calculation of number of new employees

Administrative Rulings

Incentives



GIL 29-20-2 (May 28, 2020)

- If hourly workers have reduced schedules, this will not affect number of hours attributed to full-time salaried employees
 - COVID-19 emergency is temporary and not a change in employer's regular work week

Detective Gadgets' Conclusions On:



Consider The Impact Of COVID-19 On
Its Nebraska Incentives

- The Department of Revenue's confirmations regarding employment calculations provide needed certainty regarding incentives during COVID-19.
- Because Detective Gadgets kept its workforce stable, it does not expect to face recapture for 2020.

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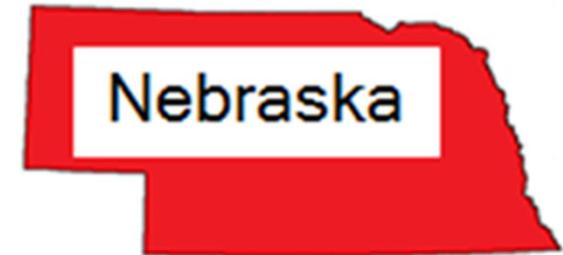
Consider Moving Its Headquarters to Nebraska in 2021

Because:

- Detective Gadgets has not yet announced that it wants to move its headquarters out of Illinois due to Illinois' political and business climate issues.
- It wants to avoid Amazon's troubles in New York, so Detective Gadgets will only consider locations where it will have a firm commitment of incentives.
- It is mainly looking at Texas and Nebraska. Key will be whether Nebraska incentives are enough to overcome Nebraska high taxes (compared to low tax Texas).

Constitutional Amendment

Incentives



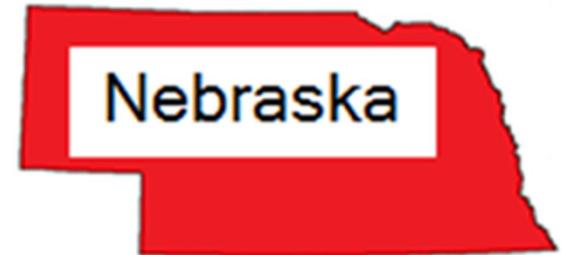
Tax Increment Financing Repayment Amendment (Amendment 2)

(Passed by Voters on November 3, 2020)

- Increases the repayment period for tax increment financing
- From 15 to 20 years
- For areas where **more than one-half** of properties are designed as **extremely blighted**.

Legislation

Incentives

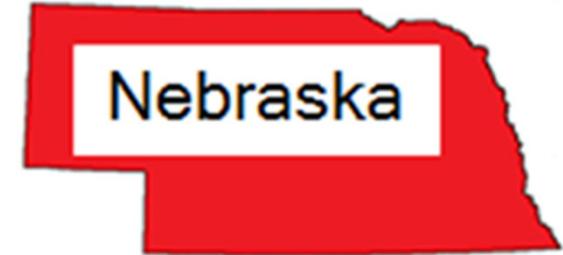


Tax Increment Financing (LB 1021) (Operative November 14, 2020)

- Amended the Community Development Law Governing TIF Projects
- Allow the governing body of a city to elect to provide for the expedited review and approval of qualifying redevelopment

Legislation

Incentives



Tax Increment Financing (LB 1021)

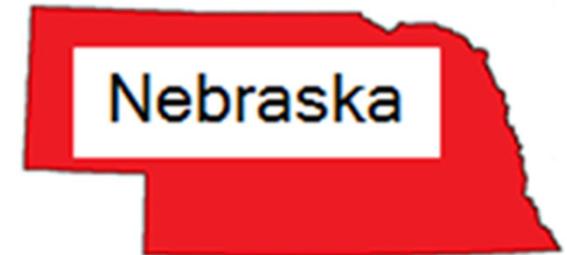
(Operative November 14, 2020)

- Qualifying Redevelopment:

1. Involves the repair, rehabilitation, or replacement of an existing structure located within a substandard and blighted area
2. Located in a county with a population of less than 100,000
3. Existing structure is at least 60 years old
4. Value of the property when complete is no more than \$250,000 for a residential structure or \$1 million for a multi-family residential structure or commercial structure.

Cases

Incentives



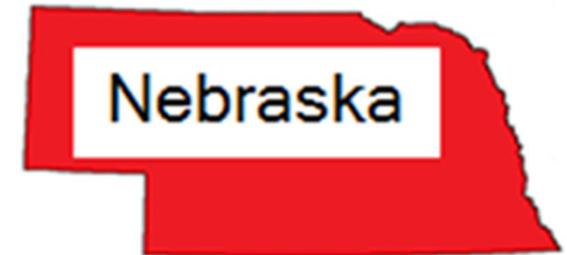
Ash Grove

Nebraska Supreme Court (August 2020)

- **Issue**: Does production of aggregate products constitute manufacturing or processing (or another qualified business)?
- **Dist. Ct.**: Aggregate production does **not** constitute “**manufacturing**”
- Aggregate production **does constitute** “**processing**”, so eligible for Nebraska Advantage incentives

Cases

Incentives



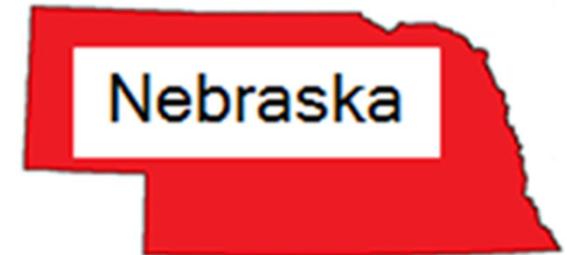
Ash Grove

Nebraska Supreme Court (August 2020)

- S. Ct.: Agreed with District Court
 - Aggregate production does not constitute “manufacturing”
 - Aggregate production does constitute “processing”, so eligible for Nebraska Advantage incentives
- More importantly, established a definition for “Processing”

Cases

Incentives



Ash Grove

Nebraska Supreme Court (August 2020)

- Processing:

“To subject to a particular method, system, or technique of preparation, handling or other treatment designed to prepare tangible personal property for market, manufacture, or other commercial use which does not result in the transformation of property into a substantially different character.”

2020 Sunset of Nebraska Advantage Act and the new Imagine Nebraska Act



Nebraska's Tax Incentive History Timeline

1987 - 2005

LB775 – The Employment and Investment Growth Act

2005 – 2020

Nebraska Advantage Act

100,000 New Jobs
\$35 Billion Capital Investment
900 Projects

2021 – 2030

Imagine Nebraska Act

LB 775 Was Passed With:

Nebraska Employee Capital Gain Exclusion
Single Factor Sales Corporate Income Tax Formula

Neb. Advantage Was Passed With:

Manufacturing Machinery & Equipment Exemption
Nebraska Job Training Fund

Imagine Nebraska Was Passed With:

Key Employer & Jobs Retention Act
Property Tax Incentive Act

Strategy Behind The Imagine Nebraska Act



Why The Imagine Nebraska Act?

- Nebraska Advantage expired after 2020
- Needed new incentive package
- Enhance to stay competitive



Strategy Behind Imagine Nebraska

Addresses What Is Important To Company Decision Makers

- Impactful
 - Sizable enough to make location competitive
- Long Term
 - Consistent with Company's long term outlook
- Committed
 - Legally enforceable commitment by State

Strategy Behind Imagine Nebraska

Addresses What Is Important To State Policy Decision Makers

- Simplifies Administration
 - Hybrid by NDOR and NDED
 - Simpler application and approval
 - Simpler incentive reporting and use

Strategy Behind Imagine Nebraska

Addresses What Is Important To State Policy Decision Makers

- Targets Higher Paying Jobs
 - Increases required wage level
 - Requires health insurance and other benefits

Strategy Behind Imagine Nebraska

Addresses What Is Important To State Policy Decision Makers

- More Transparent and Fiscally Accountable
 - Enhanced overall and per project reporting
 - Reflects cities need for predictability

Strategy Behind Imagine Nebraska

Addresses What Is Important To State Policy Decision Makers

- Remains High Performance Based and Competitive
 - Continues to require specific new investment and employment thresholds
 - Incentives are strong enough to impact location decisions

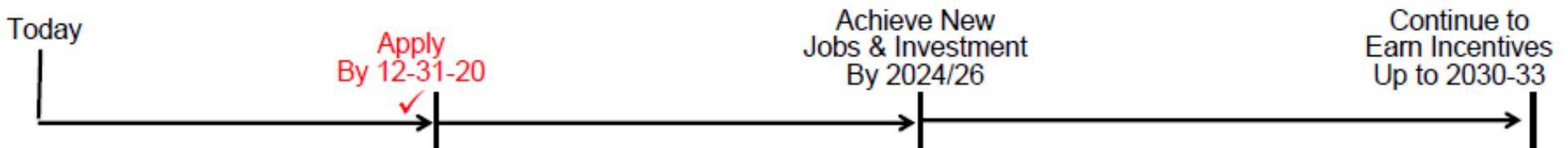
The 2020 Grandfather Opportunity



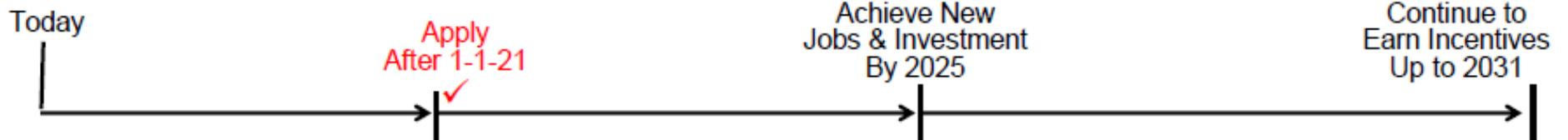
What Is The Grandfather Opportunity?

Your Choice (until December 31, 2020)

A. 2005 Nebraska Advantage Act



or B. 2020 Imagine Nebraska Act



Why Is The Grandfather Opportunity Of Interest?

- Differing Incentive Values
- Different Agency Review
- Differing Ways to Use Incentives
- Differing Employee Requirements
- Discrimination / Residency Issues
- Incentive Caps



How Do We Take Advantage Of The Grandfather Opportunity?

Decisions

1. Do we have a project in our future?
2. Which program is better?
3. Should we file a Nebraska Advantage Protective Application?

Do We Have A Project In Our Future?

What Is A Project?

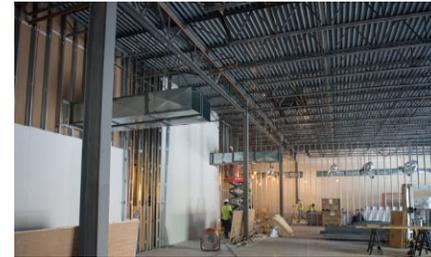
- Grow an existing site

OR

- Move to a new or larger site

OR

- Add new business from outside Nebraska



Differences In Incentives Between Acts

The logo for Nebraska Advantage, featuring the text "NEBRASKA ADVANTAGE" in white capital letters on a dark blue rectangular background. Below the rectangle is a stylized wave graphic with a yellow-to-white gradient on the left and a light blue-to-white gradient on the right.

NEBRASKA ADVANTAGE

vs.

Imagine Nebraska Act

Nebraska Advantage Act Incentive Summary

(Apply by 12-31-20)

	Tier 1	Tier 2	Tier 2 Data Center	Tier 3	Tier 4	Tier 5	Tier 6
REQUIREMENTS							
New # of Jobs	10 FTE	30 FTE	30 FTE	30 FTE	100 FTE	Maintain	75/50 FTE
New Investment	\$1,000,000	\$3,000,000	\$200,000,000	\$0	\$12,000,000	\$37M or \$20M (Renew Energy)	\$10M/\$109M
Wage Threshold	60% State Average	60% State Average	60% State Average	60% State Average	60% State Average	N/A	200% County/ 150% St. Ave.
TAX INCENTIVE BENEFITS							
Wage Credit	3-6%	3-6%	3-6%	3-6%	3-6%	None	10%
ITC	3%	10%	10%	None	10%	None	15%
Sales Tax Refund	½	Yes	Yes	None	Yes	Yes	Yes
Personal Property Tax Exemption	N/A	Data Center Computers or Internet	All Personal Property	N/A	Aircraft, Computers, Ag Proc. & Dist., Equip.	Data Center Computers or Internet	All Personal Property At Project
Real Property Tax Credit Refund	N/A	N/A	N/A	N/A	N/A	N/A	Yes
OTHER FEATURES							
Project Length	Other Requirements		Extremely Blighted		Tax Credit Use		
<ul style="list-style-type: none"> • Attainment Period – Up to 4 or 6 Years Left • Entitlement Period – 6, 7 or 10 Years • Carry Over Period – 2 to 16 Years 	No additional employee benefits required to be offered		No special provisions.		To offset withholding liability, sales tax, and corporate income tax.		
Qualified Business Categories Vary Depending On Tier. Process: Through NDR.							

Imagine Nebraska Act Incentive Summary

(Apply starting 1-1-21)

	Economic Redevelopment Area	Small Manufacturers	Growth and Expansion	Quality Jobs	Quality Jobs Investment	Mega-Project	Modernization	
REQUIREMENTS								
		<u>Rural</u>	<u>Urban</u>					
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% of 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						Ag Processing Machinery & Data Center Equipment	All Tangible Personal Property	Ag Processing Machinery & Data Center Equipment
OTHER FEATURES								
Project Length	Other Requirements				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 	Must offer health insurance and show benefits for job to count. <div style="border: 1px solid black; padding: 2px; display: inline-block; margin: 5px 0;">Anti-Discrimination</div> Broad/Vague Anti-Discrimination Provision = Project Legal Risk of losing all incentives				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.		
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. While only full-time employees count, FTE calculation is still applicable.				Process Change: File with Nebraska Department of Economic Development. Audit & Claims still NDR. Footnote: (1) 7% if \$10 M investment for manufacturers.				

Key Incentive Differences Between Programs

	Nebraska Advantage	Imagine Nebraska
Wage Threshold	60% of NE average wage 2020: \$27,768	100% of NE average wage 2020: \$46,280 (Some exceptions for smaller projects)
Wage Credits	3% if 60% of NE average wage 4% if 75% of NE average wage 5% if 100% of NE average wage 6% if 125% of NE average wage	5% if 100% of NE average wage 7% if 150% of NE average wage 9% if 200% of NE average wage (4-6% for smaller projects)
Investment Tax Credit	10% (3% for Tier 1)	7% (4% for smaller projects)
Special Provisions for Data Center	Yes	No

Key Incentive Differences Between Programs

	Nebraska Advantage	Imagine Nebraska
Sales Tax	Refund Only	Refund Until Minimum Thresholds; Then Exemption
Personal Property Tax Exemption (Unless Mega-Project or Super Advantage)	Data Center Equipment Aircraft Computers Distribution Facility Equipment Manufacture or Processing of Agricultural Products	Data Center Equipment Manufacture or Processing of Agricultural Products
Extremely Blighted Areas	No Incentive Change	1% higher

Theory Behind Qualified Business Activities

Intent

- Business activities that could locate anywhere

Examples

- Restaurants → No
- Retail → No
- Manufacturing → Yes
- Headquarters (even of Retail) → Yes

Qualified Business Activities: Nebraska Advantage

Nebraska Advantage Act

- Production of Electricity Using Renewable Energy Sources
- RD&T (Scientific, Ag, Animal Husbandry, Food Product, Industrial)
- Data Processing
- Telecommunications
- Insurance Services
- Financial Services
- Manufacturing
- Processing
- Distribution
- Storage/Warehousing
- Transportation
- Headquarters (Administrative)
- Targeted Export Services (75% of sales outside Nebraska or to the U.S. Government including Cloud Computing)
 - Software Development
 - Computer Systems Design
 - Product Testing Services
 - Guidance or Surveillance Systems
 - Technology Licensing
- Data Center
- Internet Web Portal
- Retail Sales of Tangible Personal Property (TPP) if 20% is at wholesale, manufactured, or to someone else in qualified business
- Retail sales of TPP if 75% or more of sales are outside of Nebraska

Nebraska Advantage: Tier 1

- RD&T (Scientific, Ag, Animal Husbandry, Food Product, Industrial)
- Manufacturing
- Processing
- Targeted Export Services (75% of sales outside Nebraska or to the U.S. Government including Cloud Computing)
 - Software Development
 - Computer Systems Design
 - Product Testing Services
 - Guidance or Surveillance Systems
 - Technology Licensing

Qualified Business Activities: Nebraska Advantage

Tier 6

Everything Except:

- Retail Sales of Tangible Personal Property (TPP) if **less than 20%** is at wholesale, manufactured, or to someone else in qualified business
 - Unless at least 75% are export Sales
- 80% or more of sales are food prepared for immediate consumption



Qualified Business Activities: Imagine Nebraska

Imagine Nebraska Act

NAICS Codes

- Manufacturing – 31, 32 or 33, including pre-production services
- Testing Labs – 541380
- Rail Transportation – 482
- Truck Transportation – 484
- Insurance Carriers – 5241
- Wired Telecom Carriers – 517311 and 517312
- Wired Telecom – 517312
- Telemarketing – 561422
- Data Processing, Hosting and Related Services – 518210
- Computer Facility Mgmt – 541513
- Warehousing – 4931
- Logistics Facilities – Portions of 488210, 488310, 488490
- Computer Systems Design - 5415

Other

- Admin Mgmt (e.g. HQ)
- RD&T (Scientific, Ag, Animal Husbandry, Food Product, Industrial or Tech)
- Electricity Production using Renewables
- Performance of Financial Services
- 75% Export Sales (but not if majority of employees = Ag (11), Transportation (48-49), Information (51), Utilities (22), Mining (21), Public Admin (92), or Construction (23)).
- Aircraft Services for nonresidents

Imagine Nebraska Act: Small Manufacturers

NAICS Codes

- Manufacturing – 31, 32 or 33, including pre-production services

Other

- Aircraft Services for nonresidents

New Ways To Use Credits

NEBRASKA ADVANTAGE

VS.

Imagine Nebraska Act

New Ways To Use Credits

NEBRASKA ADVANTAGE

- Sales and Use Tax
- Income Tax
- Employee Withholding (Wage Credit Only)

Imagine Nebraska Act

- Nebraska Advantage +
- Job Training Reimbursement
- Recruiting Reimbursement
- Child Care Reimbursement
- Pay loan under Imagine Nebraska RLF

Imagine Nebraska Revolving Loan Fund



Imagine Nebraska Revolving Loan Fund

- New Imagine Nebraska Revolving Loan Fund
 - \$5 million for 2022-23 and 2023-24
- DED may make loans to Imagine Nebraska Applicants
 - Secure new, high-paying jobs in Nebraska
- May be repaid with credits from Imagine Nebraska Act
 - Principal and interest

Imagine Nebraska Revolving Loan Fund

- Used for Workforce Training & Infrastructure Development
- May be repaid with credits from Imagine Nebraska Act
 - Principal and interest
- Loan will be recaptured by NDR if fail to meet thresholds

Imagine Nebraska Revolving Loan Fund

- In reviewing loans, DED will review:
 1. DED's comprehensive business development strategy
 2. Necessity of loan to assure expanded Nebraska employment
 3. Number of jobs to be created
 4. Expected pay of jobs to be created

Legislative Amendment on Discrimination

Imagine Nebraska Act

Anti-Discrimination Provision in Imagine Nebraska

- Adopted by Senator Amendment
- Refusal to Fix

Incentive Agreement

“A requirement that the taxpayer not violate any state or federal law against discrimination”

Problems With This

- Extensive audit by NDR
- Loss of all incentives for 1 violation by company anywhere in country

Differences in Administrative Roles



vs.



Nebraska Advantage: Department of Revenue

- Business Activity Qualification
- Application Review and Approval
 - Appeal if Application is Denied
- Agreement
- Audit for Investment / Employment
 - Initial Qualification Review
 - Maintenance
- Payment of Incentives



Imagine Nebraska: NDR and NDED



- Qualification for Locations
- Application Review and Approval
- Agreement



- Certify Base Year Employment
- Qualification for Locations
 - Where no review by DED
- Audit for New Investment / Employment
- Payment of Incentives

Other Key Differences Between Programs

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NEBRASKA ADVANTAGE

VS.

Imagine Nebraska Act

Differences In Program Administration

Base Year

- Nebraska Advantage: 2019
- Imagine Nebraska: Higher of 2019 or 2020



Project Locations

- NAA vs. ImagiNE
- Interdependent Locations

Differences In Program Administration

Incentive Level Flexibility

- Nebraska Advantage
 - Apply at Specific Tier
 - Some movement down
 - Not to Tier 1
- Imagine Nebraska
 - May amend designated levels



Differences In Program Administration

Audit Timing

- Nebraska Advantage
 - Initial Qualification Review (IQR)
 - Maintenance
- Imagine Nebraska



Differences In Program Administration

Incentive Timing

- Nebraska Advantage
 - Need Approval Letter to Claim Any Incentives
 - Generally Based on Refunds
 - Exception: Property Tax Exemption
- Imagine Nebraska
 - Sales Tax Exemption
 - No Waiting for Approval Letter



Differences In Program Administration

Employee Definition

- Nebraska Advantage
- Imagine Nebraska
 - Only Full-Time
 - Nebraska Residents Only
 - Provide health insurance and other benefits



Cap Under Imagine Nebraska Act

Cap

- 2021 & 2022: \$25 million
- 2023 & 2024: \$100 million
- 2025: \$150 million
- Then: 3% of Nebraska net receipts



Imagine Nebraska Act Administration Fee

Fee

- $\frac{1}{2}\%$ of all Incentives
 - Except for Personal Property Tax Exemption
- Credit for fee paid with Application
- Used for Program Administration



Incentive Comparisons for 28 Sample Projects

The logo for Nebraska Advantage features the text "NEBRASKA ADVANTAGE" in white, uppercase letters on a dark blue rectangular background. Below the text is a stylized graphic consisting of a yellow-to-white gradient wave on the left and a grey-to-white gradient wave on the right.

NEBRASKA ADVANTAGE

VS.

Imagine Nebraska Act

Imagine Nebraska Compared to Nebraska Advantage

Project: Small Transportation

New Jobs: 5
New Investment \$250,000

Tax Incentive Benefits

Neb. Advantage \$0
✓ Imagine Neb. \$110,000

Project: Small Manufacturing

New Jobs: 10
New Investment \$1,000,000

Tax Incentive Benefits

Neb. Advantage \$210,000
✓ Imagine Neb. \$260,000

Project: Local Distribution

New Jobs: 15
New Investment \$5,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$550,000
Imagine Neb. \$430,000

Project: Systems Design

New Jobs: 30
New Investment \$0

Tax Incentive Benefits

✓ Neb. Advantage \$820,000
Imagine Neb. \$690,000

Imagine Nebraska Compared to Nebraska Advantage

Project: Product Testing

New Jobs: 30
New Investment \$6,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$1,700,000
Imagine Neb. \$1,400,000

Project: Back Office

New Jobs: 35
New Investment \$7,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$2,240,000
✓ Imagine Neb. \$2,240,000

Project: Warehouse

New Jobs: 40
New Investment \$30,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$4,870,000
Imagine Neb. \$4,060,000

Project: Renewable Electric

New Jobs: 45
New Investment \$80,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$11,620,000
Imagine Neb. \$ 9,250,000

Imagine Nebraska Compared to Nebraska Advantage

Project: Retail Exporting

New Jobs: 45

New Investment \$5,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$1,570,000
Imagine Neb. \$1,430,000

Project: Bank

New Jobs: 50

New Investment \$6,500,000

Tax Incentive Benefits

✓ Neb. Advantage \$2,220,000
Imagine Neb. \$1,830,000

Project: Technology Licensing

New Jobs: 50

New Investment \$8,000,000

Tax Incentive Benefits

Neb. Advantage \$3,120,000
✓ Imagine Neb. \$3,220,000

Project: Regional HQ

New Jobs: 50 High Wage

New Investment \$110,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$31,570,000
Imagine Neb. \$19,870,000

Imagine Nebraska Compared to Nebraska Advantage

Project: Data Center

New Jobs: 50
New Investment \$600,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$90,000,000
✓ Imagine Neb. \$90,000,000

Project: Telecom Carrier

New Jobs: 65
New Investment \$160,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$26,390,000
Imagine Neb. \$22,070,000

Project: Large Headquarters

New Jobs: 75 High Wage
New Investment \$140,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$43,410,000
Imagine Neb. \$28,010,000

Project: Telemarketing

New Jobs: 80
New Investment \$7,000,000

Tax Incentive Benefits

✓ Neb. Advantage \$2,500,000
Imagine Neb. \$2,320,000

Imagine Nebraska Compared to Nebraska Advantage

Project: Transportation

New Jobs: 80
New Investment \$20,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$4,860,000
Imagine Neb. \$4,000,000

Project: Research & Develop

New Jobs: 90
New Investment \$10,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$4,630,000
Imagine Neb. \$4,890,000

Project: Internet User Portal

New Jobs: 90
New Investment \$40,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$8,560,000
Imagine Neb. \$7,930,000

Project: Data Processing

New Jobs: 90
New Investment \$125,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$22,020,000
Imagine Neb. \$19,130,000

Imagine Nebraska Compared to Nebraska Advantage

Project: Food Processing

New Jobs: 100
New Investment \$17,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$5,170,000
Imagine Neb. \$3,710,000

Project: Software Development

New Jobs: 110
New Investment \$18,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$7,220,000
Imagine Neb. \$6,570,000

Project: Manufacturing

New Jobs: 110
New Investment \$25,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$5,790,000
Imagine Neb. \$5,110,000

Project: Rail Transport

New Jobs: 120
New Investment \$150,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$20,090,000
Imagine Neb. \$15,530,000

Imagine Nebraska Compared to Nebraska Advantage

Project: Distribution Center

New Jobs: 130
New Investment \$30,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$8,420,000
Imagine Neb. \$6,120,000

Project: Headquarters

New Jobs: 150
New Investment \$35,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$10,710,000
Imagine Neb. \$10,350,000

Project: Insurance Co.

New Jobs: 200
New Investment \$50,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$12,990,000
Imagine Neb. \$9,940,000

Project: Communications

New Jobs: 250
New Investment \$250,000,000

Tax Incentive Benefits

✓ **Neb. Advantage** \$77,170,000
Imagine Neb. \$57,490,000

When To Deploy The Grandfather



How To Deploy The Grandfather

File Protective Application

Decide ASAP

- So Advantage Application may be filed by December 31

Which Program Is Better For You?



Which Program Is Better For You?

Our Optimal Tax Incentive System (OTIS):

We look at 15 Business, Financial and Legal Criteria:

1. Project Objectives
2. Project Location(s)
3. Type of Business
4. Estimated Job and Investment Growth
5. Community Impact and Issues

Which Program Is Better For You?

Our Optimal Tax Incentive System (OTIS):

We look at 15 Business, Financial and Legal Criteria:

6. Expected Wage Levels & Benefits
7. Projected Business Growth Timing
8. Expected Legal Contract Impacts
9. Expected Business Growth Financing
10. Estimated Tax Incentives

Which Program Is Better For You?

Our Optimal Tax Incentive System (OTIS):

We look at 15 Business, Financial and Legal Criteria:

11. Other Available Incentives
12. Estimated Community Infrastructure Needed
13. Your Business Model Changes Due to COVID
14. Level of Project Certainty
15. Impact of Imagine Nebraska Act Discrimination Issue

How To Deploy The Grandfather

Two Options

Option 1

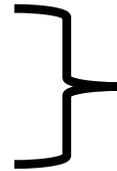
- Analyze Now
- File Protective Application Before December 31, 2020

Option 2

- File Protective Application By December 31, 2020
- Analyze Later

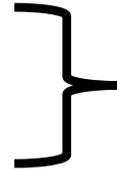
Questions Regarding Protective Application

Do I need to have all the project details when I file?



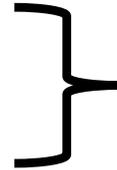
No

Can I amend my project after I file?



Yes

Is there a penalty to later withdraw?



No

Detective Gadgets' Conclusions On:



Consider Moving Its Headquarters to
Nebraska in 2021

- Detective Gadgets has decided to keep Nebraska on its short list of potential sites.
- It wants to compare the benefit of Nebraska Advantage vs. Imagine Nebraska to see if it should apply in 2020 before the Sunset.

In 2021, Detective Gadgets Wants To:



- Consider Impact of Fiscal Climate In Nebraska and Iowa vs. U.S.
- Review Impact of Business Climate In Nebraska and Iowa vs. U.S.
- Consider the Impact of COVID-19 on Its Nebraska Incentives
- Consider Moving Its Headquarters to Nebraska in 2021
- Evaluate the Tax Costs of Being in Nebraska and Iowa
- Help Its Executives Determine Where To Reside
- Analyze Impact of Key State and Local Issues From Around The Country
- Deploy The Best Defense Strategy For Its Present NDR Audit

Detective Gadgets Wants To:

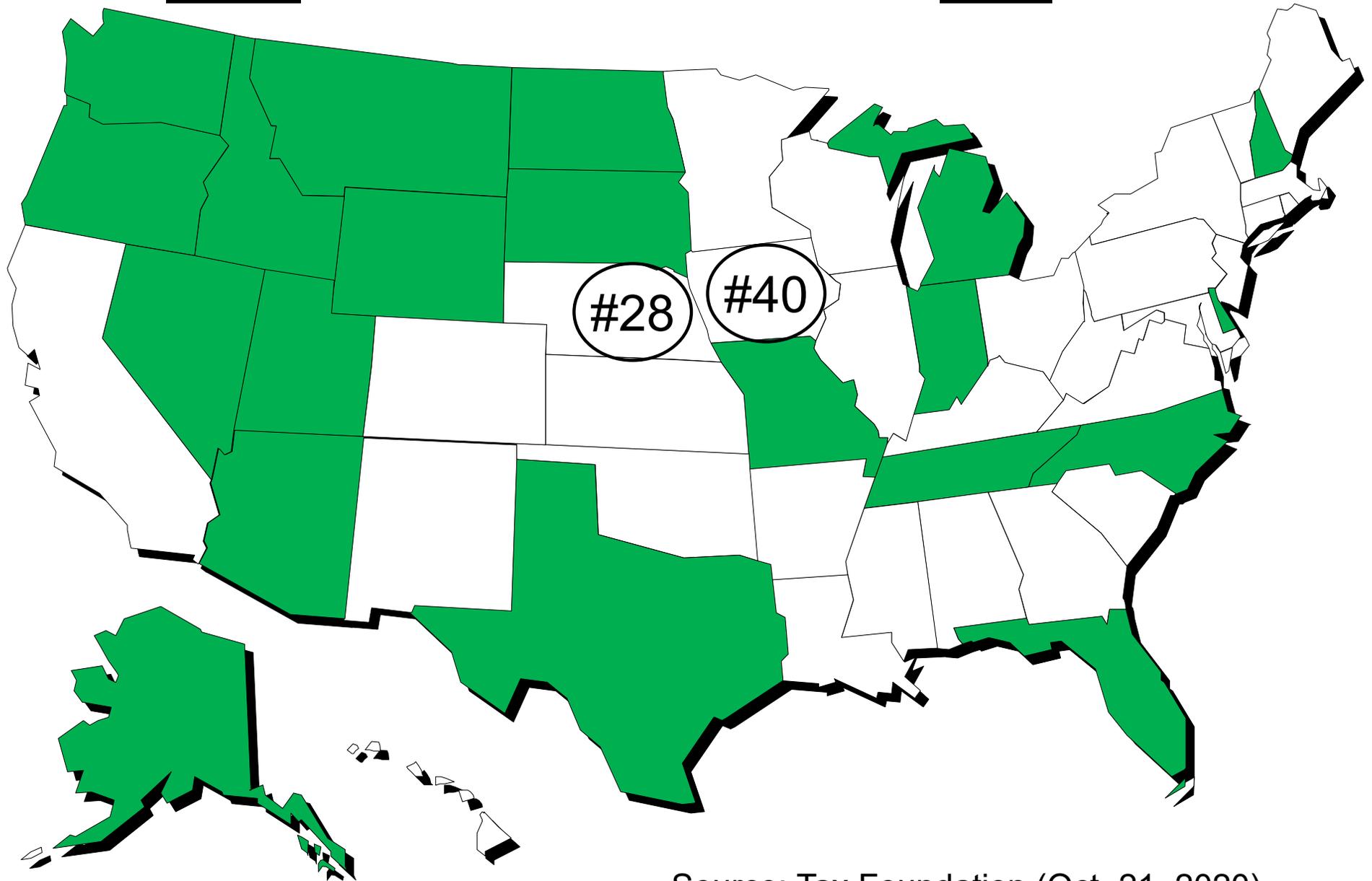
- Evaluate the Tax Costs of Being in Nebraska and Iowa

Because:

- Detective Gadgets wants to consider whether its current Nebraska and Iowa locations expose Detective Gadgets to uncompetitive tax liabilities.
- It wants to know if Nebraska and Iowa's tax climates are pro-business.

TAX FOUNDATION

20 Best States For Business Tax Climate

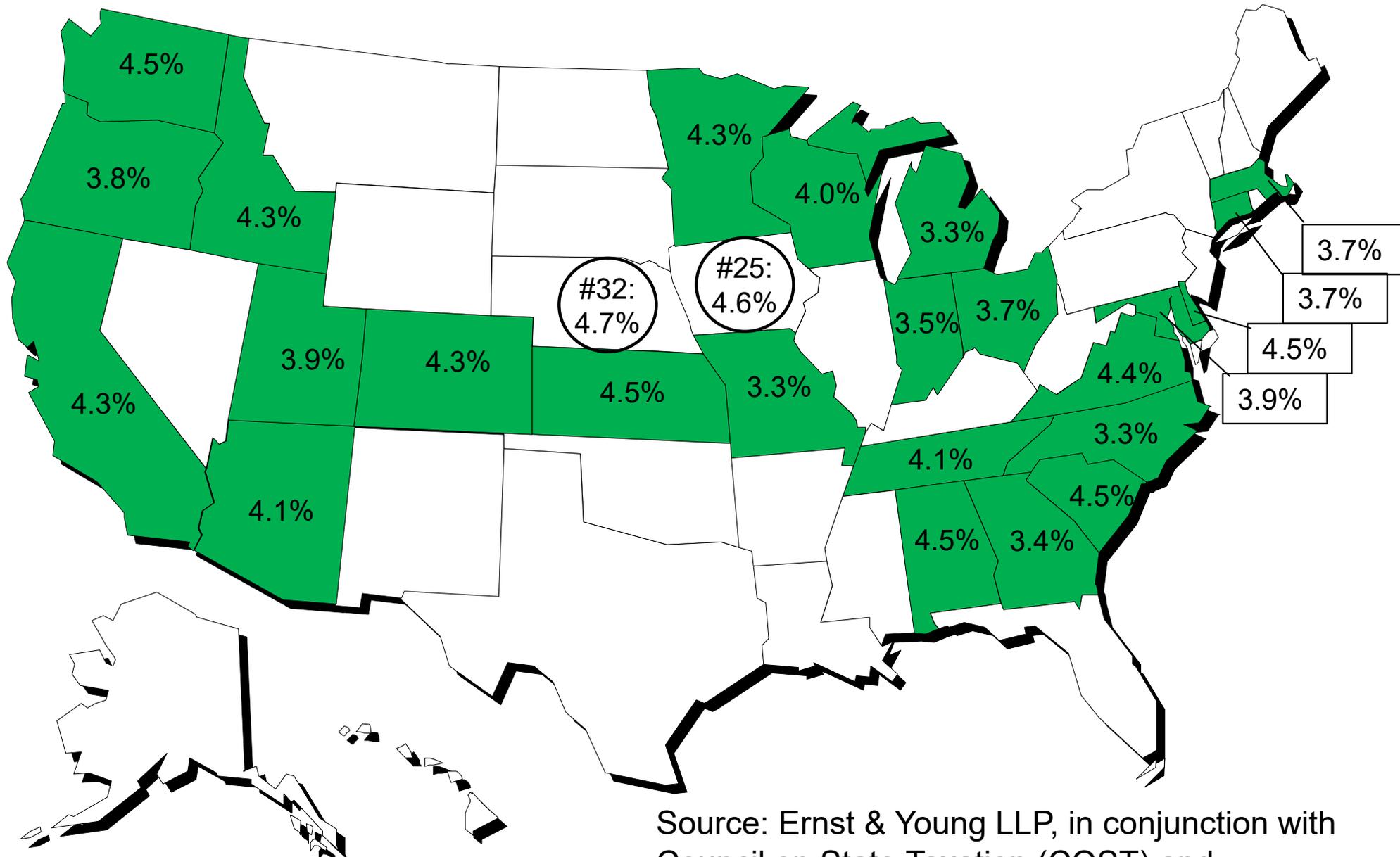


(#1 = Best)

Source: Tax Foundation (Oct. 21, 2020)

ERNST & YOUNG

Top 20(+Ties) Lowest (Best) Total Effective Biz Tax Rate

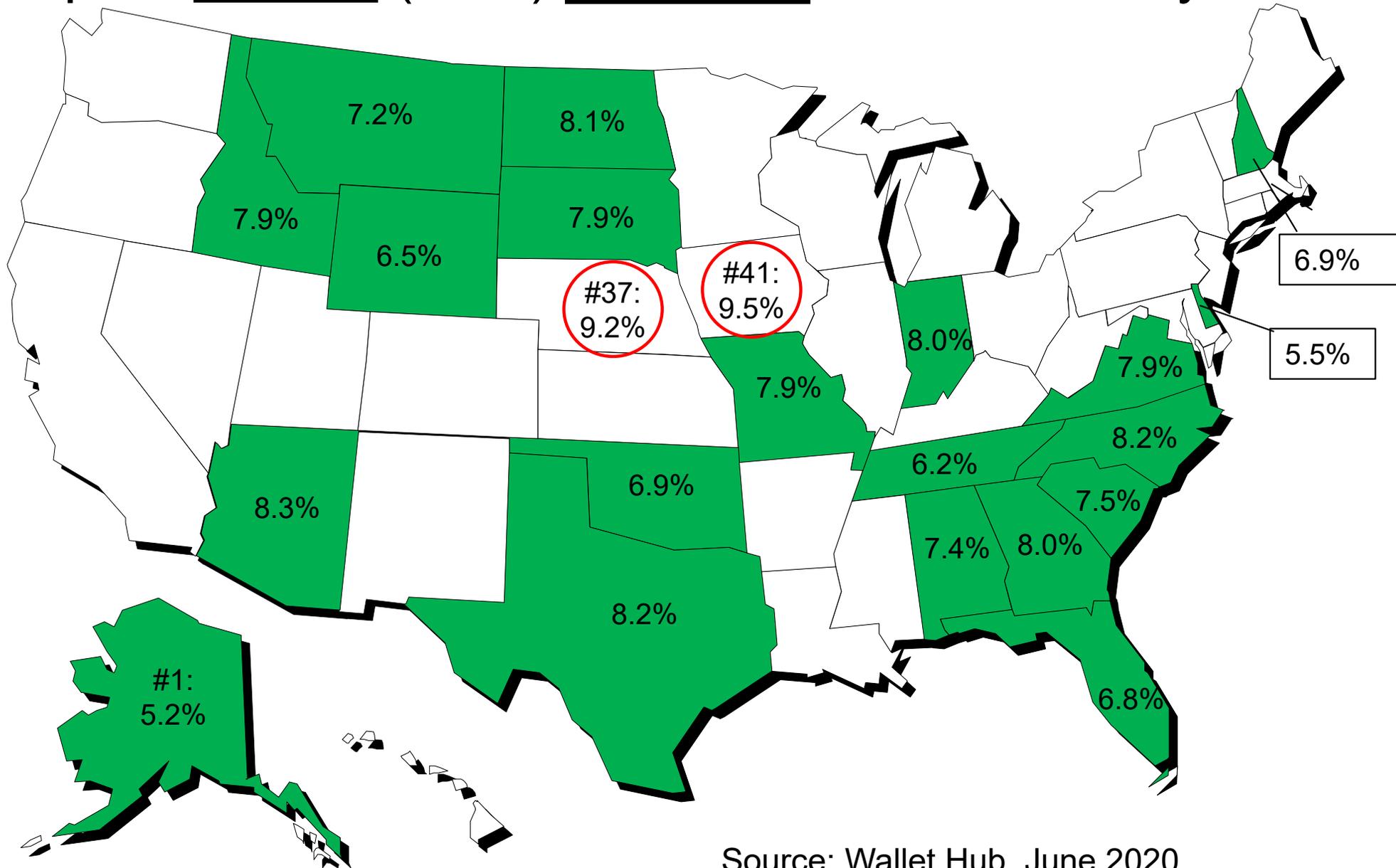


(#1 = Best)

Source: Ernst & Young LLP, in conjunction with Council on State Taxation (COST) and State Tax Research Institute (STRI), Oct. 2020

WALLET HUB

Top 20 Lowest (Best) Personal Tax Burden by State

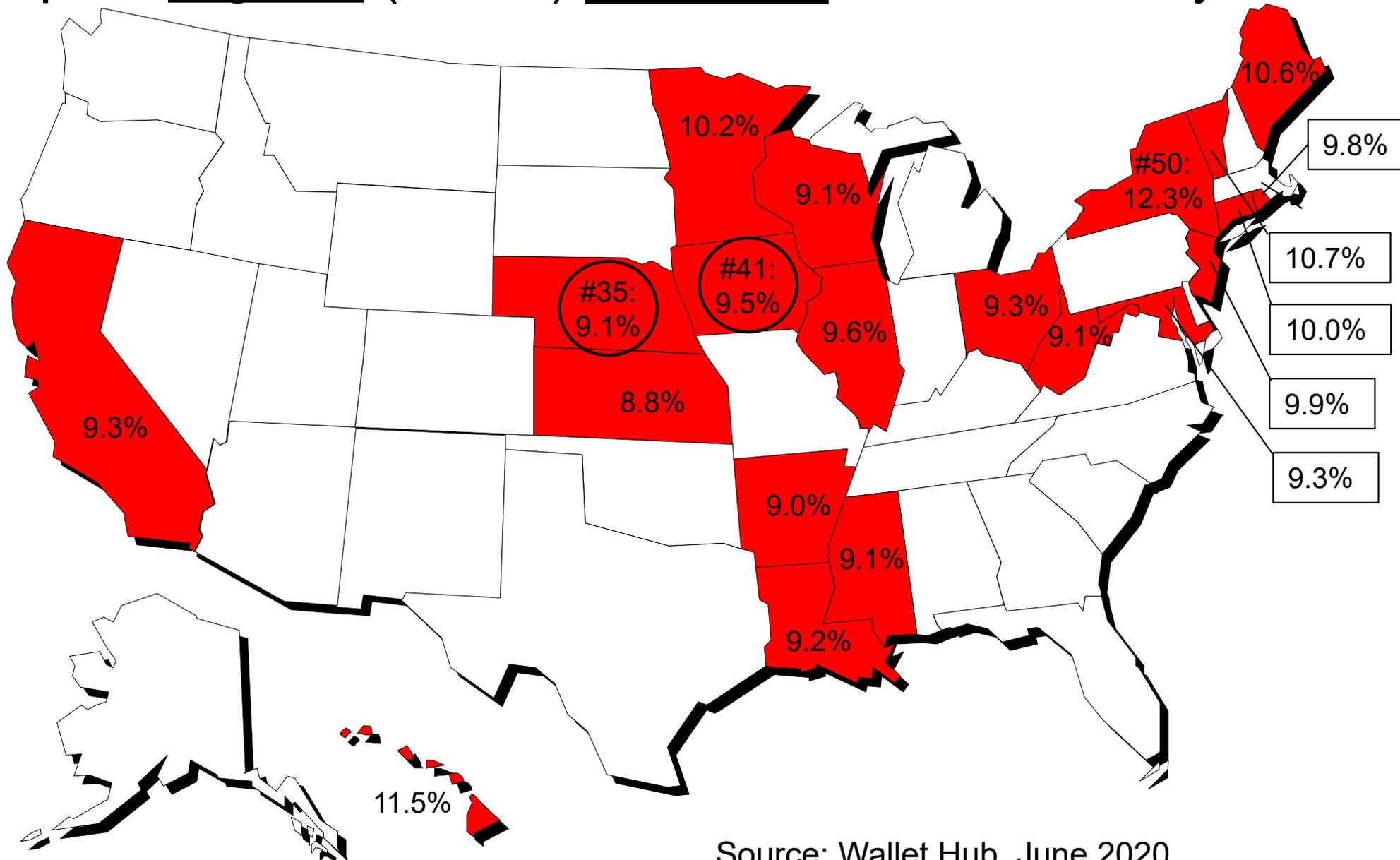


(#1 = Best)

Source: Wallet Hub, June 2020.

WALLET HUB

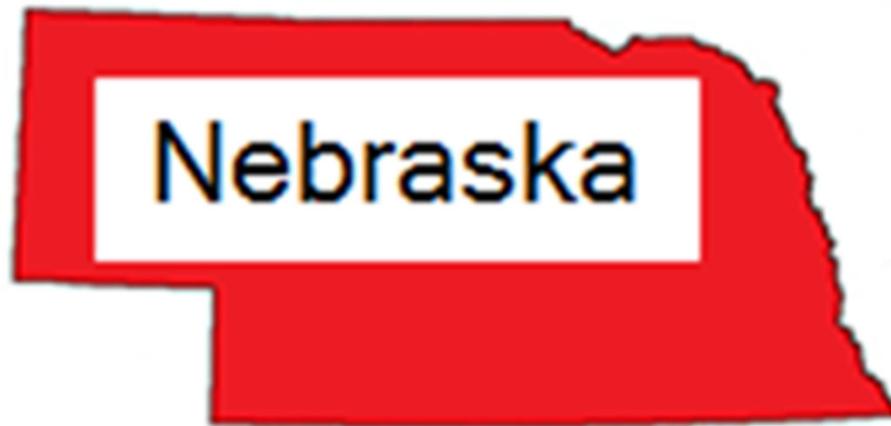
Top 20 Highest (Worst) Personal Tax Burden by State



Source: Wallet Hub, June 2020

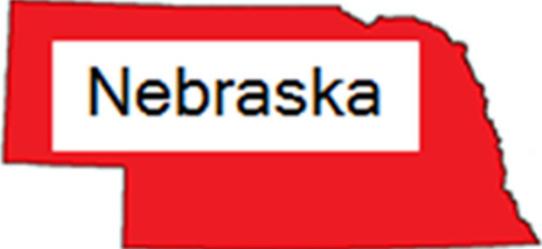
(#1 = Best)

New Developments



Legislation

Income Tax



Nebraska

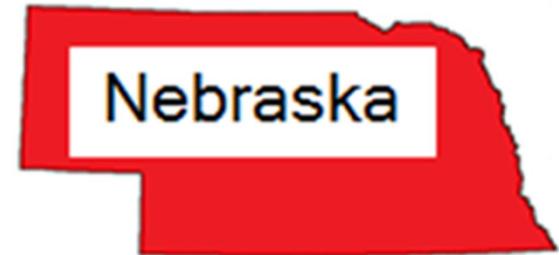
Exclusion for Military Retired Benefit (LB 153)

(Operative for Tax Years Beginning in 2022)

- Excludes 50% of military retirement benefit income to the extent that income is included in federal adjusted gross income

Legislation

Income Tax

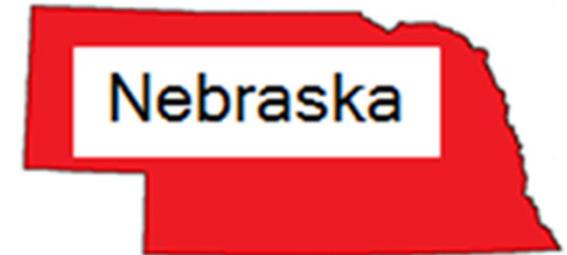


School Readiness Tax Credit (LB 266) (Operative for 2020 Income Taxes)

- **Self-employed individuals** providing child care and early childhood education **may be eligible for the School Readiness Tax Credit.**
- Allows owners of an eligible program to **claim the credit** that is (a) a **partnership**, (b) a **limited liability company**, (c) an **S-Corp**, or (d) an estate or trust.

Legislation

Property Tax

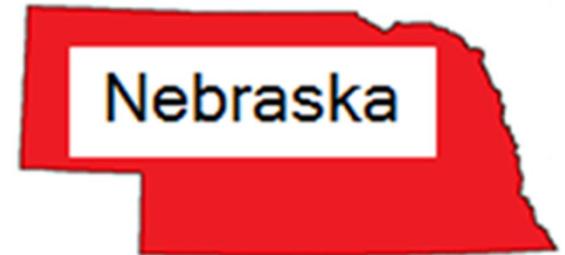


Personal Property Tax Relief Act Repealed (LB 1107) (Operative August 18, 2020)

- Nebraska's exemption for first \$10,000 of personal property was repealed
- Expected Additional Revenue: \$15-17 million per year
- Tax Foundation Study from CT:
 - \$10,000 exemption was estimated to exempt almost 46% of potential payers of TPP taxes
 - Cost was 0.014% of property tax revenue

Legislation

Property Tax



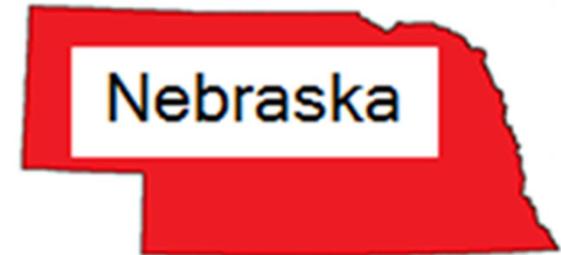
Nebraska Property Tax Incentive Act (LB 1107)

(Operative for Income Tax Year 2020)

- Established a refundable income tax credit (credit) beginning tax year 2020.
- Available to any person or entity that pays school district taxes in Nebraska.

Legislation

Property Tax

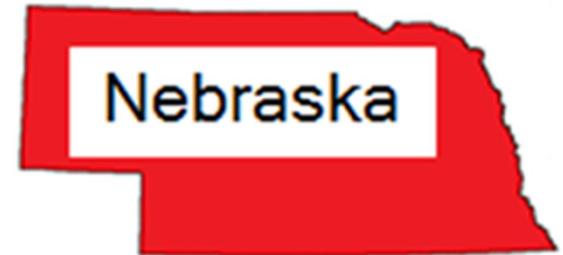


Nebraska Property Tax Incentive Act (LB 1107) (Operative for Income Tax Year 2020)

- Determined as follows:
Owner's School District Taxes x Credit Percentage
 - School District Taxes: Property taxes levied on real property by a school district, excluding bonds or levy overrides
- Credit Percentage = $\text{Dollars Available for the Credit} / \text{Total School District Taxes}$

Legislation

Property Tax

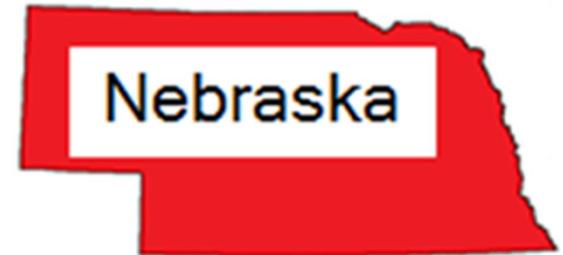


Nebraska Property Tax Incentive Act (LB 1107)

- Dollars Available for Credit:
 - For 2020: Total Credits = \$125 M
 - For 2021-3: Total Credits = \$125 M + Increase based on Nebraska's tax receipts
 - Current Revenue Forecasting Board Projection for 2021: \$211.7 M
 - For 2024: Total Credits = \$375 M
 - For 2025: Total Credits = \$375 M + Growth percentage in total assessed real property (maximum 5%)

Legislation

Property Tax

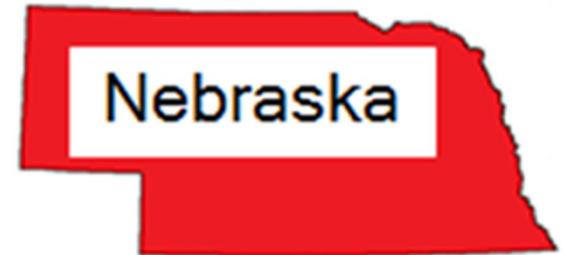


Nebraska Property Tax Credit Act (LB 1107) (Operative for Tax Year 2020)

- Amended existing Property Tax Credit Act to add statutory minimum
- For 2020 and each tax year thereafter, minimum amount of relief is \$275 million
 - 2019 Relief = \$275 million
- Previously the Credit was based on available revenue

Legislation

Gaming Tax



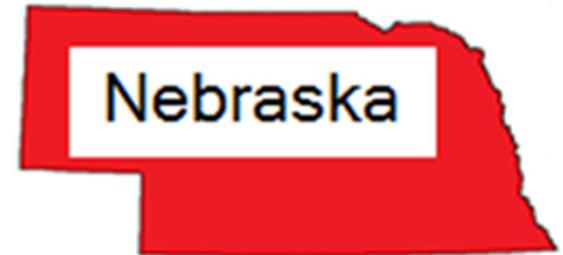
Initiative 431

(Passed by Ballot Measure on November 3, 2020)

- 20% tax on all gross gaming revenue generated within licensed racetracks.
 - Collected by Nebraska Gaming Commission
- Gross gaming revenue =
 - Amount of money players gamble –
 - Amount won, federal taxes, and any promotion gaming credits redeemed by the player.

Legislation

Gaming Tax



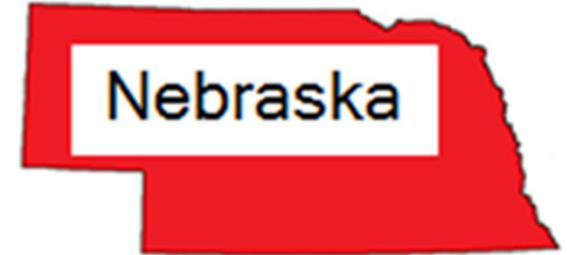
Initiative 431

(Passed by Ballot Measure on November 3, 2020)

- Revenue from the tax is required to be allocated as follows:
 - 2.5% to the Compulsive Gamblers Assistance Fund
 - 2.5% to the General Fund
 - **70% to the Property Tax Credit Cash Fund**
 - 25% to local jurisdictions where licensed racetracks operate.

Administrative Rulings

All Nebraska Taxes



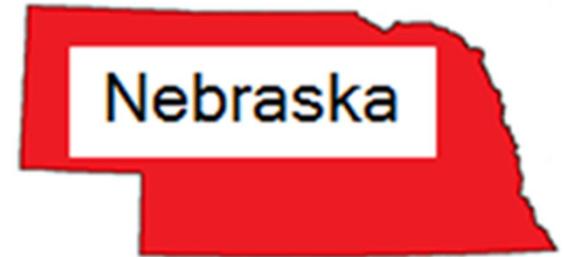
Rev. Rul. 99-20-1: Signature Requirements

Issue

- What will the Department of Revenue accept as a valid taxpayer or authorized representative (taxpayer) signature on its forms and documents?

Administrative Rulings

All Nebraska Taxes



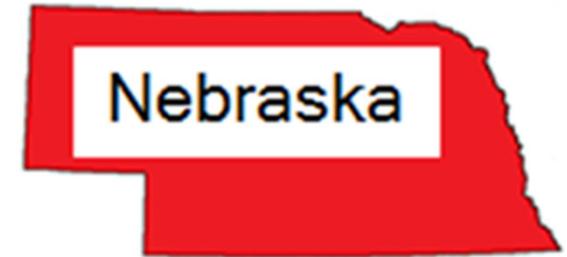
Rev. Rul. 99-20-1: Signature Requirements

Conclusion

- Unless fraud is indicated
- For most forms and filings
- Department will accept “any mark, handwritten or digitally rendered”
 - Applied with actual or apparent intention
 - To authenticate the filing as being approved and made by the signer.

Administrative Rulings

All Nebraska Taxes



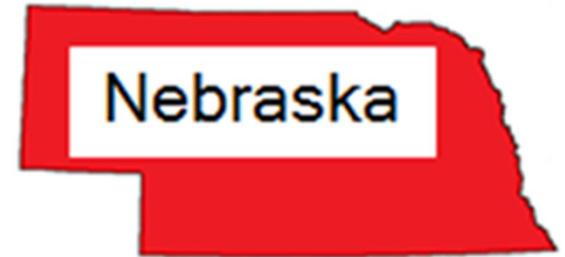
Rev. Rul. 99-20-1: Signature Requirements

Conclusion

- Exceptions:
 - Power of Attorney (Form 33)
 - Statute of Limitations Extension Agreements (Form 872 or 872-MF)
 - Nebraska Tax Return Copy Request (Form 23)
- Handwritten Signature is Required

Administrative Rulings

All Nebraska Taxes

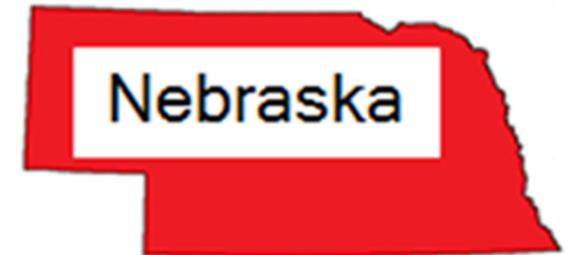


Rev. Rul. 99-20-2: Interest Rate Assessed on State Taxes

- 3% for 2021-22

Cases

Sales Tax



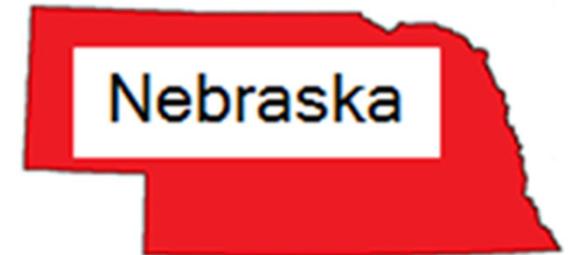
Lyman-Richey v. Dep't of Revenue

Lancaster Cty. Dist. Ct. (June 2019) (Companion to Ash Grove Case)

- **Issue**: Does production of aggregate products constitute manufacturing?
- **Manufacturing Definition**: Results in tangible personal property being reduced or transformed into a different state, quality, form, property, or thing
- Dist. Ct.: **Aggregate production** does **not** constitute "**manufacturing**"

Cases

Sales Tax



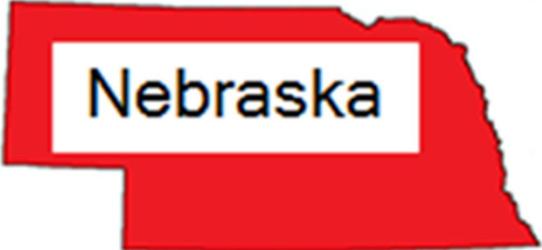
Lyman-Richey v. Dep't of Revenue

Neb. Supreme Court (August 2020) (Companion to Ash Grove Case)

- Supreme Court: Affirmed decision of Dist. Ct.
- **Aggregate production** does **not** constitute **“manufacturing”**

Cases

Sales Tax



Nebraska

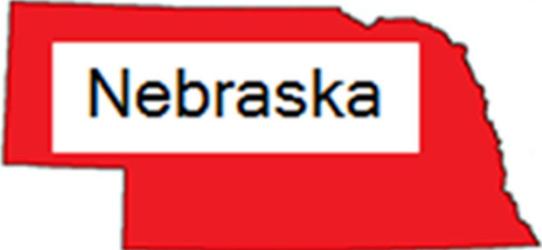
Big Blue Express, Inc. v. Dep't of Revenue
Lancaster Cty. Dist. Ct. (7/1/20)

Facts

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

Cases

Sales Tax



Nebraska

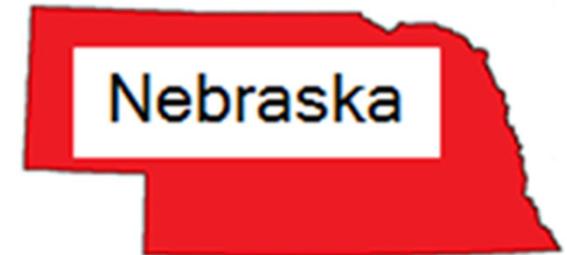
Big Blue Express, Inc. v. Dep't of Revenue
Lancaster Cty. Dist. Ct. (7/1/20)

Issues

1. 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
2. Whether Big Blue had purchased the aircraft for leasing in the **normal course** of its **“business”**

Cases

Sales Tax



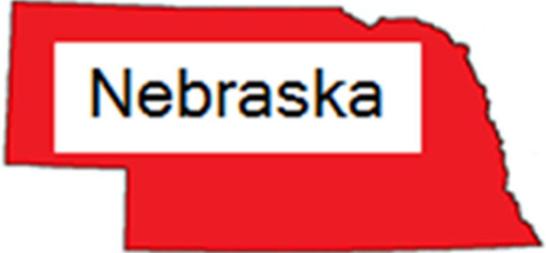
Big Blue Express, Inc. v. Dep't of Revenue
Lancaster Cty. Dist. Ct. (7/1/20)

Rulings

1. Nebraska sales tax **exemption** for sales to lessors **is available** when leasing to related parties
 2. Due to fact details in case, Big Blue **did not qualify** as purchasing the aircraft for leasing in "**the normal course** of its business"
- Case has been appealed to Nebraska Court of Appeals

Cases

Sales Tax



Nebraska

Diversified Telecom Services v. Dep't of Revenue Neb. Supreme Court (8/14/20)

Facts

- Builds, maintains, repairs and removes mobile telecommunication towers and equipment
- At some sites, it installs back-up generators
- Pays tax on purchases as Option 2 contractor
- NDR performed three year audit period, examining only records from 2014
- Company believed it installed unusually large number of generators in 2014

Cases

Sales Tax



Nebraska

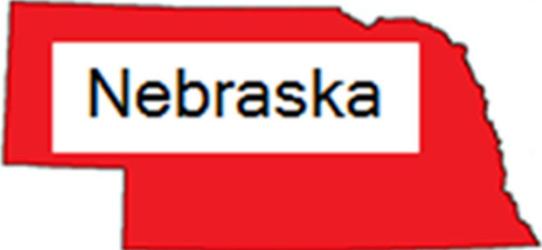
Diversified Telecom Services v. Dep't of Revenue Neb. Supreme Court (8/14/20)

Issues

- Whether amounts collected by Diversified for the sale of building materials annexed to real property are subject to sales tax
- Whether Department could use a projection to estimate Diversified's liability, even though Diversified did not agree to this projection

Cases

Sales Tax



Nebraska

Diversified Telecom Services v. Dep't of Revenue Neb. Supreme Court (8/14/20)

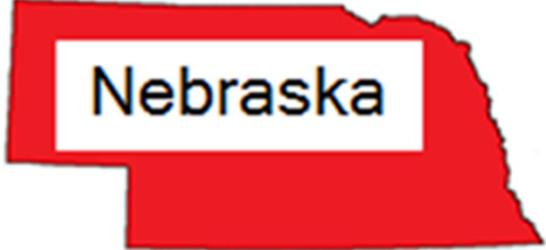
Rulings

- Diversified must pay tax on gross income from providing and installing property used in conjunction with telecommunications services, even though it already paid tax on building material purchases
- No double taxation, since purchase by Diversified and sale to others were distinct transactions
- Diversified did not meet its factual burden to show that projection was invalid

Affirmed Decision of Lancaster Cty. Dist. Ct. (Reported in 2019)

Cases

Income Tax



Nebraska

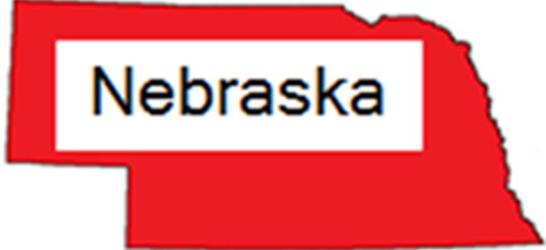
COST (Council on State Taxation) v. Dep't of Revenue Filed in Lancaster Cty. Dist. Ct. Nov. 13, 2020

Background

1. NDR issued GIL 24-19-1 on September 13, 2019
 - Modified GIL 24-18-1 issued on December 21, 2018
2. 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

Cases

Income Tax



Nebraska

COST (Council on State Taxation) v. Dep't of Revenue
Filed in Lancaster Cty. Dist. Ct. Nov. 13, 2020

COST's Position

1. Nebraska's dividends-received deduction is available for both dividends and "deemed dividends"
2. 965 Income inclusions are "deemed dividends"
3. 965 Income is eligible for Nebraska's dividends-received deduction
4. Department's position in GIL 24-19-1 is invalid

(Case Pending)

New Developments



Legislation

Income Tax



Use of Net Operating Loss (HF 2340)

- A taxpayer **may elect to waive the entire carryback** period with respect to an Iowa net operating loss for any taxable year
- By the due date for filing the taxpayer's return, including extensions of time.
- After the election is made for any taxable year, the election shall be irrevocable for such taxable year.
- If an election has been properly made, the Iowa net operating loss shall be carried forward 20 taxable years.

Changes Effective For Years Beginning On or After January 1, 2020.

Legislation

Income Tax



Married Taxpayers – Joint Liability (HF 2340)

- Relief from Iowa joint tax liability is **available under all circumstances that are available under federal law.**
- Also provides a mechanism for the department to allow the spouse not requesting relief from joint tax liability to intervene in the department's process when deciding whether to grant relief.

Changes Effective June 29, 2020

Legislation

Income Tax



Use of Educational Savings Plan Funds (HF 2340)

- **Allows funds** withdrawn from Iowa Educational Savings Plan Trust accounts (Iowa Accounts)
- **To be used to pay tuition for students requiring special education** and attending out-of-state elementary or secondary schools.
- With the change, withdrawals made for this purpose **will not be subject to Iowa individual income tax.**

Changes Effective Retroactively to January 1, 2020

Legislation

Property Tax



Confidentiality of Individual Information (HF 2382)

- Name and address of an individual allowed a disabled veteran tax credit under Iowa Code § 425.15, or a military tax exemption under Iowa Code § 426A.13
- That is maintained by the county recorder, county assessor, city assessor, or other entity
- **Confidential information** unless otherwise ordered by a court or released by the lawful custodian of the records pursuant to state or federal law.

Changes Effective July 1, 2020

Legislation

Sales Tax



Software and Computer Peripherals (HF 2340)

- Specifies that any services arising from or related to software sold as tangible personal property are subject to the sales tax.
- Exempts from the sales and use tax certain sales of computer peripherals in the same manner as computers are exempted from the sales and use tax
- The Act defines “computer peripheral” to mean an ancillary device connected to the computer digitally, by cable, or by other medium, used to put information into or get information out of a computer.

Changes Effective July 1, 2020

Legislation

Sales Tax



Specified Digital Product and Service (HF 2340)

Specifies that the following is **not subject to the sales tax**:

- The retail sale of a specified digital product and a service
- **Where the specified digital product is essential and exclusive to the use of the service**
- The **true object** of the transaction **is the service**.

Changes Effective July 1, 2020

Cases

Income Tax



Christensen v. Iowa Department of Revenue Iowa Supreme Court (6/19/20)

- Iowa law excludes capital gain from the sale of “real property used in a business, in which the taxpayer materially participated for ten years”
- Taxpayers inherited real property in 1989 that they cash rented to local farmers
- S. Ct. affirmed IDR that taxpayers did not “materially participate” in rental business
 - Based on Iowa law’s reference to Internal Revenue Code for definition of “material participation”

Detective Gadgets' Conclusion On:



Evaluate the Tax Costs of Being in Nebraska and Iowa

- Detective Gadgets' advisors have determined that Nebraska and Iowa have competitive – but not market leading – tax costs.

In 2021, Detective Gadgets Wants To:



- Consider Impact of Fiscal Climate In Nebraska and Iowa vs. U.S.
- Review Impact of Business Climate In Nebraska and Iowa vs. U.S.
- Consider the Impact of COVID-19 on Its Nebraska Incentives
- Consider Moving Its Headquarters to Nebraska in 2021
- Evaluate the Tax Costs of Being in Nebraska and Iowa
- Help Its Executives Determine Where To Reside
- Analyze Impact of Key State and Local Issues From Around The Country
- Deploy The Best Defense Strategy For Its Present NDR Audit

Detective Gadgets Wants To:

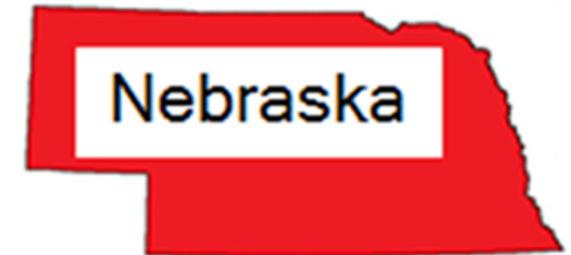
- Help Its Executives Determine Where To Reside

Because:

- Detective Gadgets' executives do not want to move to a high tax state and want to keep the ability to freely retire elsewhere.
- One of Detective Gadgets' executives, who used to be based at Detective Gadgets' existing Nebraska location, received a tax assessment from Nebraska when that executive tried to claim that he had moved to another state.

Cases

Income Tax



Houghton v. Dep't of Revenue

Lancaster County District Court (2/3/20)

Facts

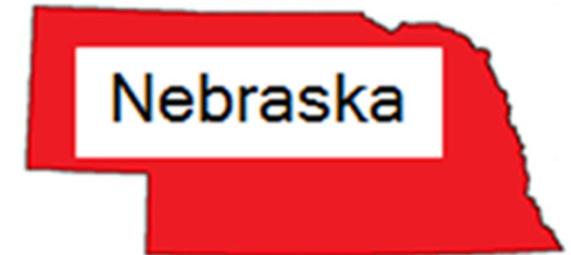
- Taxpayer accepted a position in England and moved there on a restricted work visa
- Visa expired after 3 years
- Taxpayer obtained second restricted visa, and eventually pursued permanent residency in England
- Kept home in Nebraska for several years

Issue

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

Cases

Income Tax



Houghton v. Dep't of Revenue

Lancaster County District Court (2/3/20)

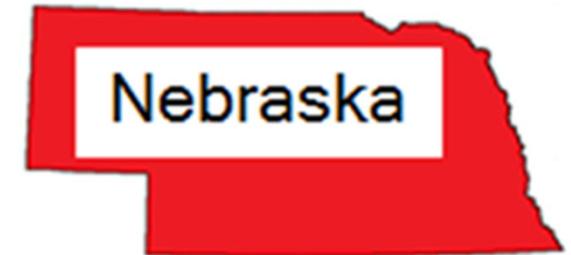
Tax Commissioner Ruling

- 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

Cases

Income Tax



Houghton v. Dep't of Revenue

Lancaster County District Court (2/3/20)

District Court Ruling

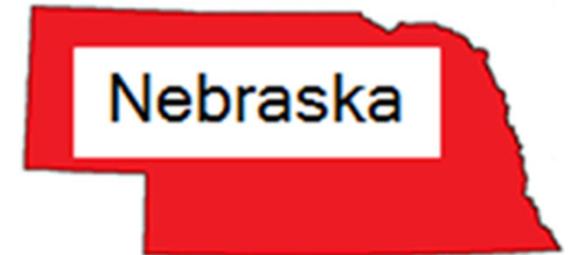
- Tax Commissioner did not err, because intent to remain in England was “unrealistic subjective intent” where Visa had expiration date
- Court also noted statement of Taxpayers regarding eligibility for special capital gains exclusion in Nebraska, in which they claimed they were Nebraska residents

Conclusion: Taxpayer **remained Nebraska resident** for tax purposes

Appealed to Nebraska Supreme Court

Cases

Income Tax



Declaration of Abandonment

- A step to take to help establish change of residency.

Detective Gadgets' Conclusions On:

Help Its Executives Determine Where To Reside

- Nebraska's Courts are willing to rule against the Department of Revenue and have provided some guidance for future planning.
- Their executives will deploy the Declaration of Abandonment.
 - When leaving Illinois to come to Nebraska.
 - When moving out of Nebraska.

In 2021, Detective Gadgets Wants To:



- Consider Impact of Fiscal Climate In Nebraska and Iowa vs. U.S.
- Review Impact of Business Climate In Nebraska and Iowa vs. U.S.
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- Analyze Impact of Key State and Local Issues From Around The Country
- Deploy The Best Defense Strategy For Its Present NDR Audit

Detective Gadgets Wants To:

- Analyze Impact of Key State and Local Issues From Around The Country

Because:

- Given its size and growth, Detective Gadgets will only establish locations in tax and business friendly states.
- Detective Gadgets is considering the sale of one of its subsidiaries and is looking for guidance.
- It wants to understand Nebraska and Iowa tax authorities from a tax dispute fairness perspective.

Proposed IRS Regulation

SALT Cap Workaround

- In proposed regulations, IRS allowed one type of SALT cap workaround
- No cap on entity-level taxes
 - Owners of pass-through businesses to pay an additional state tax at the business level
 - Allowed an offsetting credit against their individual income tax liability.
- This functionally allows these owners to avoid the cap.

Key State and Local Tax Cases From U.S.

Preserve II v. New Jersey Director, Division of Taxation (Sep. 9, 2020)

- N.J. Tax Ct. (Lower Court): Taxpayer had **“automatic economic nexus”** in New Jersey because it received partnership income from New Jersey sources
- N.J. Appellate Court: No **“automatic economic nexus”**
 - Court found additional factors created sufficient nexus to satisfy the constitutional limitations

Key State and Local Tax Cases From U.S.

Noell Indus. v. Idaho State Tax Commission (May 22, 2020)

- **Idaho Supreme Court**: Gain realized by a corporate holding company on the **sale of its 78.54 percent** ownership interest **in an LLC**
- **Was nonbusiness** income and therefore **not** subject to **apportionment** in Idaho.

Key State and Local Tax Cases From U.S.

Noell Indus. v. Idaho State Tax Commission (May 22, 2020)

Facts

- The LLC had operations in most states, including a factory located in Idaho.
- The LLC and the corporate holding company shared the same founder, who also served as president and CEO of the LLC.
- The LLC maintained its own human resource department

Key State and Local Tax Cases From U.S.

Noell Indus. v. Idaho State Tax Commission (May 22, 2020)

Facts

- Shared President and CEO did not manage the day-to-day operations, marketing decisions, and other ordinary business and sales decisions of the LLC.
- The corporate holding company did not have any employees, did not share any expenses or assets with the LLC, and did not provide financing or other services to the LLC.

Key State and Local Tax Cases From U.S.

Noell Indus. v. Idaho State Tax Commission (May 22, 2020)

Court Decision

- Gain did not constitute business income under the transactional test or functional test.
- Transactional test was not satisfied because the holding company was not in the business of buying and selling such interests.
- Functional test was not satisfied because the taxpayer's sale of its interest in the LLC was a passive investment.

State Tax Administration

COST Scorecard on State Tax Administration (Dec. 30, 2019)

Nebraska Grade: C

Negatives:

- **Lack of independent tax dispute forum**
- Failure to meet certain elements for reporting changes resulting from a federal audit.
- **Lack of transparency in issuing guidance** and rulings

State Tax Administration

COST Scorecard on State Tax Administration **(Dec. 30, 2019)**

Iowa Grade: C

Negatives:

- **Lack of independent tax dispute forum**
- Failure to meet certain elements for reporting changes resulting from a federal audit.
- Other fairness issues

Detective Gadgets' Conclusions On:



Analyze Impact of Key State and Local Issues From Around The Country

- Detective Gadgets may use *Prestige II* to challenge a state's imposition of tax simply because they received receipts from that state
- Detective Gadgets can use *Noell* to challenge Nebraska's assessment of tax from a sale of an investment entity

In 2021, Detective Gadgets Wants To:



- Consider Impact of Fiscal Climate In Nebraska and Iowa vs. U.S.
- Review Impact of Business Climate In Nebraska and Iowa vs. U.S.
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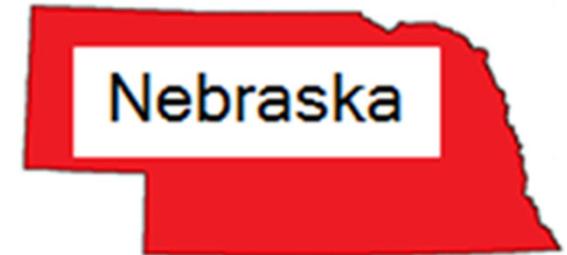
- Deploy The Best Defense Strategy For Its Present NDR Audit

Because:

- Detective Gadgets is under a Nebraska tax incentive audit regarding its software investment.
- Detective Gadgets may want to locate a significant portion of its IT system at a Nebraska data center.
- It wants to understand best practices for State Tax and Incentive Audit defense.

Current Department Position

Sales Tax



Security for Data Centers and Cloud Computing

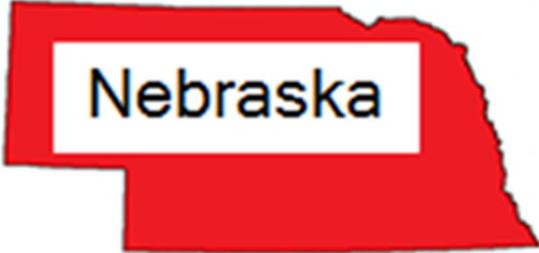
- NDR is contending that a part of the basic payments to data centers, and for cloud computing, is for **taxable security service**.
- NDR is **disregarding** “**True Object**” or “**Incidental-to-Service**” tests that have previously been applied in Nebraska (and throughout the U.S.)

Recommendation

- Challenge the NDR on this.

Current Department Position

Incentives



Nebraska

Department of Revenue Interpretation of First Data Case

- *First Data*: Neb. S.Ct. determined that software qualifies for incentives if “nonexclusive” and not an IRC 197 intangible.
- NDR has (we believe incorrectly) stated that qualified software cannot be “substantially modified”
 - The cost of modifications cannot exceed 25% of software cost.

NDR Auditor Positions:

1. Taxpayers need to meet the 25% cost of modification test.
2. Software implementation may constitute “modification.”

Recommendation

- Challenge the NDR on this misreading of the First Data case.

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)

- 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”

Detective Gadgets' Conclusions On:

Deploy The Best Defense Strategy For
Its Present NDR Audit

- Detective Gadgets will need to be part of the present “Security” taxation debate with the Department.
- Detective Gadgets has a better outlook than it expected regarding its software eligibility for the Nebraska Advantage Incentive.

CLOSING THOUGHTS



– 2021 OUTLOOK –

This Briefing covers the new
Imagine Nebraska Act
enacted August 17, 2020

M | N The McGrath
North Business
Growth Series™

NEBRASKA TAX INCENTIVE BRIEFING



Deciding Whether to Deploy the
Nebraska Advantage Act
Grandfather Opportunity by 12-31-20 or
Wait Until 2021 to Use the New
Imagine Nebraska Act



Nick Niemann, JD

Matt Ottemann, JD, LLM

State & Local Tax & Incentives Attorneys - August 20, 2020

THE ANATOMY OF **RESOLVING STATE TAX MATTERS**



**How to Deploy the Right Strategy
and Mindset for Reducing State Taxes
and Optimizing State Incentives**



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Matt Ottemann, JD, LL.M.

State & Local Tax & Incentives Attorneys



**Thank
You!**



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 - 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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- 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

Disclaimer

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