

**60th Annual Great Plains  
Federal Tax Institute  
December 2, 2022**

# **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  
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
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- ☐ Political Impact
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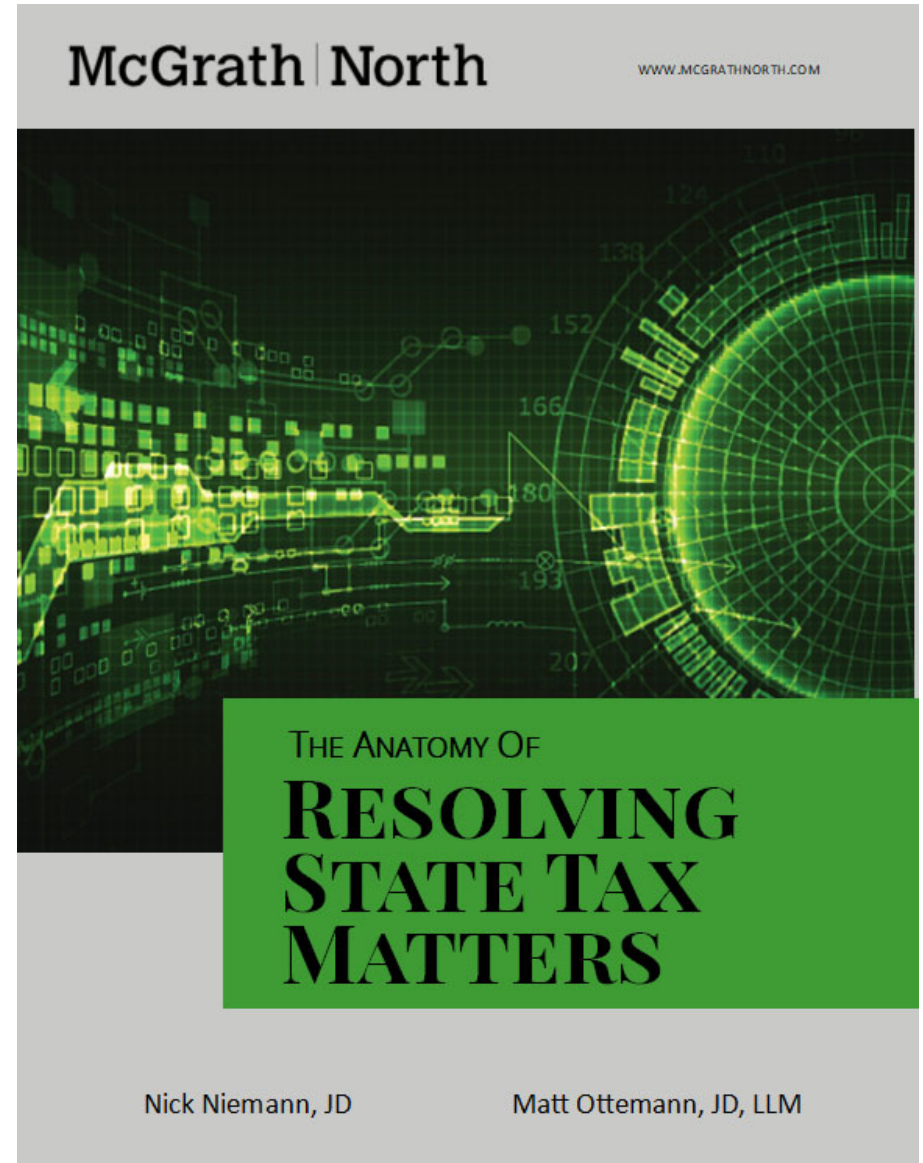
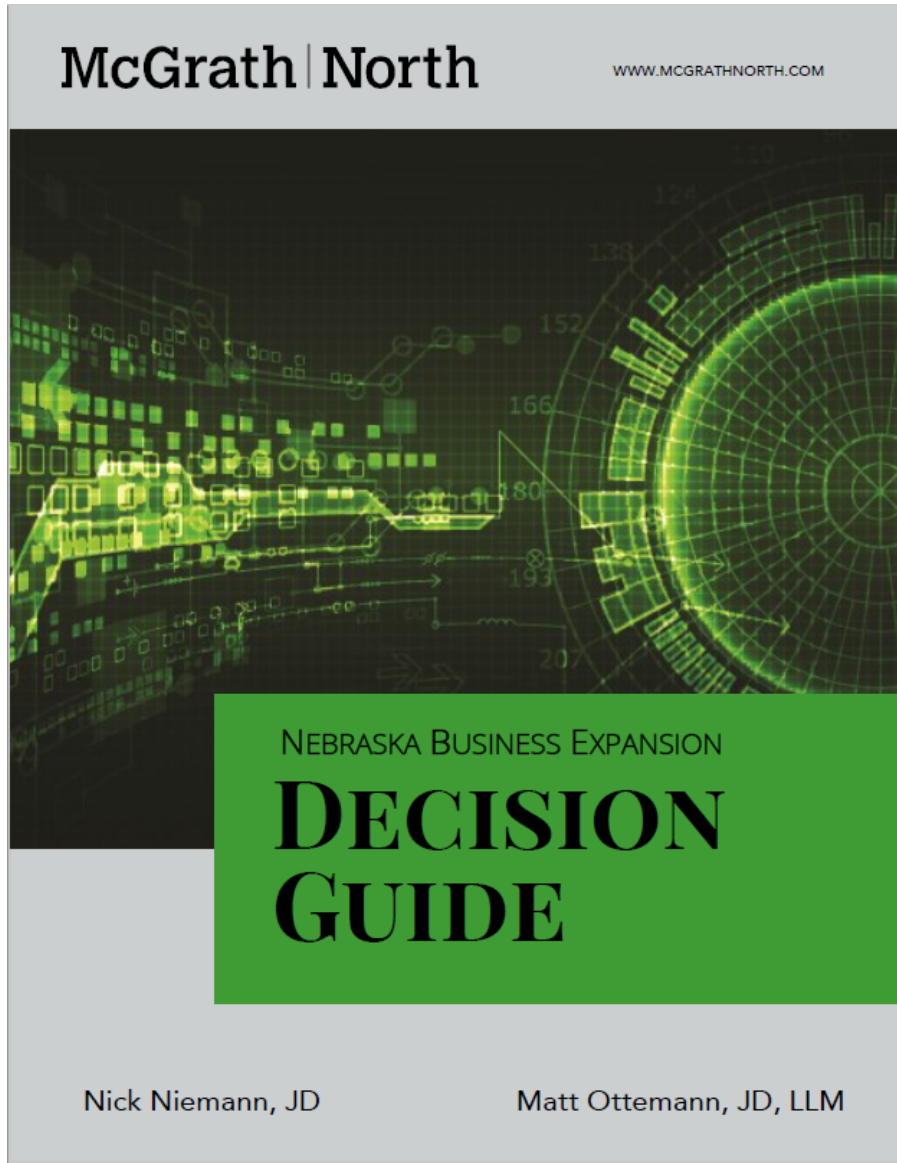
### Resolution

- ☐ New Cases
- ☐ Audits & Appeals

### What Next

- ☐ A Look Ahead to 2023
- ☐ Closing Thoughts

# MORE INFORMATION IN THESE 2 BRIEFINGS



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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

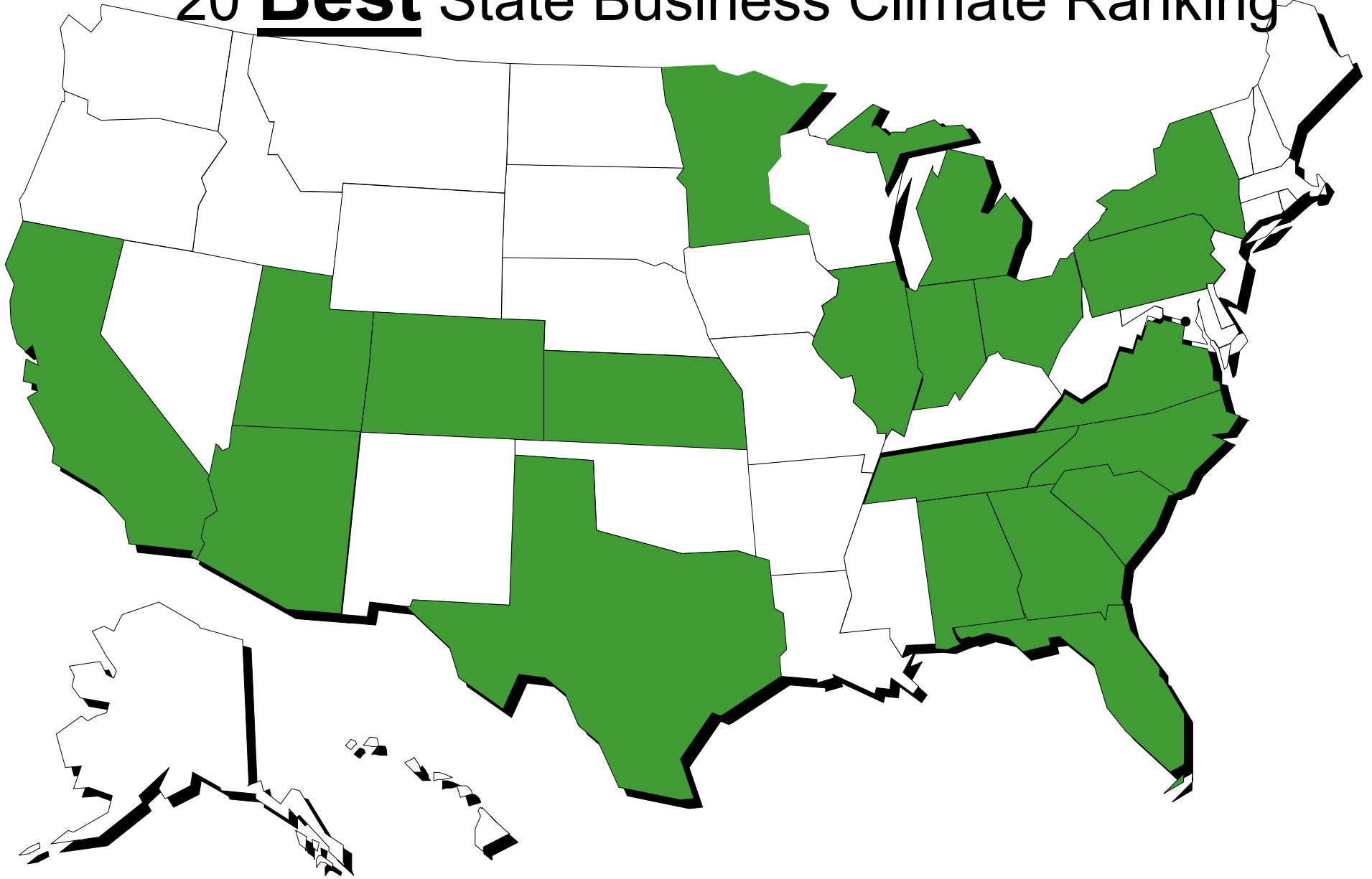
Economic development  
strategy

Utilities (cost, reliability)

Workforce development

# SITE SELECTION MAGAZINE

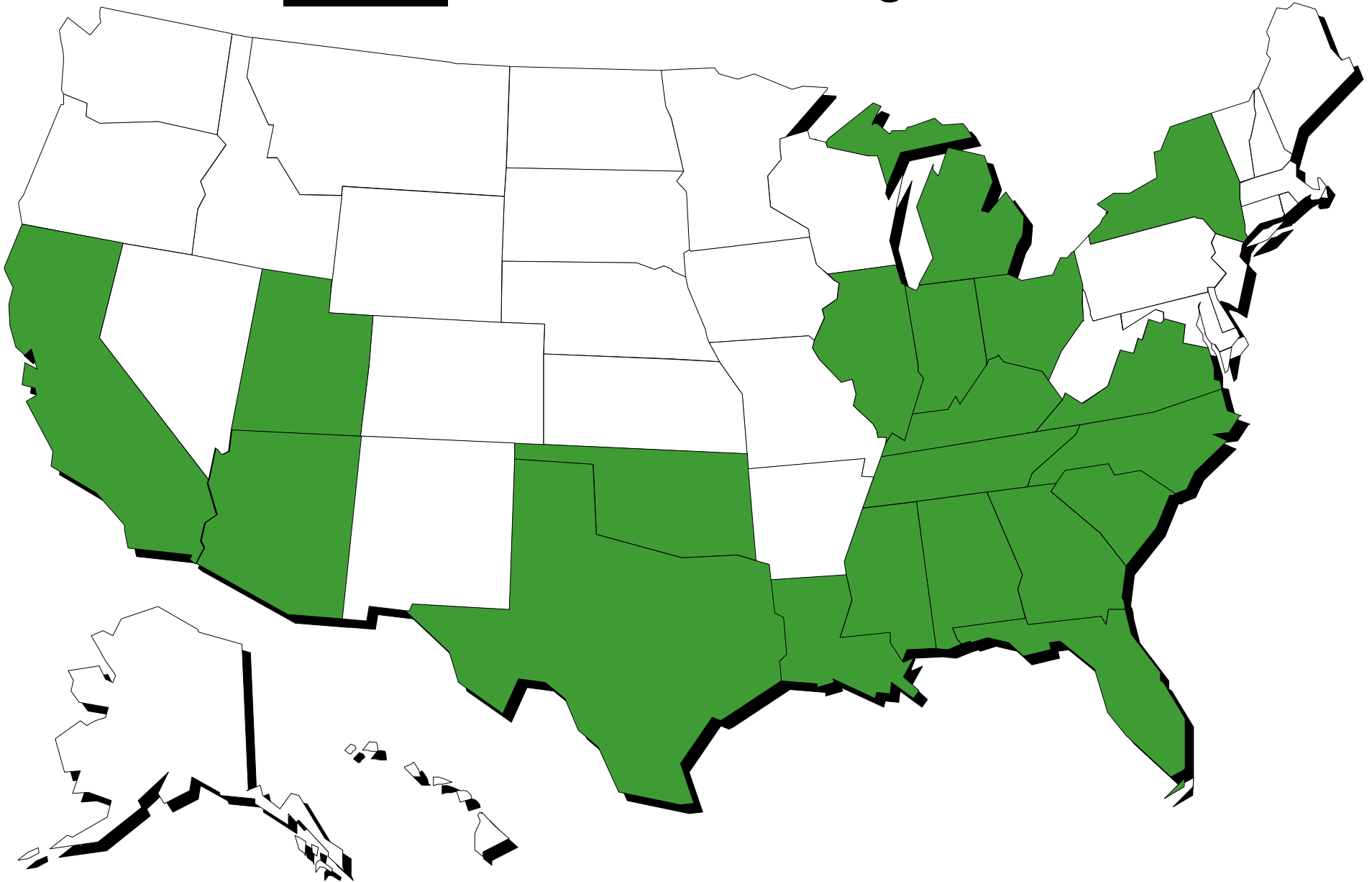
## 20 **Best** State Business Climate Ranking



Source: Site Selection Magazine, Nov. 2022

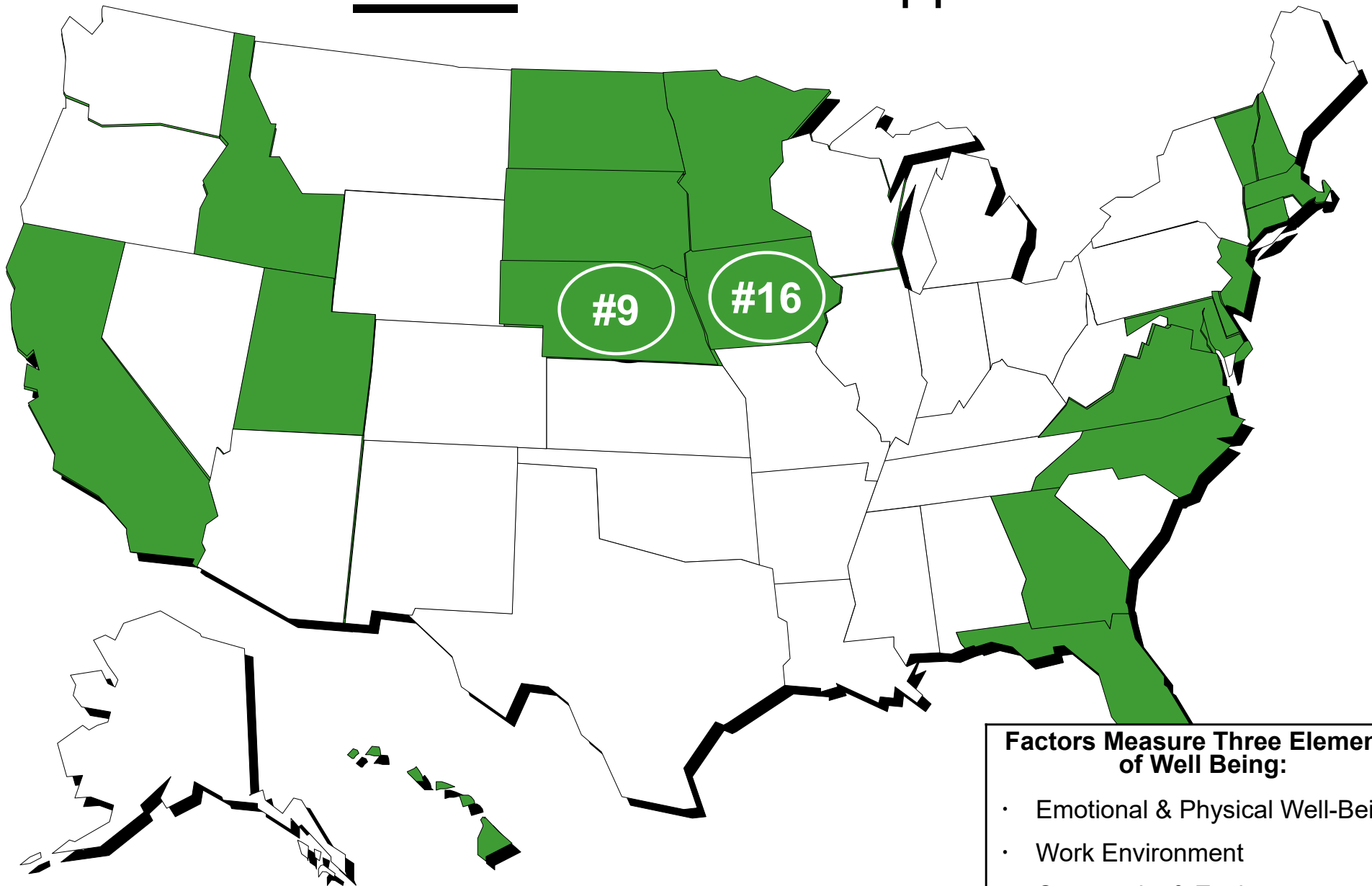
# AREA DEVELOPMENT

## 20 **Best** States For Doing Business



Source: Area Development Magazine, Q3 2022

## 20 **Best** States For Happiness



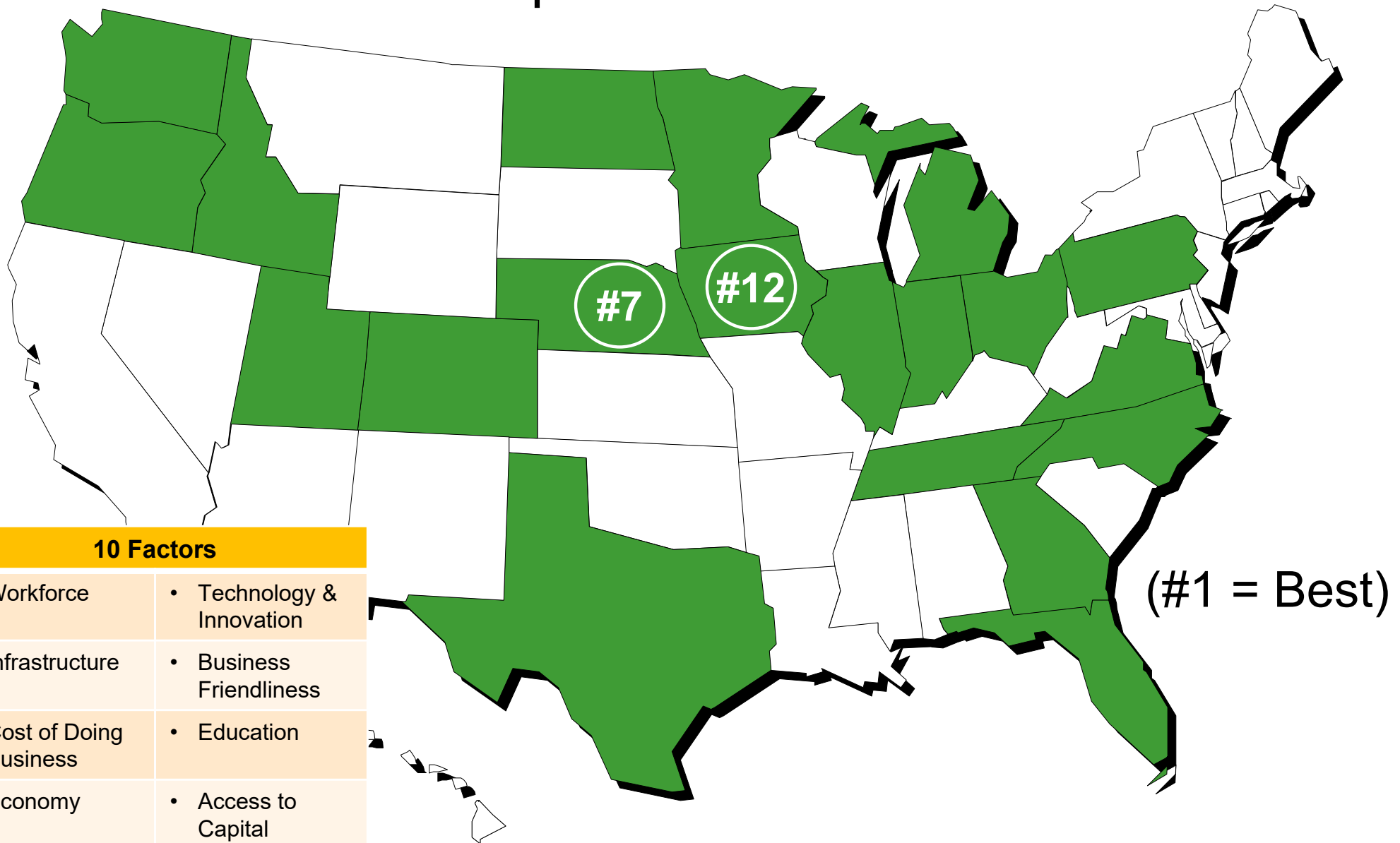
(#1 = Best)

Source: WalletHub, September 20, 2022

### Factors Measure Three Elements of Well Being:

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

## America's Top 20 States for Business



### 10 Factors

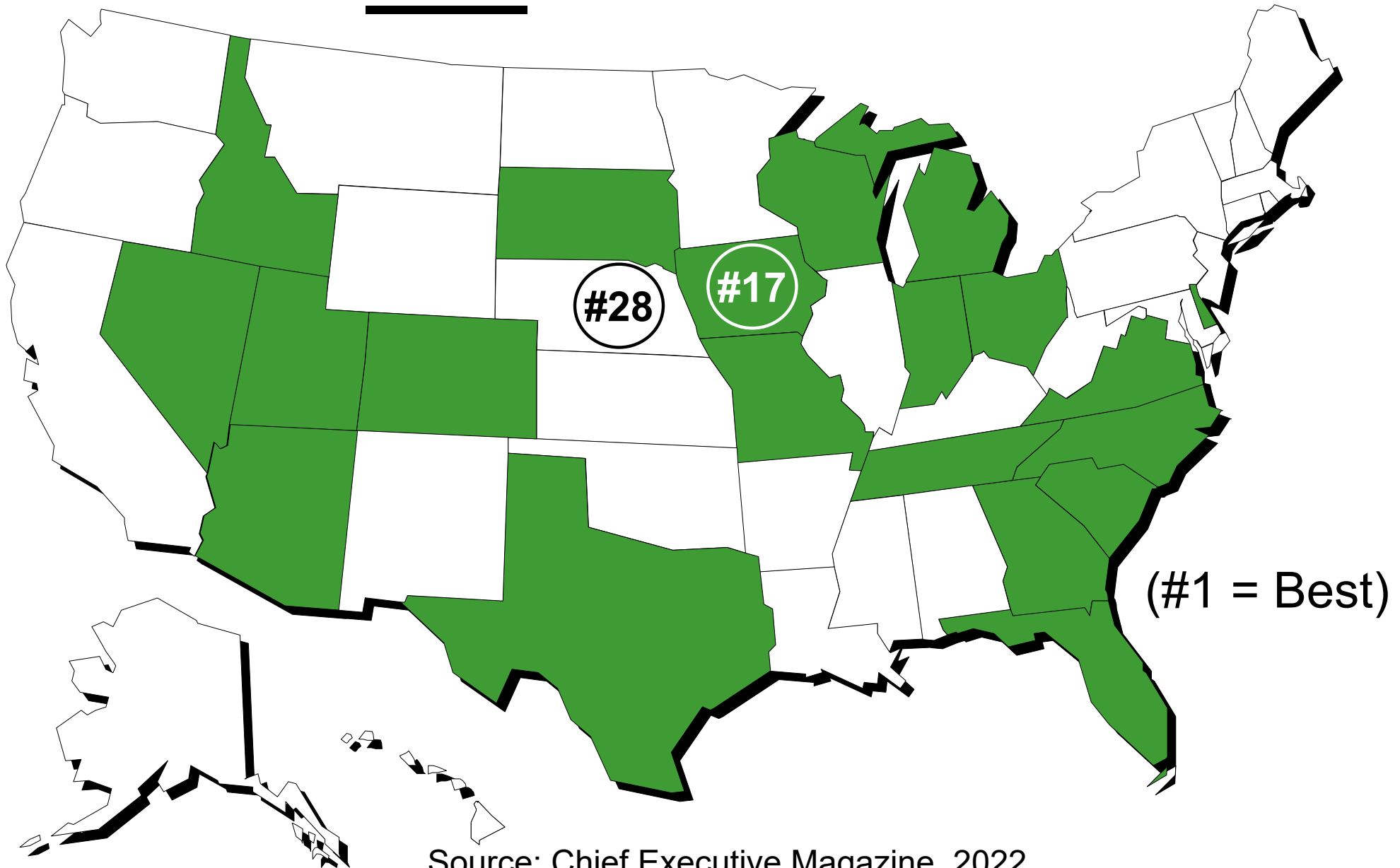
- |                            |                           |
|----------------------------|---------------------------|
| • Workforce                | • Technology & Innovation |
| • Infrastructure           | • Business Friendliness   |
| • Cost of Doing Business   | • Education               |
| •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

(#1 = Best)

Source: CNBC, July 13, 2022

# CHIEF EXECUTIVE MAGAZINE

## 20 Best States For Business

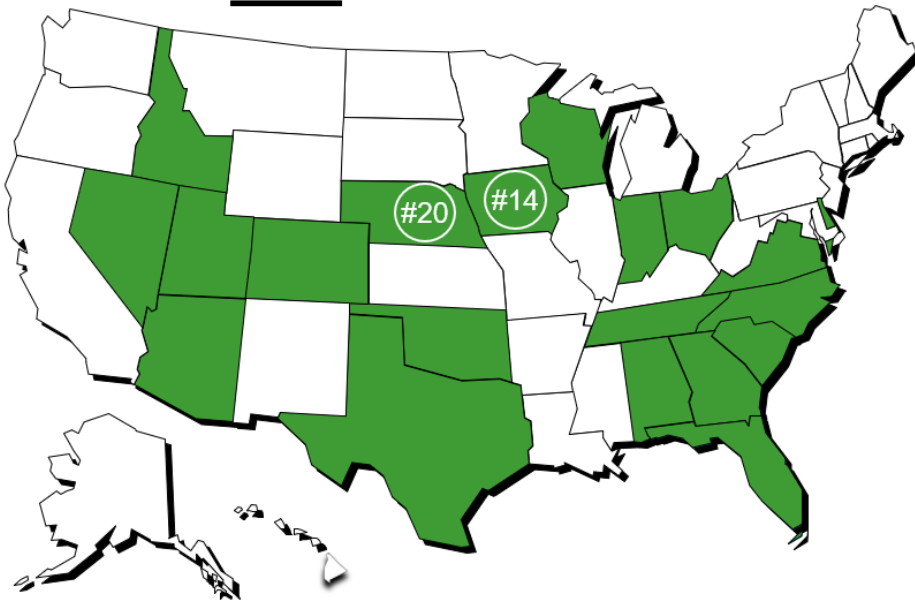


Source: Chief Executive Magazine, 2022  
Based on Survey of CEOs.

# CHIEF EXECUTIVE MAGAZINE

2017

20 **Best** States For Business

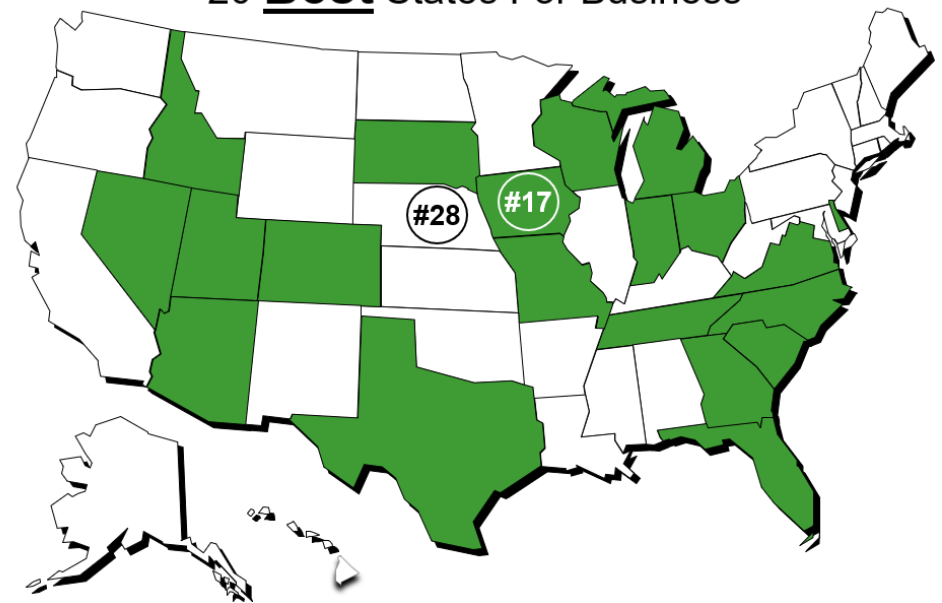


(#1 = Best)

Source: Chief Executive Magazine, 2017  
Based on Survey of CEOs.

2022

20 **Best** States For Business



(#1 = Best)

Source: Chief Executive Magazine, 2022  
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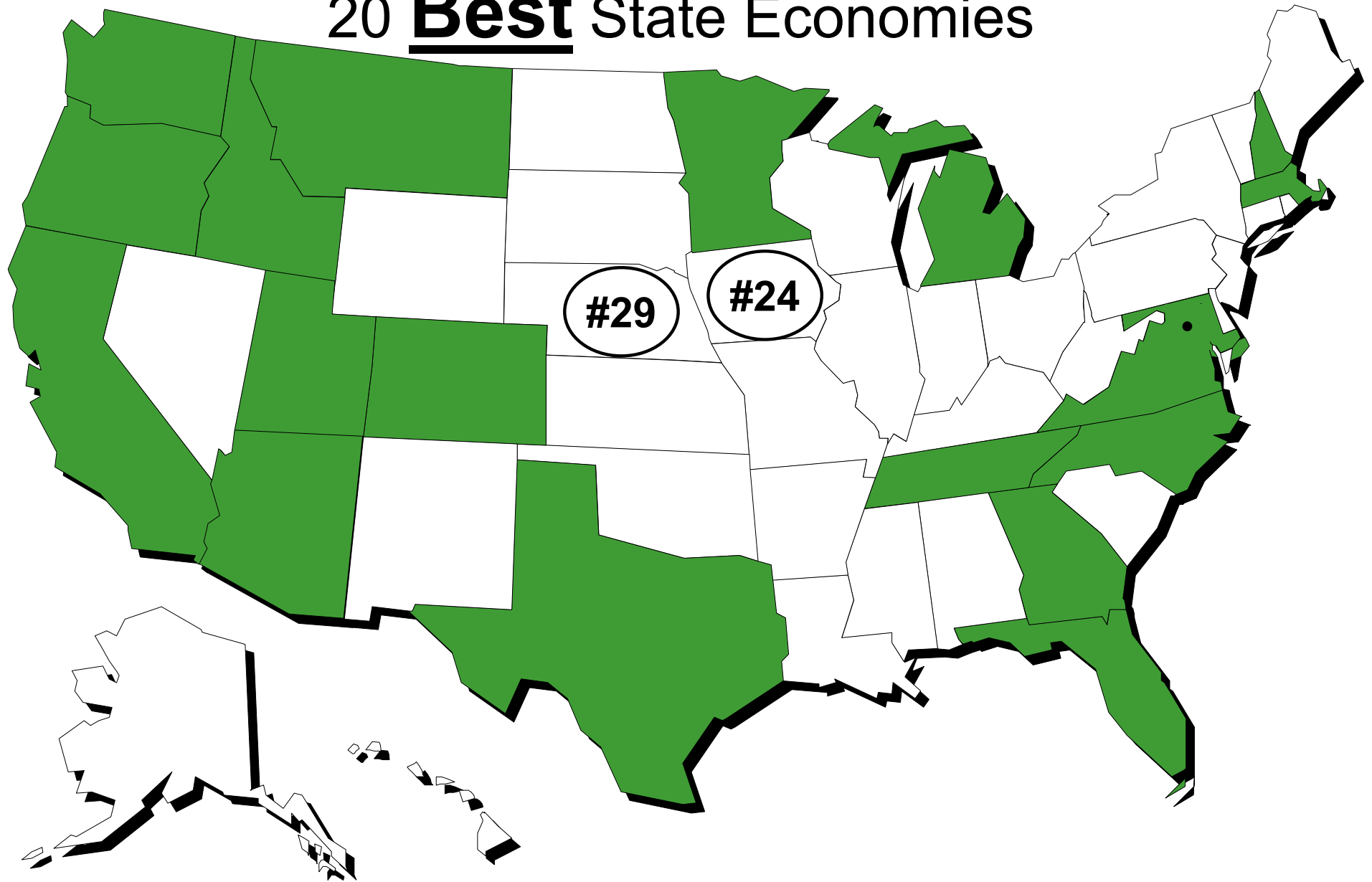
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## Fiscal Report Card



## 20 Best State Economies



Source: WalletHub, June 6, 2022

(#1 = Best)

## 20 Worst State Economies



Source: WalletHub, June 6, 2022

(#1 = Best)

# AMERICAN LEGISLATIVE EXCHANGE COUNCIL

## Economic Performance Rankings

(Based on 3 policy variables)

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

(#1 = Best)

Nebraska = #17; Iowa = #25

Source: American Legislative Exchange Council, April 18, 2022

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

Nebraska = #36; Iowa = #32

(#1 = Best)

Source: American Legislative Exchange Council, April 18, 2022

# 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

Source: American Legislative Exchange Council, April 18, 2022

# AMERICAN LEGISLATIVE EXCHANGE COUNCIL

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Economic Outlook Rankings			
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6	Florida	46	Connecticut
7	Wyoming	47	California
8	Arizona	48	New Jersey
9	Texas	49	Vermont
10	Idaho	50	New York

Nebraska = #32; Iowa = #29

(#1 = Best)

Source: American Legislative Exchange Council, April 18, 2017

2022

Economic Outlook Rankings			
(Based on 15 policy variables)			
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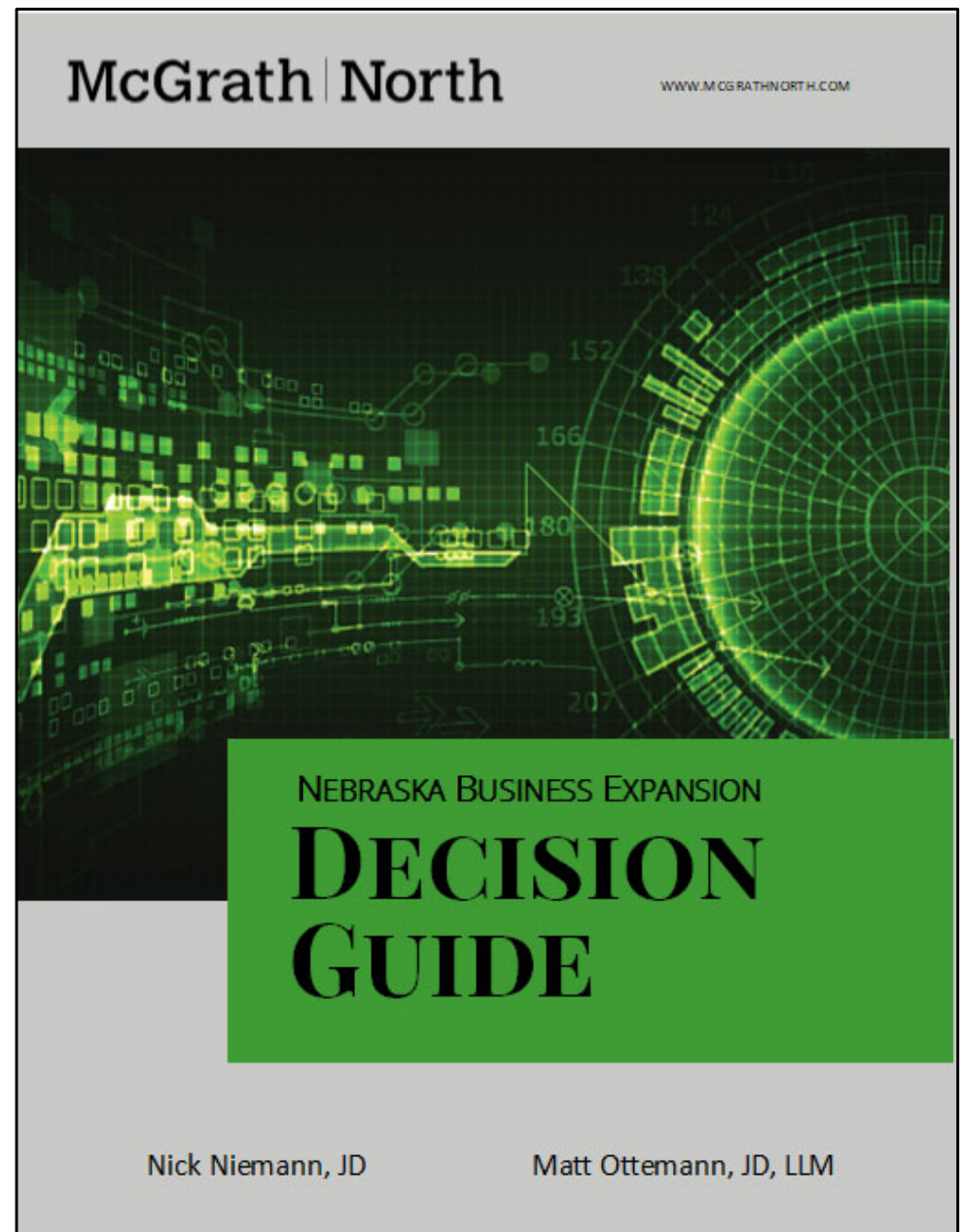
# TODAY'S AGENDA



## 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**



# WE START HERE ...

Do You Have A Project  
In Your Future? ☒

What Is  
A Project?

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

☐ Start a new business or  
product line

☐ Move to, or add, a new or  
larger site

☐ Move a business to  
Nebraska

☐ Refurbish, remodel or  
retool existing site

☐ Acquire and then grow  
another Company

# POTENTIAL PROJECT SUMMARY

## Brief Project Description

And Next  
We Go  
Here ...

Your Company Name: \_\_\_\_\_

Your Website: \_\_\_\_\_

Your Type(s) of Business: \_\_\_\_\_

Your Potential Expansion:

- Purpose: \_\_\_\_\_

- Estimated New Investment:

Land Acquisition \$ \_\_\_\_\_

New Construction or Remodel \$ \_\_\_\_\_

Building Purchase or Total Lease \$ \_\_\_\_\_

Equipment Purchase or Total Lease \$ \_\_\_\_\_

New Software \$ \_\_\_\_\_

Other Capital Expenditures \$ \_\_\_\_\_

Total \$ \_\_\_\_\_

- Estimated New Jobs: \_\_\_\_\_ Estimated New Job Wage: \$ \_\_\_\_\_

- Estimated Timeline: \_\_\_\_\_ years (beginning 20\_\_ +/-)

- Potential Locations: Nebraska ☐ Other States ☐

- Financing: ☐ Internal ☐ Investor  
☐ Bank ☐ Other  
☐ Leasing ☐ Combination

# POTENTIAL PROJECT SUMMARY

## Overall Incentive Value

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

**- And Then Estimate Potential Incentives -**

# POTENTIAL PROJECT SUMMARY

## Your Business Expansion Team

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

Below are positions to consider:

- **Company**

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

- **Search**

- Site Selection Firm
- Real Estate Developer

- **Legislation**

- Lobbyist
- Legislative Committee

- **City/County**

- Elected Officials
- Permitting/Zoning, etc.

- **Workforce**

- University
- Community College

- **Financing**

- Bank
- Investor

- **Financial**

- CPA Firm
- Financial Analyst

- **Community**

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

- **Legal**

- Law Firm With Business Expansion Team
- Company Law Firm

- **State**

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

- **Energy/Utility**

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

- **Construction**

- Real Estate Developer
- Architect
- Construction Firm
- Telecom

# FOCUS OF BUSINESS EXPANSION TEAM

## Site It

### Selection and Incentives

Focus:

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

## Own It

### Formation and Structure

Focus:

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

## Build It

### Real Estate and Construction

Focus:

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

## Fuel It

### Energy and Environment

Focus:

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

## Finance It

### Finance and Investment

Focus:

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

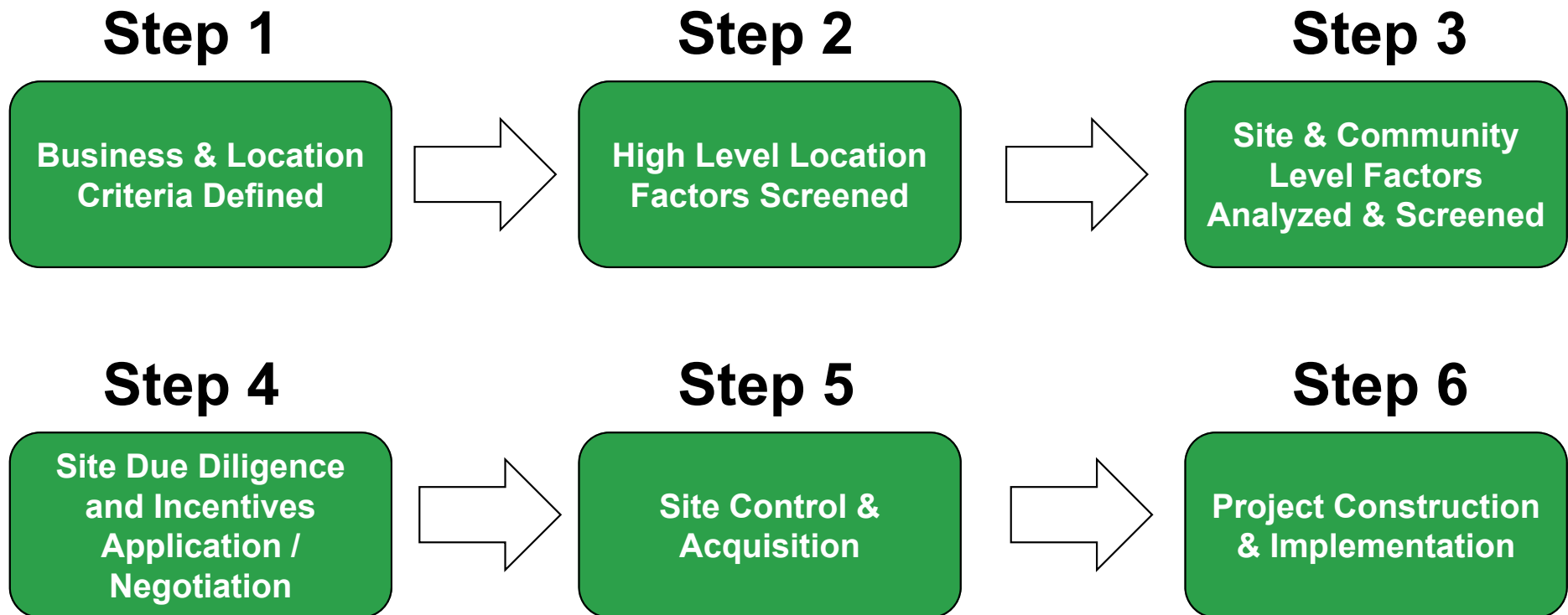
## Staff It

### Employment and Engagement

Focus:

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

# THE BUSINESS EXPANSION DECISION MAKING PROCESS







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

Key to success is team play and collaboration.

# A QUICK HIGH LEVEL ANALYSIS

## Are These Nebraska Features:

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

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

Don't  
Overlook:

## POTENTIAL FEDERAL INCENTIVES FOR NEBRASKA GROWTH ☒

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

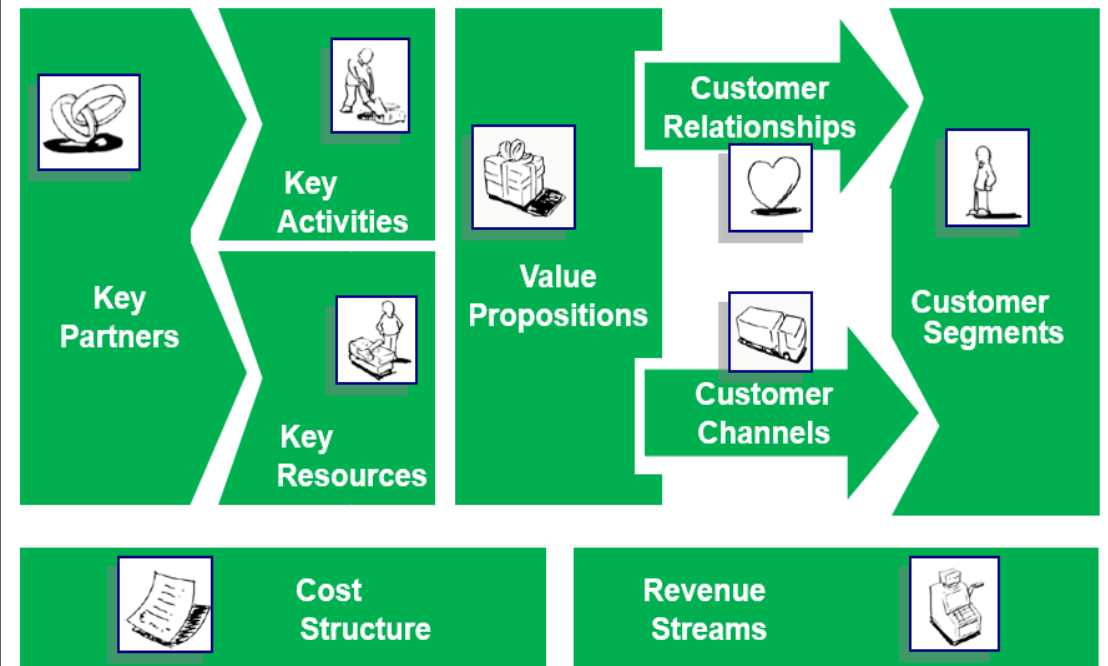
Don't  
Overlook:

# PROJECT INCENTIVES FROM BUSINESS ✓

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

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

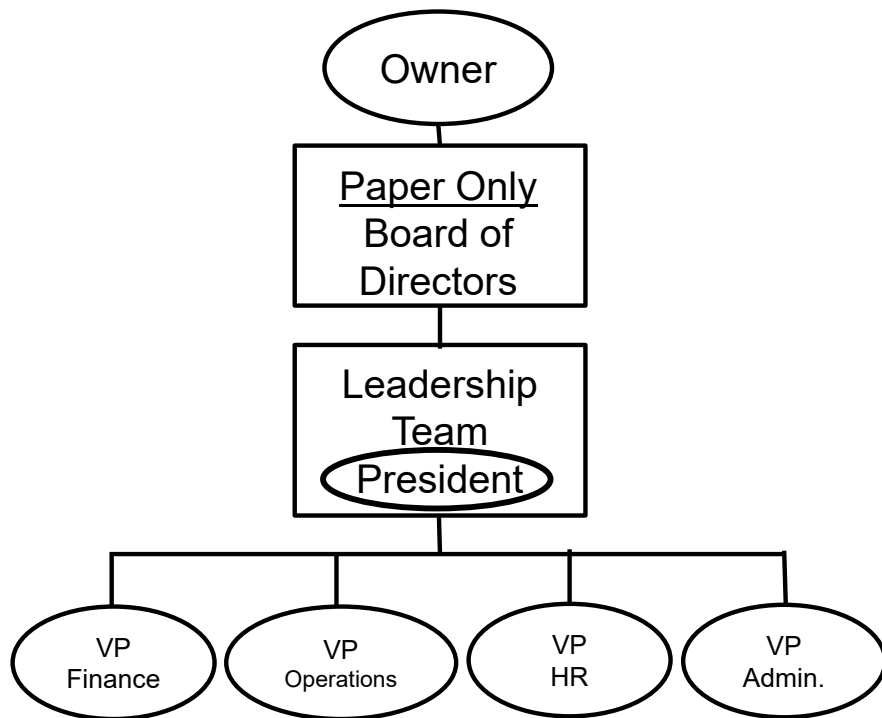
## The 9 Business Model Building Blocks



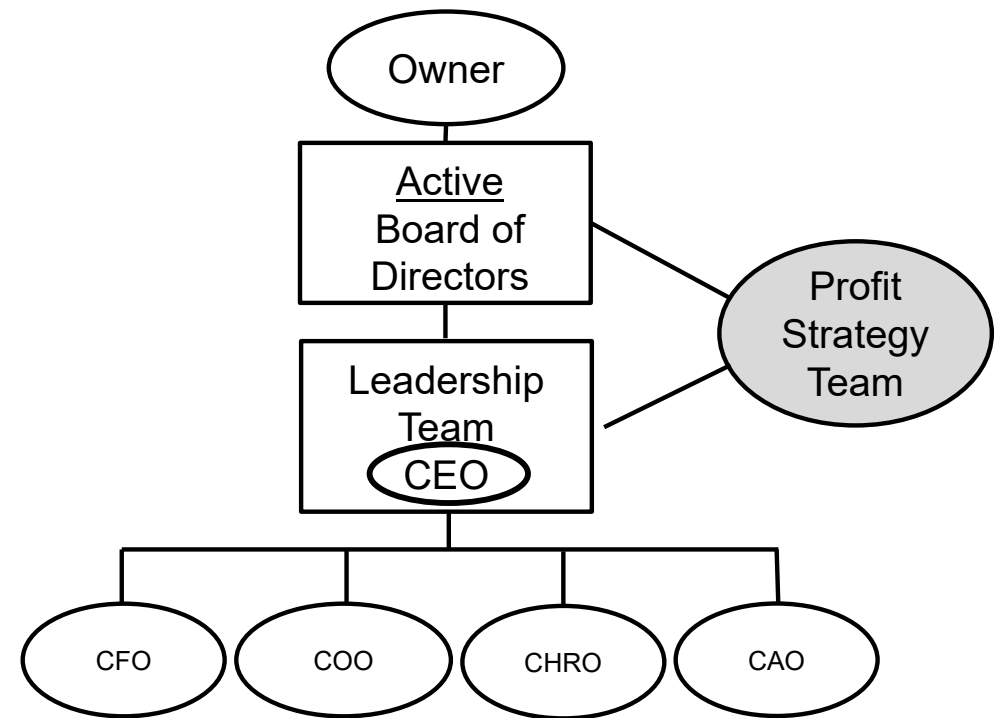
Source: *Business Model Generation*

# Adding A Profit Strategy Team

## Present Organizational Structure



## Revised Organizational Structure



Main Focus: Business Model Pivots and Business Expansions

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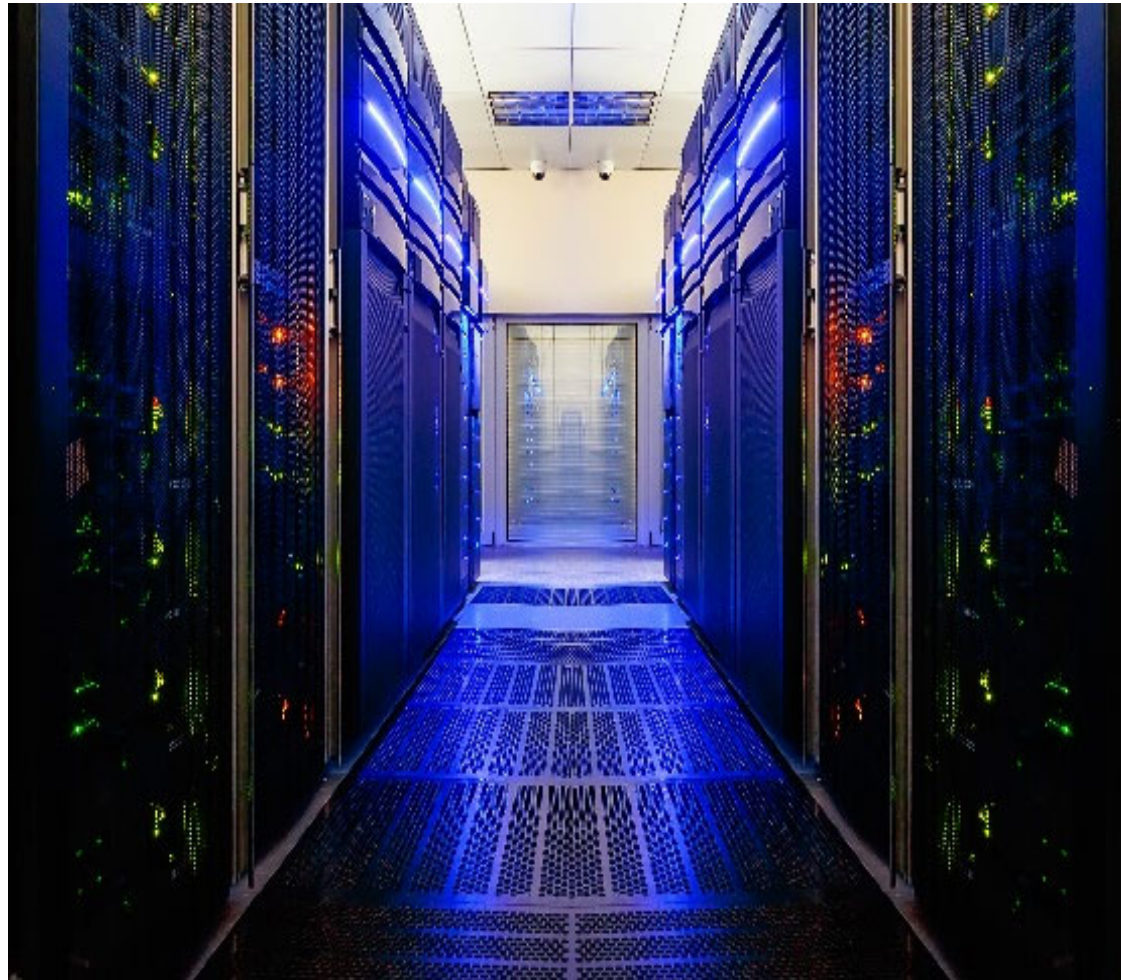
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## New Projects



# 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

2022	2021	State
1	1	North Carolina
2	3	Texas
3	9	Tennessee
T4	2	Georgia
T4	5	Indiana
6	5	Kentucky
7	4	Ohio
8	7	South Carolina
9	10	Michigan
10	11	Virginia

## West North Central Region

2022	2021	State
1	1	Kansas
2	4	<u>Iowa</u>
3	5	South Dakota
4	2	<u>Nebraska</u>
5	3	Missouri
6	7	North Dakota
7	6	Minnesota

Source: Site Selection Magazine, May 2022

# IMAGINE NEBRASKA PROJECTS

## Imagine Nebraska Act 2022 Projects (1<sup>st</sup> & 2<sup>nd</sup> Quarters)

Nova-Tech, Inc.

Layer Platform, Inc.

Empirical Foods, Inc.

Medical Solutions, LLC

Rotella's Italian Bakery, Inc.

Fiserv, Inc.

The Toro Company & Subsidiaries

Speedway Motors, Inc.

Orion Advisor Technology, LLC

Real Estate Equity Exchange, LLC

Northern Data US Holdings, Inc.

ASP MSG Acquisition Co., Inc.

Aviture

JEZ Investments

Talent Plus

JST Global, LLC

3M Company and Subsidiaries

Zoetis, LLC

Premier Claims, LLC

Norfolk Crush, LLC

The Strawhecker Group

BuilderTrend Solutions, Inc.

Wearparts Tillage Tools LLC

Syngenta Crop Protection LLC

Marvel Medical Staffing LLC

**Total Jobs: 1840    Total Investment: \$190,000,000**

(Source: Nebraska Department of Economic Development)

# TOP STATES BY TOTAL PROJECTS

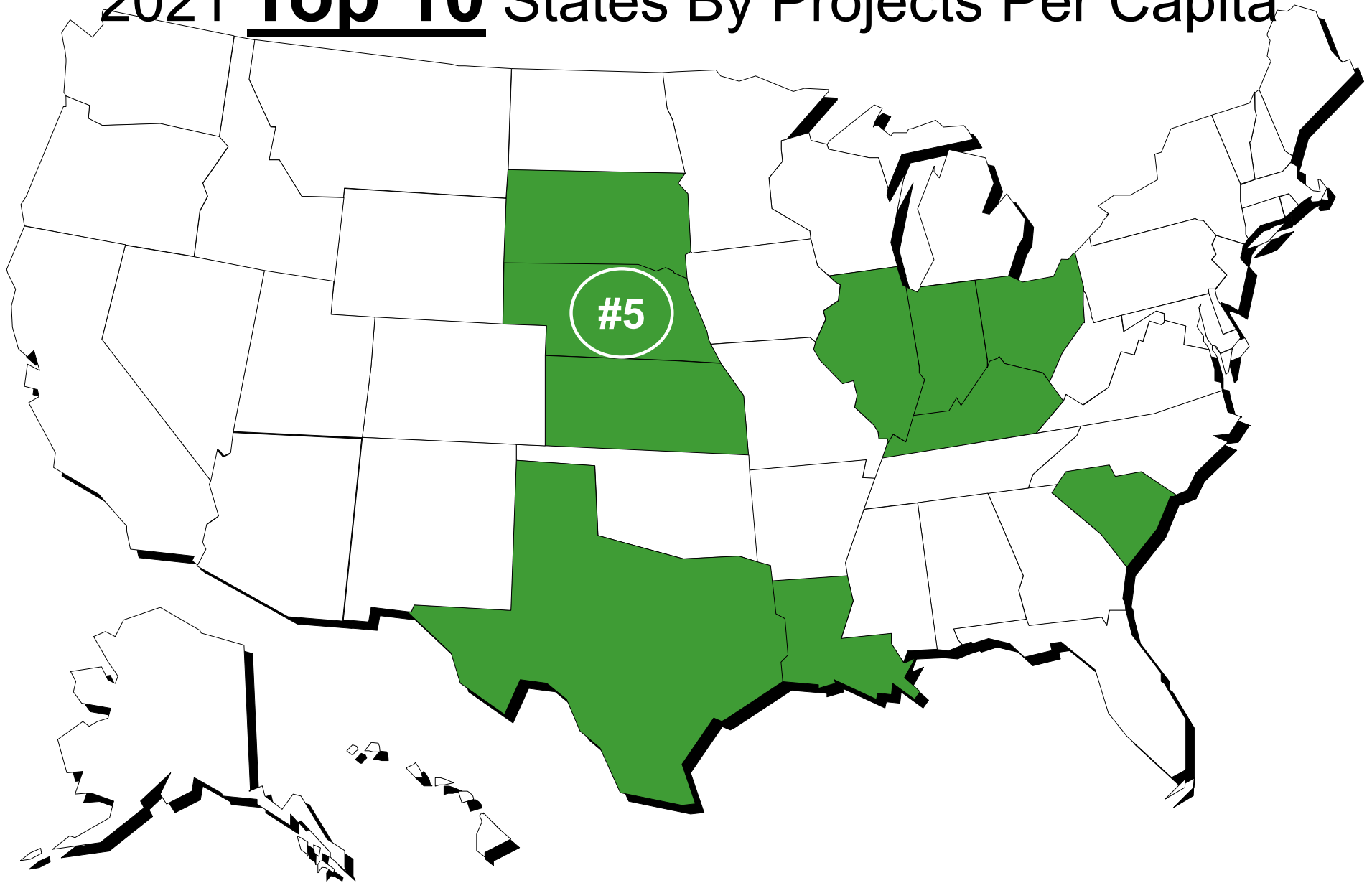
## West North Central Region

2021	2020	State	Projects
1	2	Kansas	139
2	4	<u>Iowa</u>	101
3	1	Missouri	92
4	4	Minnesota	91
5	3	<u>Nebraska</u>	78
6	6	South Dakota	41
7	7	North Dakota	10

Source: Site Selection Magazine, March 2022

# GOVERNOR'S CUP

## 2021 Top 10 States By Projects Per Capita



Source: Site Selection Magazine, Mar. 2022

(#1 = Best)

# GOVERNOR'S CUP

## 2021 Top States By Projects Per Capita

2021 Rank	2020 Rank	State	Project Count
1	10	Kansas	139
2	34	South Dakota	41
3	3	Kentucky	199
4	1	Ohio	507
5	4	Nebraska	78
6	6	Texas	1,122
7	7	Illinois	480
8	5	Indiana	254
9	8	Louisiana	162
10	11	South Carolina	173

Source: Conway Projects Database

## Top States by Projects Per Capita:

**#5 Nebraska**



### Prior Nebraska Rankings:

2020: #4

2019: #3

2018: #1

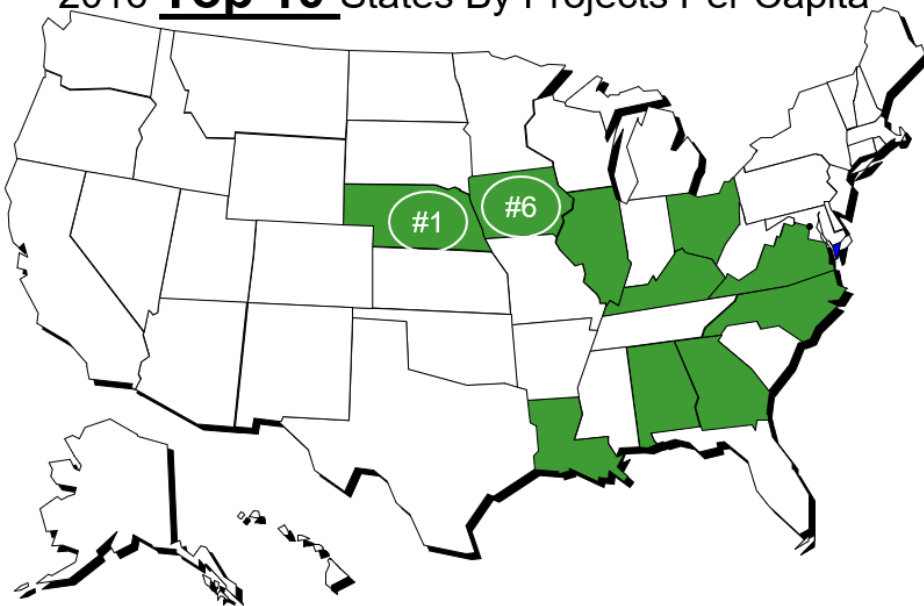
2017: #1

2016: #1

# TOP STATES BY PROJECTS PER CAPITA

2017

2016 **Top 10** States By Projects Per Capita

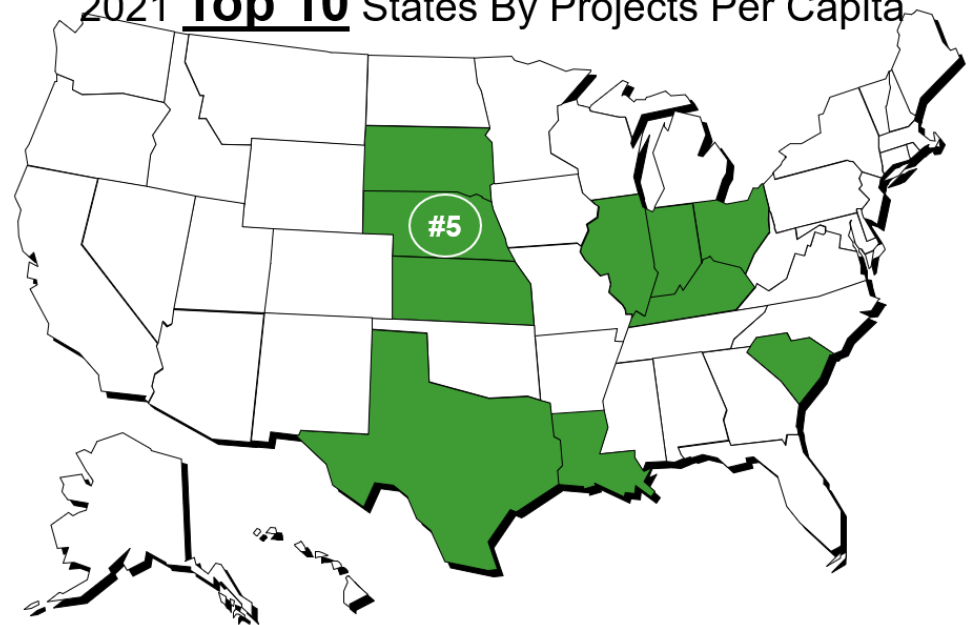


(#1 = Best)

Source: Site Selection Magazine, Mar. 2017

2022

2021 **Top 10** States By Projects Per Capita



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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:

<b>Illustrations:</b>  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.	<b>Project: Econ. Redev. Area</b>  New Jobs: 5 New Investment \$250,000 <u><b>Tax Incentive Benefits</b></u> <b>\$110,000</b>	<b>Project: Manufacturing (Rural)</b>  New Jobs: 5 New Investment \$1,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$140,000</b>	<b>Project: Manufacturing (Urban)</b>  New Jobs: 10 New Investment \$1,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$190,000</b>
<b>Project: Local Distribution</b>  New Jobs: 15 New Investment \$5,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$430,000</b>	<b>Project: Truck Transport</b>  New Jobs: 20 New Investment \$3,500,000 <u><b>Tax Incentive Benefits</b></u> <b>\$450,000</b>	<b>Project: Systems Design</b>  New Jobs: 20 New Investment \$0 <u><b>Tax Incentive Benefits</b></u> <b>\$700,000</b>	<b>Project: Insurance</b>  New Jobs: 30 New Investment \$5,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$1,960,000</b>
<b>Project: Warehouse</b>  New Jobs: 40 New Investment \$30,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$4,060,000</b>	<b>Project: Retail Exporting</b>  New Jobs: 45 New Investment \$5,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$1,430,000</b>	<b>Project: Bank</b>  New Jobs: 50 New Investment \$6,500,000 <u><b>Tax Incentive Benefits</b></u> <b>\$1,830,000</b>	<b>Project: Data Center</b>  New Jobs: 50 New Investment \$600,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$90,000,000</b>
<b>Project: Telecom Carrier</b>  New Jobs: 65 New Investment \$160,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$22,070,000</b>	<b>Project: Research &amp; Develop</b>  New Jobs: 90 New Investment \$10,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$4,890,000</b>	<b>Project: Regional HQ</b>  New Jobs: 100 (High Wage) New Investment \$110,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$19,870,000</b>	<b>Project: Food Processing</b>  New Jobs: 100 New Investment \$17,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$3,710,000</b>
<b>Project: Distribution Center</b>  New Jobs: 130 New Investment \$30,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$6,010,000</b>	<b>Project: Large Headquarters</b>  New Jobs: 200 (High Wage) New Investment \$140,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$28,010,000</b>	<b>Project: Large Manufacturing</b>  New Jobs: 250 New Investment \$25,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$7,640,000</b>	<b>Project: Modernization</b>  New Jobs: 0 New Investment \$50,000,000 <u><b>Tax Incentive Benefits</b></u> <b>\$3,500,000</b>

# 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% <sup>(1)</sup>	4% <sup>(1)</sup>	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"><li>• Ramp Up Period - Up to 5 years</li><li>• Performance Period - 7 Years</li><li>• Carry Over Period - 3 Years</li></ul>	<ul style="list-style-type: none"><li>• Must offer health insurance and show benefits for job to count.</li><li>• The State Average wage, as of 10/26/22, 100% = \$25.90.</li><li>• Pro rata benefit recapture if fall below thresholds before end of Performance Period.</li></ul>	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 unless Legislative Committee expands. While only full-time employees count, FTE calculation is still applicable as a limit.		Process: File with Nebraska Department of Economic Development. Audit & Claims with Nebraska Department of Revenue. Footnote: (1) 7% if \$10M investment for manufacturing.	
* Economic Redevelopment Area = Area of high unemployment and poverty. A listing of Areas is available on Nebraska DED website (www.Imagine.Nebraska.gov).			

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

## Important To Your Project?

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

# BUSINESS GROWTH INCENTIVES

- **Market State Income Tax Benefit**
- **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**

# NEBRASKA INCENTIVES

## Imagine Nebraska Act

(LB 1150) (Various Operative Dates)



- Provides that base year is 2019 for calculating employment if:
  - 2021 or 2022 application year
  - Applicant increased staffing in 2020 or 2021 in response to COVID-19
- Time spent by employees working at qualified location and Nebraska residence will be considered as working entirely at qualified location

# NEBRASKA INCENTIVES

## Imagine Nebraska Act

(LB 1150) (Various Operative Dates)



- New Application Information Requirements:
  - Most recent tax valuation and levy rate for qualified locations
  - Program schedule of job training activities related to credits used for job training payments
  - City and State of residence of recruited employees related to credits used for talent recruitment

# NEBRASKA INCENTIVES

## Imagine Nebraska Act

(LB 1150) (Various Operative Dates)



- Clarifies that time of investment for improvements to real estate is based on a percentage of completion basis
- Clarifies the calculation of withholding credit when taxpayer uses an employee leasing company
- Clarifies that applications on wait list will retain same application date and base year as if approved when applied

# NEBRASKA INCENTIVES

## Nebraska Advantage Act

(LB 1150) (Operative January 1, 2023)

- Amends sales tax refund provisions for Large Data Center projects (At least \$200 Million and 30 new FTE jobs):

Creates sales tax exemption in lieu of refund

- Allowed once required levels are reached
- Must report all sales and use taxes for each year of Entitlement Period where not at required levels

# NEBRASKA INCENTIVES

## **Neb. Adv. Rural Development Act**

(LB 1261) (Operative April 20, 2022)

- Increases annual cap for Livestock Modernization applications to \$10 million annually
- Increases maximum allowable credit for Livestock Modernization project from \$150,000 to \$500,000
- Extends Sunset Date to December 31, 2027

# NEBRASKA INCENTIVES

## Nebraska Urban Development Act

(LB 1261) (Operative July 21, 2022)

- Allows multiple locations for same agreement



### URBAN REDEVELOPMENT ACT

NEBRASKA DEPARTMENT OF  
ECONOMIC DEVELOPMENT

# NEBRASKA INCENTIVES

## Nebraska Higher Blend Tax Credit Act

(LB 1261) (Operative July 21, 2022)

- Creates refundable income tax credit for dealers who sell E-15 or greater
  - \$.05 for each gallon of E-15
  - \$.08 for each gallon of E-25, E-30, and E-85
  - Capped at \$2 million for 2022
  - Up to \$4 million for later years





# **lowa Incentives**

# IOWA INCENTIVES

## 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)

Changes Effective January 1, 2023

## Net Capital Gain Exclusion (HF 2317)

- Phase In:
  - 33% of Capital Gain for 2023
  - 66% of Capital Gain for 2024
  - 100% of Capital Gain for 2025 and later years

## Net Capital Gain Exclusion (HF 2317)

- Election applies to transfers by inter-vivos gift from employee-owner to:
  - Spouse
  - Trust for benefit of spouse
- If employee-owner was married to spouse on the date of sale or the date of death

## Net Capital Gain Exclusion (HF 2317)

- Election may be made by Surviving Spouse or Personal Representative
  - If employee-owner made gift but died without making an election

## **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

Changes Effective January 1, 2023

## 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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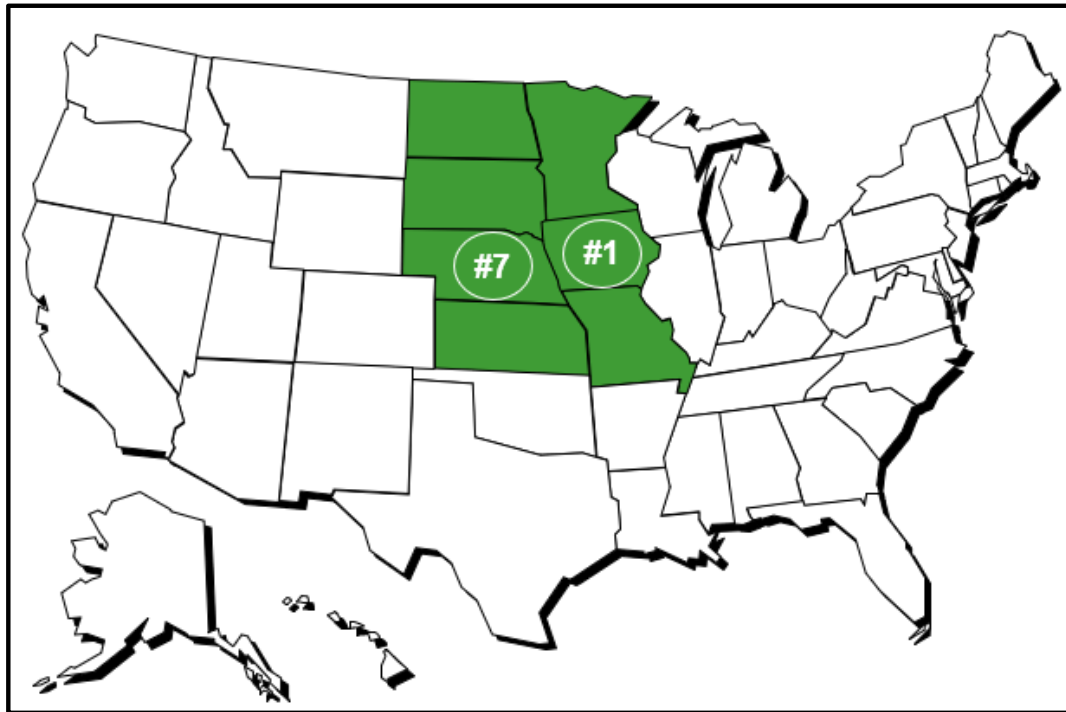


## Workforce Development



# SITE SELECTION MAGAZINE

## 2021 Regional Workforce Development Rankings



(#1 = Best)

Source: Site Selection Magazine, January 2022

West North Central	2021	2020
Iowa	1	2
Kansas	2	7
North Dakota	3	5
Minnesota	4	3
South Dakota	5	4
Missouri	6	6
Nebraska	7	1

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.

# WORKFORCE DEVELOPMENT INCENTIVES

## **Now up to**

- Nearly 300 State-Level Programs focused on education, training and recruitment of workers.
- Frequently cover skills training or retraining and work-based learning opportunities.
- About 10% address individual barriers, such as disability, criminal history or recovery from substance abuse.

# 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 ht sknysl wjxzqx3

# POTENTIAL REMOTE EMPLOYEE FIXES

## **Potential 2023 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

## **Expect Interim Nebraska guidance**

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## Political Impact



## 2021 Migration Trends As Tracked By:



- Largest Net Gain of Trucks:

- |                   |                |
|-------------------|----------------|
| 1. Texas          | 6. Indiana     |
| 2. Florida        | 7. Colorado    |
| 3. Tennessee      | 8. Maine       |
| 4. South Carolina | 9. Idaho       |
| 5. Arizona        | 10. New Mexico |

Shows Where People Are Moving To

# POLITICAL IMPACT

## 2021 Migration Trends As Tracked By:



- Largest Net Loss of Trucks:

- |                  |              |
|------------------|--------------|
| 1. California    | 6. New York  |
| 2. Illinois      | 7. Oklahoma  |
| 3. Pennsylvania  | 8. Louisiana |
| 4. Massachusetts | 9. Michigan  |
| 5. Alabama       | 10. Arkansas |

Shows Where People Are Moving From

## Political Environment

### **“Why Company Headquarters Are Leaving California In Unprecedented Numbers”**

- 352 Companies Moved Headquarters to Other States from 2018-2021
  - Includes 11 Fortune 1,000 Companies
- Beneficiary States:
  - Texas: 132
  - Tennessee: 31
  - Nevada: 25
  - Florida: 24
  - Arizona: 21

## Political Environment

### **“Why Company Headquarters Are Leaving California In Unprecedented Numbers”**

- Study noted that California should be among the leaders in number of new Economic Development Projects
  - Third largest state in land area
  - Most populous state
  - Geographic advantage in being home to ports
- In 2020, California was 16<sup>th</sup>: 103 new Projects
  - Texas had 781
- 46<sup>th</sup> in Per Capita for new Projects

## Political Environment

### “Why Company Headquarters Are Leaving California In Unprecedented Numbers”

- Economic Factors Cited by Study:
  - High Tax Rates
  - **Punitive Regulations**
  - High Labor Costs
  - High Utility and Energy Costs
  - High Living Costs, Including Housing Affordability

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## National Events



# TOP 20 NORTH AMERICAN DEALS

**Ford Motor Company**  
Stanton,  
**Tennessee**  
\$5.6 billion, 5,700 jobs

**Rivian Automotive, Inc.**  
Social Circle,  
**Georgia**  
\$5 billion, 7,500 jobs

**Ford Motor Company/SK Innovation Co.**  
Glendale,  
**Kentucky**  
\$5.8 billion, 5,000 jobs

**Texas Instruments Incorporated**  
Sherman,  
**Texas**  
\$30 billion, 3,000 jobs

**Intel Corporation**  
Chandler,  
**Arizona**  
\$20 billion, 3,000 jobs

**Stellantis N.V.**  
Detroit,  
**Michigan**  
\$1.6 billion, 5,000 jobs

**Oracle Corporation**  
Nashville,  
**Tennessee**  
\$1.2 billion, 8,500 jobs

**Samsung Electronics Co., Ltd.**  
Taylor,  
**Texas**  
\$17 billion, 2,000 jobs

**Ford Motor Company**  
Wayne and Dearborn,  
**Michigan**  
\$1.5 billion, 3,000 jobs

**Google LLC**  
New York,  
**New York**  
\$2.1 billion, 2,000 jobs

**Amazon.com, Inc.**  
Erlanger,  
**Kentucky**  
\$1.5 billion, 2,000 jobs

**Toyota Motor North America, Inc./Toyota Tsusho Corporation**  
Liberty, **North Carolina**  
\$1.3 billion, 1,750 jobs

**Ultium Cells/General Motors/LG Energy Solutions**  
Spring Hill, **Tennessee**  
\$2.3 billion, 1,300 jobs

**Blue Star Manufacturing Company LLC**  
Wytheville, **Virginia**  
\$714 million, 2,464 jobs

**Walt Disney Co.**  
Orlando,  
**Florida**  
\$864 million, 2,000 jobs

**Apple Inc.**  
Raleigh,  
**North Carolina**  
\$552 million, 3,000 jobs

**Sanofi**  
Toronto,  
**Ontario**  
\$455 million, 1,225 jobs

**Toyota Motor Manufacturing, Indiana, Inc.**  
Princeton, **Indiana**  
\$800 million, 1,400 jobs

**Kore Power, Inc.**  
Buckeye,  
**Arizona**  
\$500 million, 3,000 jobs

**CoStar Group, Inc.**  
Richmond,  
**Virginia**  
\$460 million, 2,000 jobs

Source: Site Selection Magazine, May 2022

# NATIONAL EVENTS

## MICRON Megadeal To New York

- \$100 Billion Semiconductor Plant
- One of largest in U.S. History
- Largest ever in New York
  - 9,000 direct jobs + 40,000 “community jobs”
- Impacted by:
  - Available Land & Utilities
  - Abundant, quality workforce
  - “Robust” Package of State & Local Incentives
  - \$10 Billion from New York share of Federal CHIPS & Science Act funds
  - \$5.5 Billion in other incentives.

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## International Events



# INTERNATIONAL EVENTS

## Global Best To Invest 2022

### Top 10 Countries

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

### Top 10 Countries Per Capita

1. United States
2. Ireland
3. Singapore
4. Canada
5. Switzerland
- T6. United Kingdom
- T6. Sweden
8. Denmark
9. Netherlands
10. Australia

Source: Site Selection Magazine, May 2022

# NEBRASKA'S TRADE MISSIONS

## “Nebraska's Global Reach”

- Over the past decade, Nebraska exports have totaled almost \$10 billion per year
- Gov. Ricketts has led a number of trade missions to grow Nebraska's international commerce
  - Japan: 4 times
  - Mexico: 2 times
  - Germany: 2 times
  - China: 2 times
  - Hong Kong
  - Belgium
  - Vietnam
  - Italy
  - Macau
  - Denmark
  - Canada
  - United Kingdom
  - Ireland

# IMPACT OF GLOBALIZATION

## Distributional Effects of Trade and Trade Policy on U.S. Workforce

- The report found that U.S. free trade policy has allowed companies to more readily move American jobs overseas and keep wages low for jobs that remain in the U.S.
- When U.S. free trade policy enables companies to offshore production, American employees are not the only ones directly impacted by such moves. Towns and communities as a whole, along with Americans in supporting industries, feel the devastating impact as well.

## Arizona's Growing Warehouses

- California's Warehouse Vacancy Rate is Below 1%
  - Creating Bottleneck for Goods Coming Into U.S.
- To reduce delays based on lack of warehouses, companies have begun to haul goods to Phoenix directly from U.S. ports
  - Cheaper building cost
  - Availability of space for big warehouses
- In the first half of 2022 alone, companies leased 16,000,000 new square feet of industrial space in Phoenix
- 20 million square feet under construction
- Similar growth in Houston and Salt Lake

# INTERNATIONAL TRADE

## Arizona's Growing Warehouses AZ Loop 303



5 years ago



2 years ago



Today

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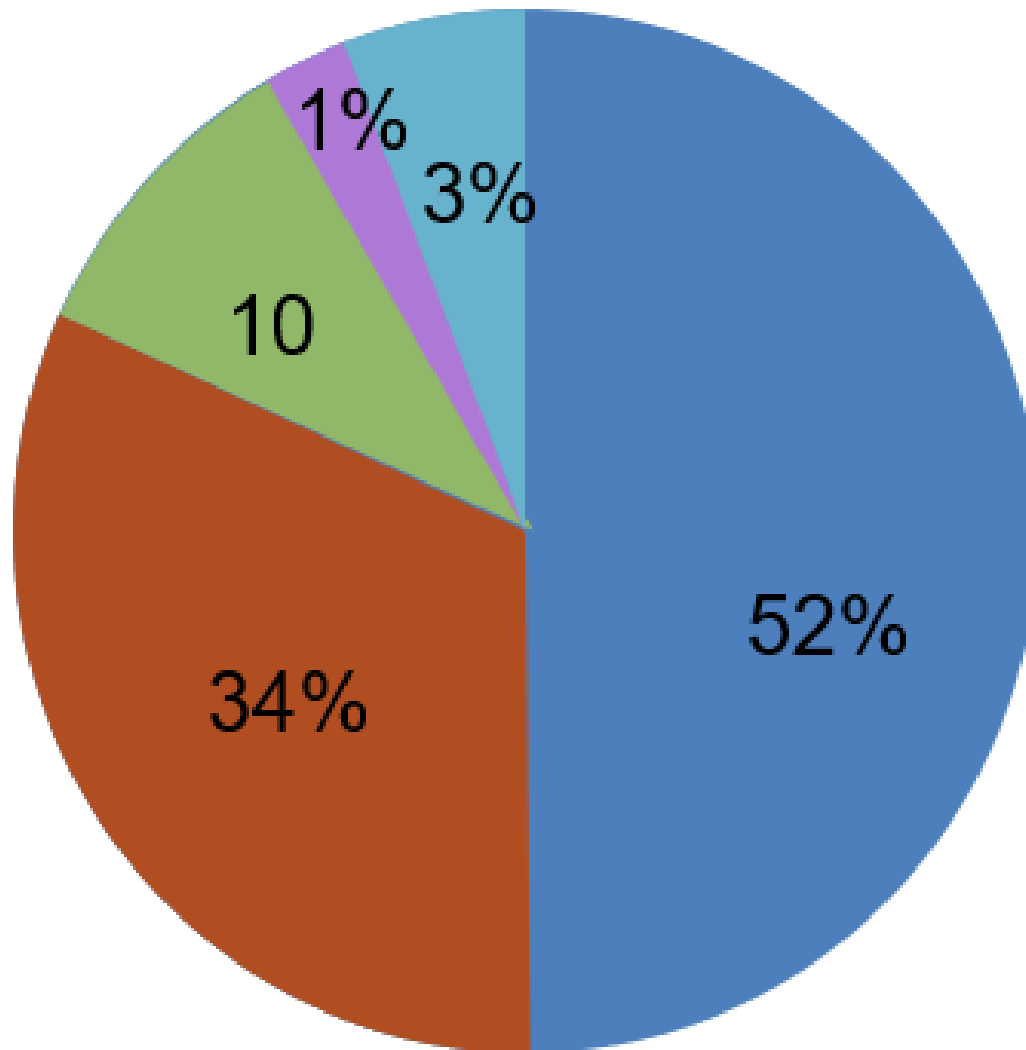
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## Nebraska Tax Report Card



# Nebraska State Tax Revenue Sources



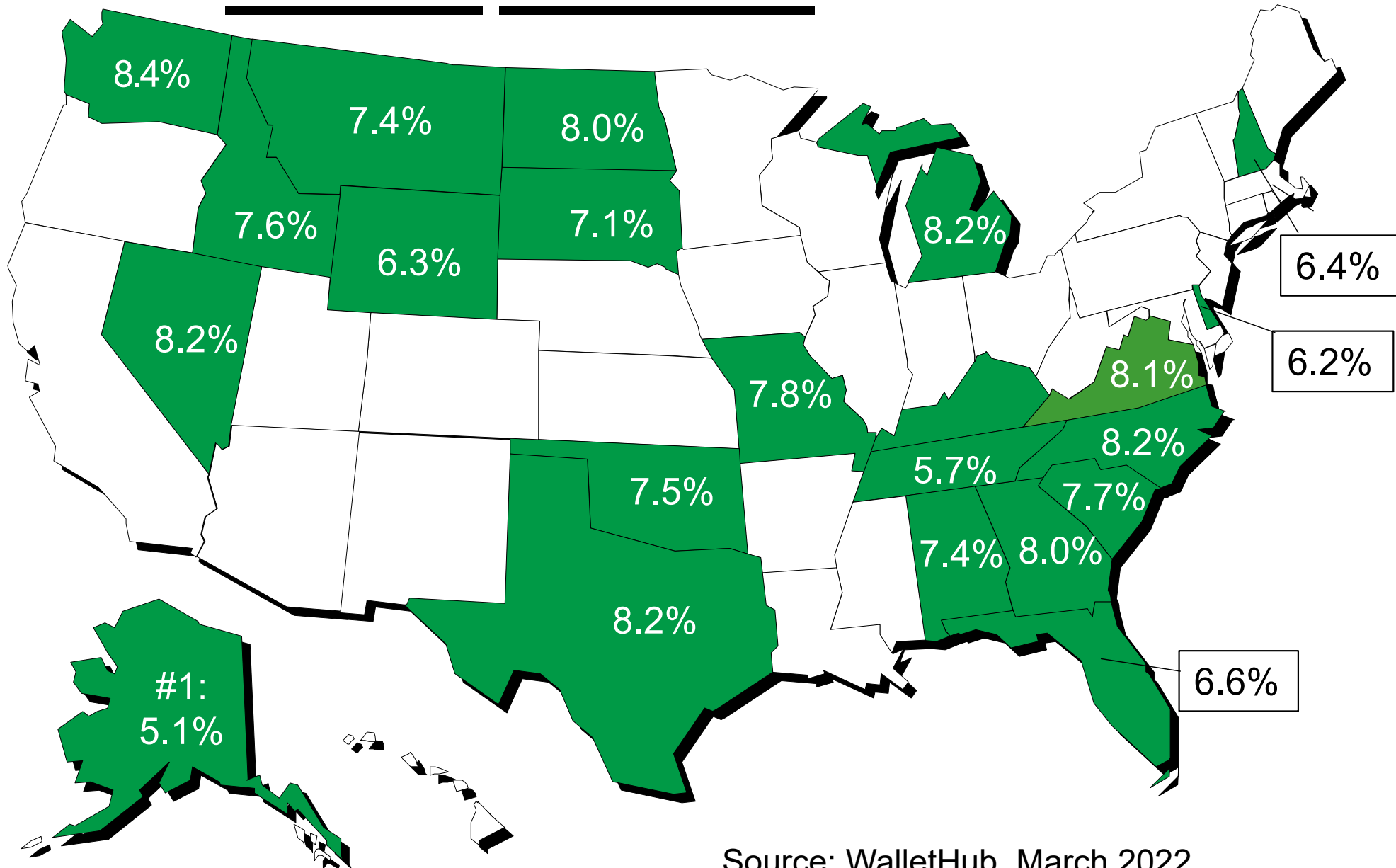
Total: \$5.9 Billion

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

Prior Year \$4.9 Billion

Source: DAS Accounting Division Fiscal Year 2020-2021

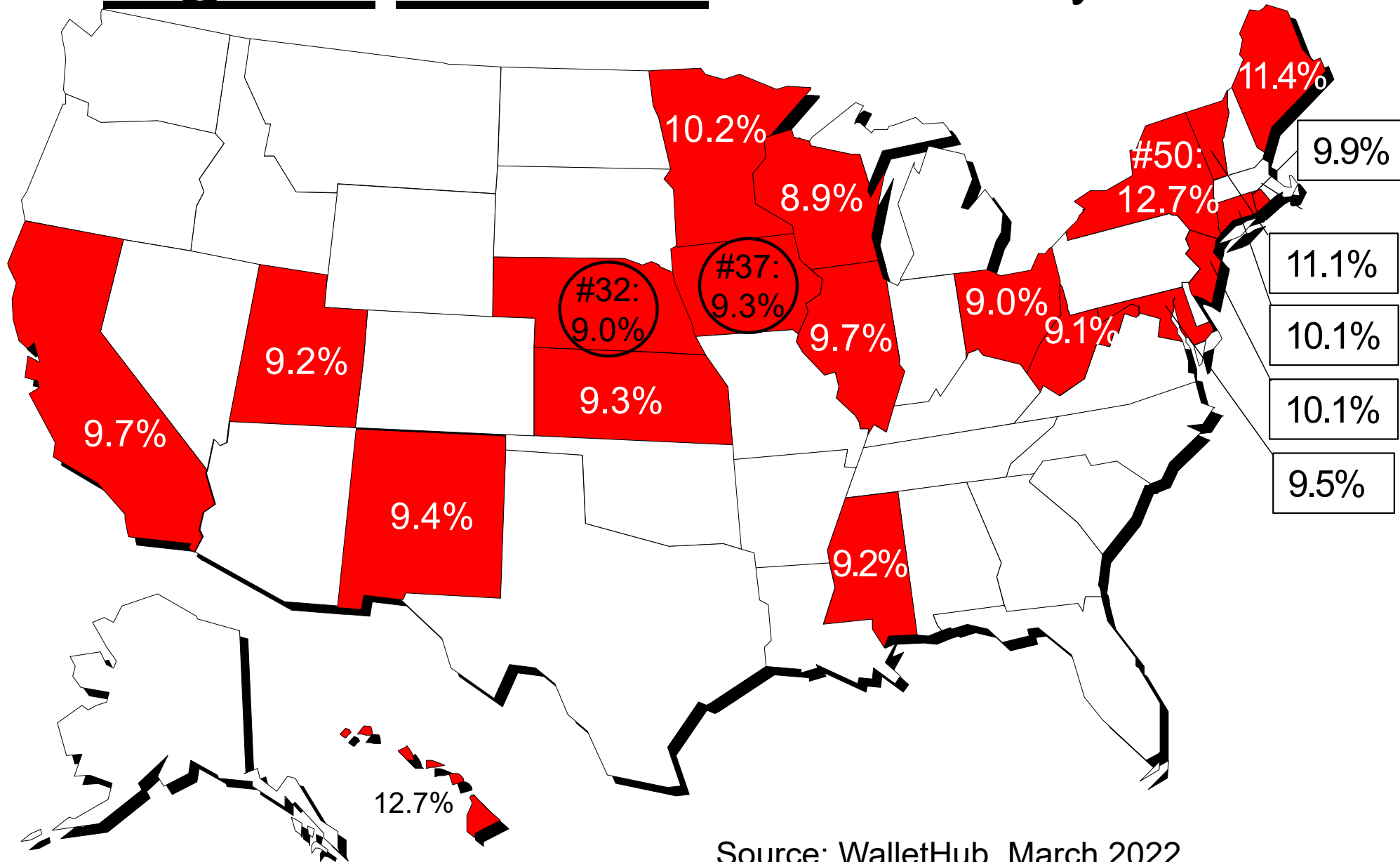
## Lowest Personal Tax Burden



(#1 = Best)

Source: WalletHub, March 2022.

## Highest Personal Tax Burden by State

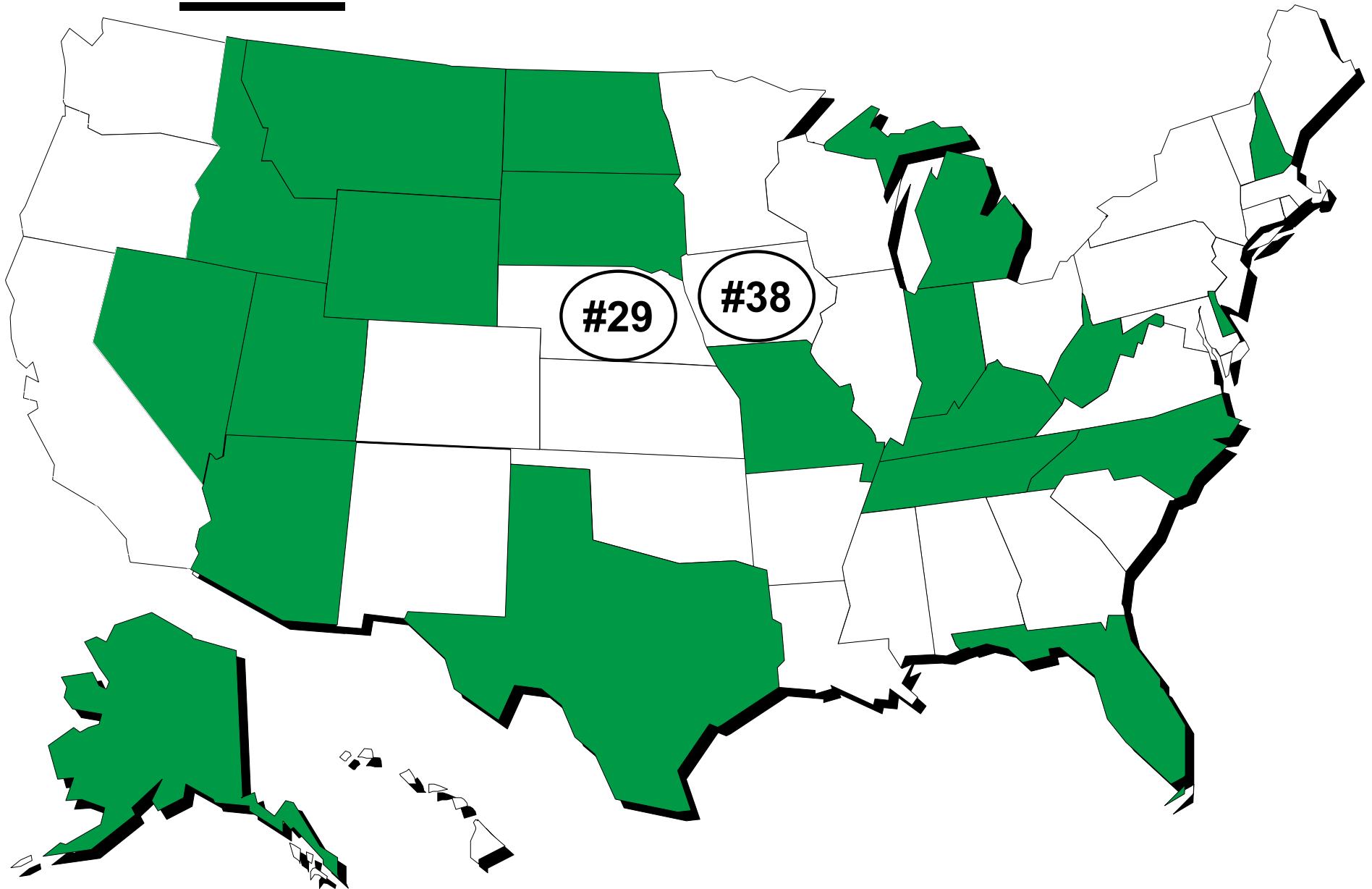


Source: WalletHub, March 2022

(#1 = Best)

# TAX FOUNDATION

## 20 **Best** State Business Tax Climate Index

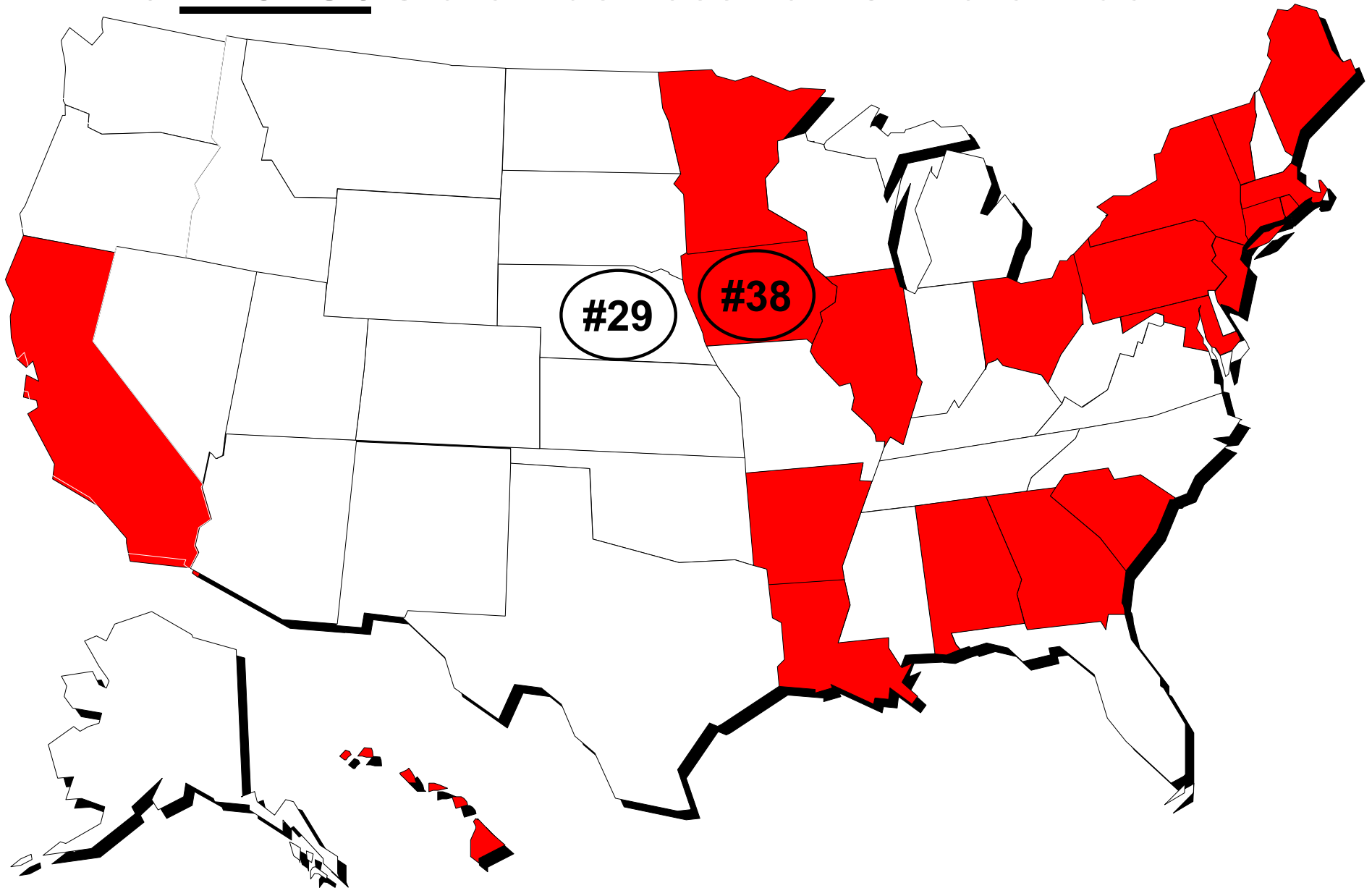


Source: Tax Foundation, October 25, 2022

(#1 = Best)

# TAX FOUNDATION

## 20 **Worst** State Business Tax Climate Index



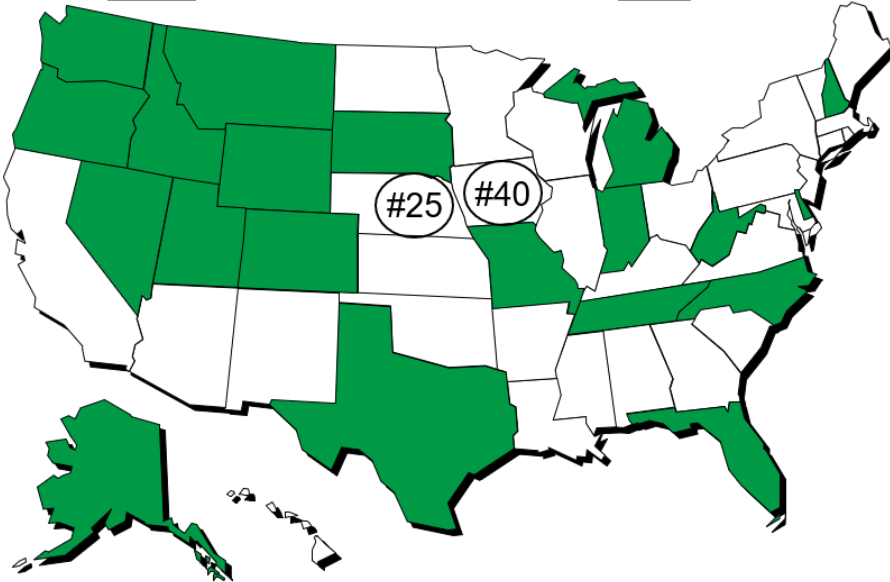
Source: Tax Foundation, October 25, 2022

(#1 = Best)

# Tax Foundation Comparison

2017

20 Best States For Business Tax Climate

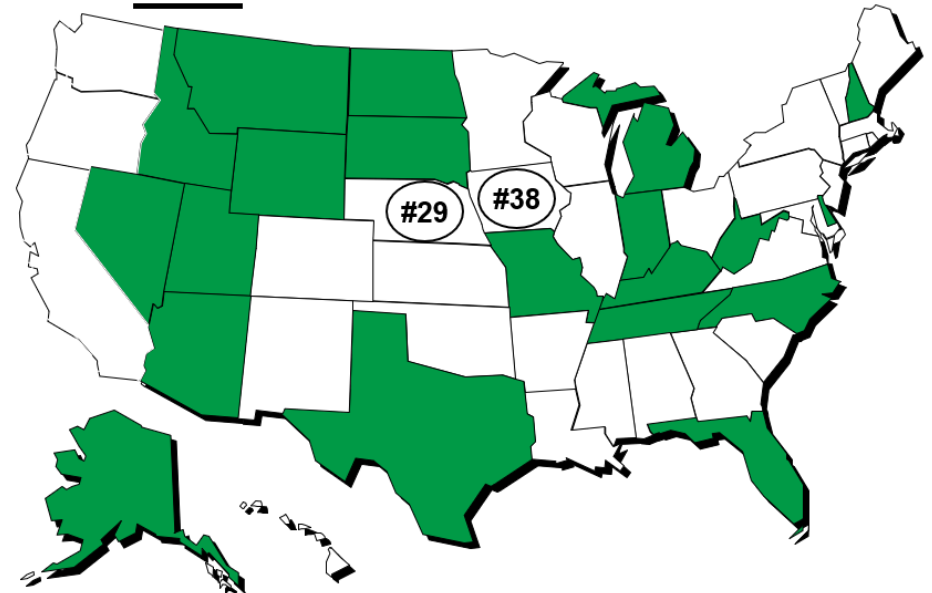


(#1 = Best)

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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- ☐ Closing Thoughts

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## Nebraska Income Tax Update



## Taxation of Social Security Benefits

### Prior Law: LB 64, 2021

- Percentage of social security benefits that would be deducted from Nebraska taxable income
  - 5% for 2021
  - 20% for 2022
  - 30% for 2023
  - 40% for 2024
  - 50% for 2025 and beyond
- Additional exemption for lower income seniors



# NEBRASKA INCOME TAX

## Taxation of Social Security Benefits

(LB 873) (Operative for 2022 and later)

- Percentage of social security benefits that would be deducted from Nebraska taxable income is increased
  - 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



# NEBRASKA INCOME TAX

## Individual and Fiduciary Rate Change

(LB 873) (Operative for 2023 and later)

- Reduces maximum tax rate for individuals, trusts and estates: Now at 6.84%
  - 6.64% for 2023
  - 6.44% for 2024
  - 6.24% for 2025
  - 6.00% for 2026
  - 5.84% for 2027 and beyond
- Compare: 1987 LB773 – Max Rate 5.9%



# NEBRASKA INCOME TAX

## Corporate Rate Change

(LB 873) (Operative for 2023 and later)

- Reduces corporate tax rate imposed on Nebraska taxable income above \$100,000: Now at 7.81%
  - 6.50% for 2024
  - 6.24% for 2025
  - 6.00% for 2026
  - 5.84% for 2027 and beyond
- 5.58% for the first \$100,000 of Nebraska taxable income
  - No Change



## Credit for Hiring Felony Convicts

(LB 917) (Operative January 1, 2023)

- Provides new non-refundable credit for employing felony convicts
  - Credit = 10% of Wages  
Paid in First Year
  - \$20,000 Maximum Per Employee
  - Cannot be claimed or distributed by S Corporation, Partnership or LLC
  - NDR Application
  - Maximum \$5 million credits per year

# NEBRASKA INCOME TAX

## Teach in Nebraska Today Act

(LB 1218) (Operative July 21, 2022)

- Income tax deduction for any amount received as student loan repayment assistance, if included in Federal AGI
- To receive assistance:
  - Resident of Nebraska
  - Teaching full-time in Nebraska
  - Apply to Dept of Education by June 10
  - Loan repayment assistance is capped at \$5,000 per year per person
    - Up to 5 years
  - Total assistance capped at \$5 million / yr



# NEBRASKA INCOME TAX

## Taxation of Military Retirement Benefits (LB 387)

(Operative Beginning in 2022)

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



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## Nebraska Sales Tax Update



# NEBRASKA SALES TAX

## Exemption for Net Wrap

(LB 984) (Operative October 1, 2022)

- Exempts net wrap purchased for use in commercial agriculture
  - Plastic wrap used in baling hay



# NEBRASKA SALES TAX

## Sales and Use Tax Collection Fees

(LB 984) (Operative October 1, 2022)

- Increases amount businesses receive for collecting and remitting Nebraska sales taxes
  - 3.0% of first \$5,000 of sales tax collected (\$150 per month, \$1,800 per year)
  - Prior: 2.5% of first \$3,000 of sales tax collected (\$75 per month, \$900 per year)

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## Nebraska Property Tax Update



# NEBRASKA INCOME TAX

## Expansion of Property Tax Credit

(LB 873) (Operative July 21, 2022)

- Expands Nebraska Property Tax Incentive Act by amending total credits for property taxes paid in 2022 and 2023
  - 2022: Total credits of \$548,000,000
  - 2023: Total credits of \$560,700,000
  - 2024 and Later: Prior Year + Growth %
  - Growth %: % Increase in Total Assessed Value of Real Property in Nebraska, capped at 5%

# NEBRASKA INCOME TAX

## Expansion of Property Tax Credit

(LB 873) (Operative July 21, 2022)

- Provides new refundable credit for paying community college property taxes
  - 2022: Total credits of \$50,000,000
  - 2023: Total credits of \$100,000,000
  - 2024: Total credits of \$125,000,000
  - 2025: Total credits of \$150,000,000
  - 2026: Total credits of \$195,000,000
  - 2024 and Later: Prior Year + Growth %
  - Growth %: % Increase in Total Assessed Value of Real Property, capped at 5%

# NEBRASKA PROPERTY TAX

## Directive 22-3

(Issued November 21, 2022)

### Issue

- Homestead exemptions for homesteads that have been destroyed or damaged by disaster.

### NDR Analysis

- County Assessor must determine:
  1. That homestead was uninhabitable at some point between January 1 and August 15 and
  2. That the applicant intends to rebuild or repair the homestead
- If both are met, County Assessor should approve application

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# TODAY'S AGENDA



## Iowa Tax Update



# IOWA INCOME TAX

## Reductions to Individual Income Tax Rates (HF 2317)

### 2023: New Rates

#### Married Filing Jointly

Income over:	But not over:	Tax Rate:
\$0	\$12,000	4.40%
\$12,000	\$60,000	4.82%
\$60,000	\$150,000	5.70%
\$150,000		6.00%

#### All Other Filers

Income over:	But not over:	Tax Rate:
\$0	\$6,000	4.40%
\$6,000	\$30,000	4.82%
\$30,000	\$75,000	5.70%
\$75,000		6.00%

# IOWA INCOME TAX

## Reductions to Individual Income Tax Rates (HF 2317)

### 2024: New Rates

#### Married Filing Jointly

Income over:	But not over:	Tax Rate:
\$0	\$12,000	4.40%
\$12,000	\$60,000	4.82%
\$60,000		5.70%

#### All Other Filers

Income over:	But not over:	Tax Rate:
\$0	\$6,000	4.40%
\$6,000	\$30,000	4.82%
\$30,000		5.70%

# IOWA INCOME TAX

## Reductions to Individual Income Tax Rates (HF 2317)

### 2025: New Rates

#### Married Filing Jointly

Income over:	But not over:	Tax Rate:
\$0	\$12,000	4.40%
\$12,000		4.82%

#### All Other Filers

Income over:	But not over:	Tax Rate:
\$0	\$6,000	4.40%
\$6,000		4.82%

### 2026+ New Rates

Flat Rate      3.9%

# IOWA INCOME TAX

## Reductions to Individual Income Tax Rates (HF 2317)

### Iowa AMT

- Corresponding changes to Iowa's AMT rates were enacted for 2023 and later years
  - 2023: 6%
  - 2024: 5.7%
  - 2025: 5.2%
  - 2026 and Later: 4.4%

## Retirement Income Exclusion (HF 2317)

- Excludes “retirement income” from calculation of net income for Eligible Taxpayers
- Eligible Taxpayers
  - Disabled
  - At least 55 years of age
  - Surviving Spouse or Survivor having insurable interest in an individual who would have qualified for exclusion

# IOWA INCOME TAX

## Reductions to Corporate Income Tax Rates (HF 2317)

- In 2022: Iowa has three tax brackets for corporate income:
  - 5.5% for corporate income up to \$100,000
  - 9% for income between \$100,000 and \$250,000
  - 9.8% for income over \$250,000.
- Iowa will (based on corporate Income Tax receipts) reduce its tax rate to 5.5%

Changes Effective January 1, 2023

# IOWA INCOME TAX

## Electronic Filing (HF 2552)

- Requires a Fiduciary, Partnership or S Corp to file an electronic return if:
  - Gross receipts of \$250,000 or more
  - 10 or more K-1s or
  - \$25,000 or more of Iowa tax credits.

Changes Effective Tax Years Ending On or After December 31, 2023

# IOWA SALES TAX

## Exemption Updates (SF 2367)

- Eliminates exemption for purchase of computers and computer peripherals by insurance company, financial institution or commercial enterprise  
(Effective January 1, 2024)

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## National Tax Update



# STATE AND LOCAL BUSINESS TAX BURDEN STUDY

## State and Local Business Taxes

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

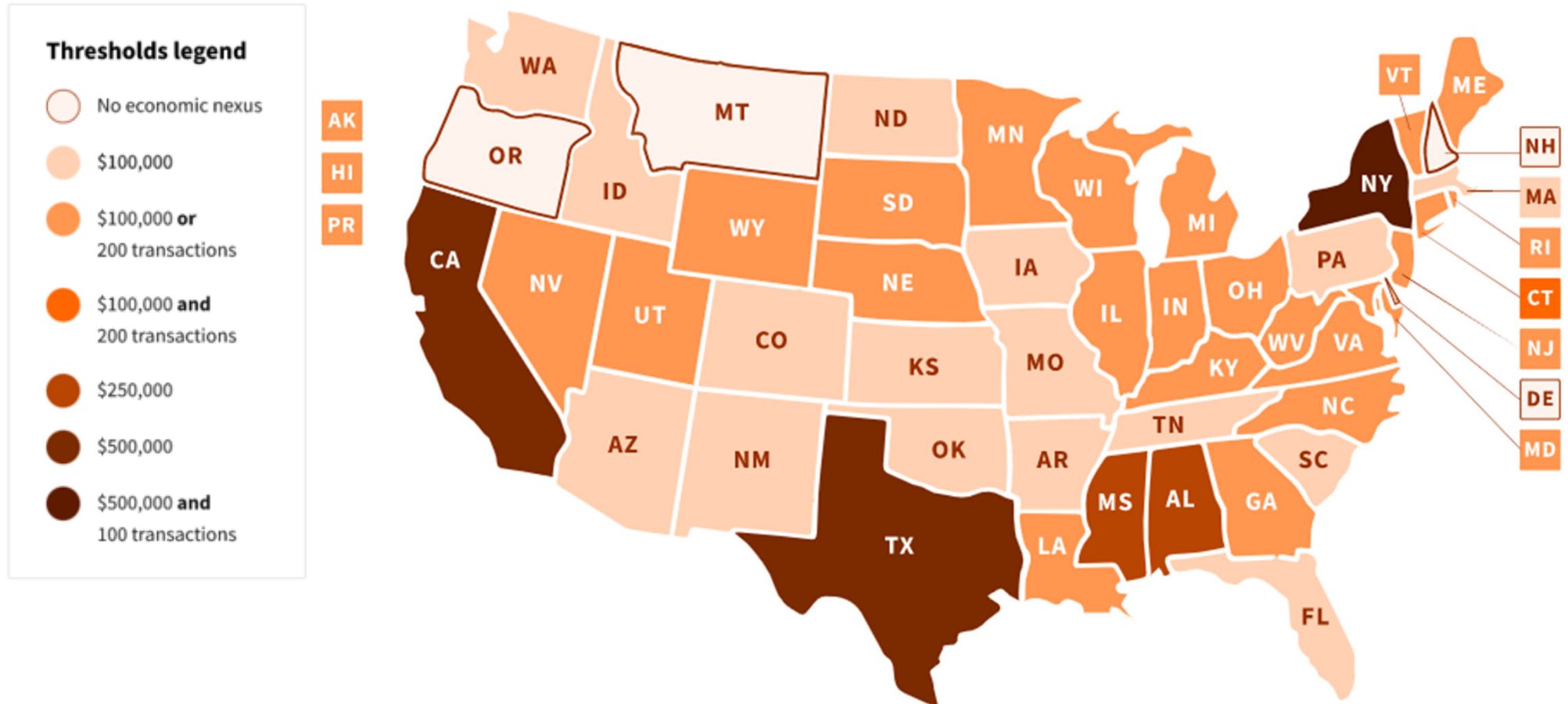
## How Much Do Businesses Pay?

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

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

# TAXABLE NEXUS

# Economic Presence Statutes Post-Wayfair



Avalara, 2022

## National State Tax Proposals

- Expansion of False Claims (Qui Tam – Whistle Blower) Acts to Tax Issues
- Taxing the Digital Economy
  - Digital Advertising Services
  - Data Tax Proposals
  - Personal Information Sales
  - Data Processing Services

# Proposals To Tax Digital Services

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

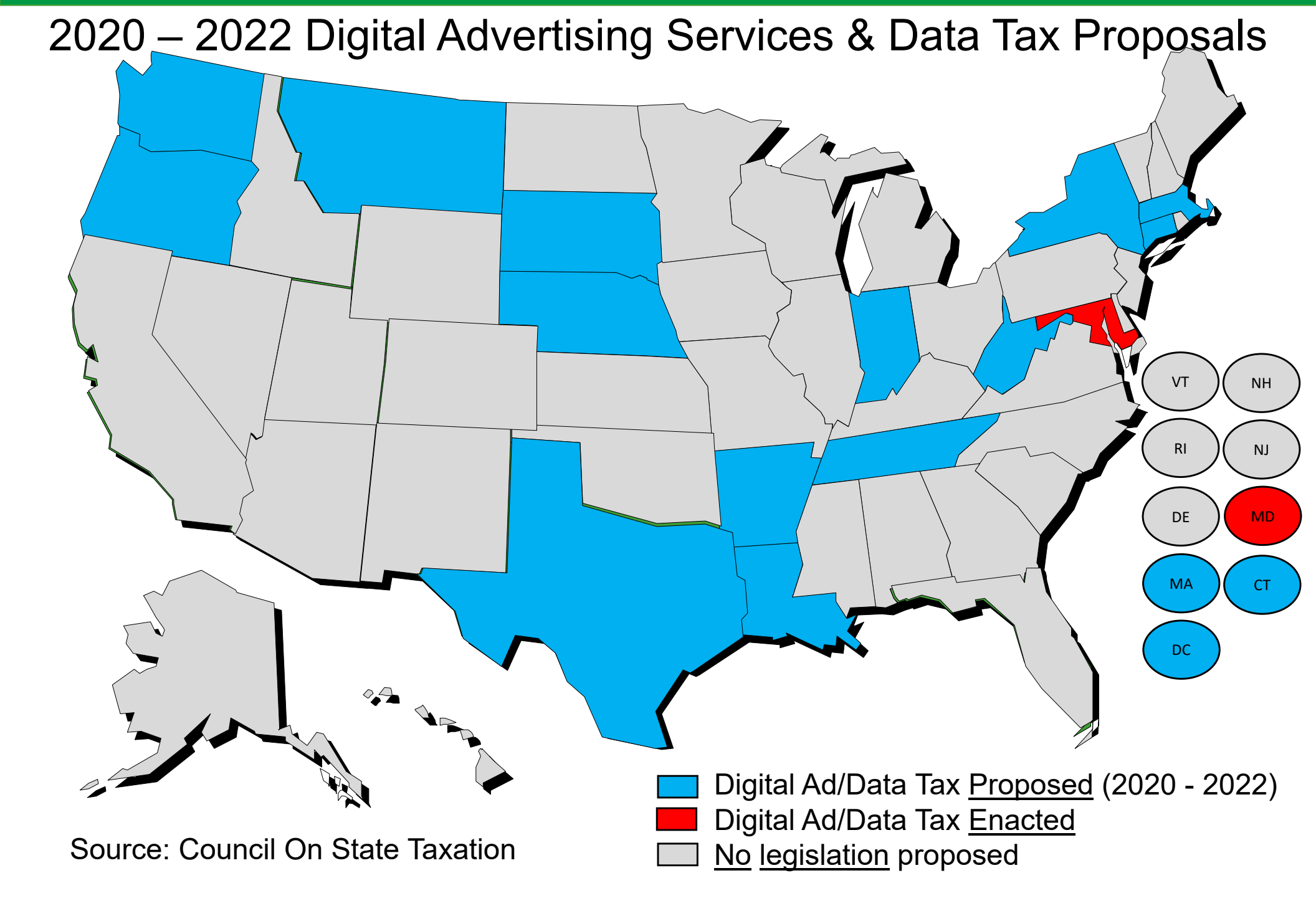
## DIGITAL SERVICES TAX

## 2020 – 2022 Digital Advertising Services & Data Tax Proposals

The map displays the following states and their status:




- Proposed (Blue):** WA, OR, ID, MT, WY, NE, KS, OK, TX, NM, AZ, NV, UT, CO, MN, IA, MO, WI, IL, IN, OH, PA, NY, NJ, CT, MA, RI, DE, MD, VA, NC, SC, GA, FL, AL, LA, MS, AR, KY, TN, MS, AL, GA, FL.
- Enacted (Red):** MD.
- No legislation proposed (Gray):** AK, HI, VT, NH, VT, NH, RI, NJ, DE, CT, MA, DC.

Source: Council On State Taxation



Source: Council On State Taxation

Source: Council On State Taxation

 Digital Ad/Data Tax Proposed (2020 - 2022)  
 Digital Ad/Data Tax Enacted  
 No legislation proposed

# Challenges To Digital Tax Expansion

## Legal Challenges

- Discriminates against electronic commerce in violation of the Internet Tax Freedom Act
- Discriminates against interstate commerce in violation of the Dormant Commerce Clause of U.S. Constitution
- Prevents Congress from speaking with one voice in violation of the foreign Commerce Clause
- Violates Due Process Clause of the 14<sup>th</sup> Amendment
- Improperly delegates authority to the Tax Commissioner

# Challenges To Digital Tax Expansion

## Recent Court Challenges

- Comcast v. Maryland – Digital Ad Tax
  - Initial ruling against State (10-17-22)
- U.S. Chamber of Commerce v. Franchot – Md. Digital Ad Tax
  - Oral Argument on Cross-Motions for Summary Judgment (11-29-22)

# National State Tax Proposals

## State Tax Uniformity Efforts

- Multistate Tax Compact - Sales and Use Taxation of Digital Products
- Streamlined Sales Tax Board - Digital Products Sourcing Rules
  - Workgroup study: “What happens to sourcing when the seller does not need a street address from the customer (such as a digital goods transaction with electronic delivery/access to the product) and has only a 5-digit zip code from the customer (if that)?”

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## New Cases



# NEBRASKA INCOME TAX

## **Acklie v. Dep't of Revenue**

**Neb. S. Ct. (Hearing September 2022)**

### **Background**

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

# NEBRASKA INCOME TAX

## **Acklie v. Dep't of Revenue**

**Neb. S. Ct. (Hearing September 2022)**

### **Key Facts for Florida**

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

### **Key Facts for Nebraska**

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

# NEBRASKA INCOME TAX

## **Acklie v. Dep't of Revenue**

**Neb. S. Ct. (Hearing September 2022)**

### **Tax Commissioner Ruling**

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

### **District Court Ruling**

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

### **On Appeal to Nebraska Supreme Court**

# NEBRASKA INCOME TAX

## **Precision Castparts Corp.**

## **v. Dep't of Revenue**

**Lancaster Cty. Dist. Ct.**

### **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

# NEBRASKA INCOME TAX

## **Precision Castparts Corp.**

## **v. Dep't of Revenue**

**Lancaster Cty. Dist. Ct.**

## **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

# NEBRASKA INCOME TAX

## **Precision Castparts Corp.**

## **v. Dep't of Revenue**

**Lancaster Cty. Dist. Ct.**

## **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”

## **Appeal to District Court**

- PCC filed appeal to Lancaster County District Court
- Hearing scheduled for January 2023

# NEBRASKA INCOME TAX

## **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
- Judicial notes indicate that parties are working toward settlement

# NEBRASKA SALES TAX

## Gelco Fleet Trust v. Dep't of Revenue

Nebraska Supreme Court (7/22/22)

### Background

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

# NEBRASKA SALES TAX

## **Gelco Fleet Trust v. Dep't of Revenue** **Nebraska Supreme Court (7/22/22)**

### **District Court Decision**

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

# NEBRASKA SALES TAX

## **Gelco Fleet Trust v. Dep't of Revenue**

**Nebraska Supreme Court (7/22/22)**

### **Supreme Court Decision**

- Found that the District Court's finding that the purchase of old vehicle and new vehicle were separate transactions was supported by the record
- Affirmed that Gelco was not entitled to "trade-in" credit because its Old Vehicle value was not shown as a "trade-in allowance" on NDR Form 6 when New Vehicle was purchased
- Affirmed denial of refund claim

# NEBRASKA SALES TAX

## **Crow v. Dep't of Revenue**

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

### **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 (Filed 3/22/22)**

### **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

### **Case Pending**

#### **Note:**

- If DOR is correct, then every protested Assessment could potentially result in personal corporate officer liability
- Personal liability also applies for income taxes

# NEBRASKA SALES TAX

## **NPPD v. Dep't of Revenue**

**Lancaster County District Court (Filed 6/24/22)**

### **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 (Filed 6/24/22)**

### **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 PROPERTY TAX

## Lancaster Cty. Bd of Equalization v. Moser (Ne. S. Ct. October 28, 2022)

### Facts

- The Mosers owned agricultural land in Lancaster County.
- The Mosers had an irrigator on their land, so it was valued as irrigated cropland.
- The neighbor, the Morrisons, also had an irrigator.
- However, the Morrisons' land was still not valued as irrigated land, resulting in a lower land value.

# NEBRASKA PROPERTY TAX

## Lancaster Cty. Bd of Equalization v. Moser

(Ne. S. Ct. October 28, 2022)

### Issue

- Whether the Mosers could appeal the value of their land as not being “equalized” with their neighbor
- Even though the value of their neighbor’s land contained a mistake

### S.Ct. Decision

- No requirement in Nebraska law that an “isolated error in the subclassification and undervaluation of one taxpayer’s property must be replicated through the equalization process.”

# NEBRASKA PROPERTY TAX

## Lancaster Cty. Bd of Equalization v. Moser (Ne. S. Ct. October 28, 2022)

### S.Ct. Analysis

- To show disproportionate property value, a property owner must show that
  1. “Valuation is arbitrary or capricious” or
  2. “So wholly out of line with actual values as to give rise to an inference that the assessor and county board of equalization have not properly discharged their duties.”
- “Mere errors of judgment do not sustain a claim of discrimination.”
- Instead, must be something “which in effect amounts to an intentional violation of the essential principle of practical uniformity.”

# NEBRASKA PROPERTY TAX

## Lancaster Cty. Bd of Equalization v. Moser

(Ne. S. Ct. October 28, 2022)

### S.Ct. Analysis

- Mosers could not meet the standards to show disproportionate value
- In essence, there will always be isolated mistakes by a County Assessor
- The County Assessor need not replicate those mistakes if found by a neighbor

# 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
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### Resolution

- ☐ New Cases
- ☒ Audits & Appeals

### What Next

- ☐ A Look Ahead to 2023
- ☐ Closing Thoughts

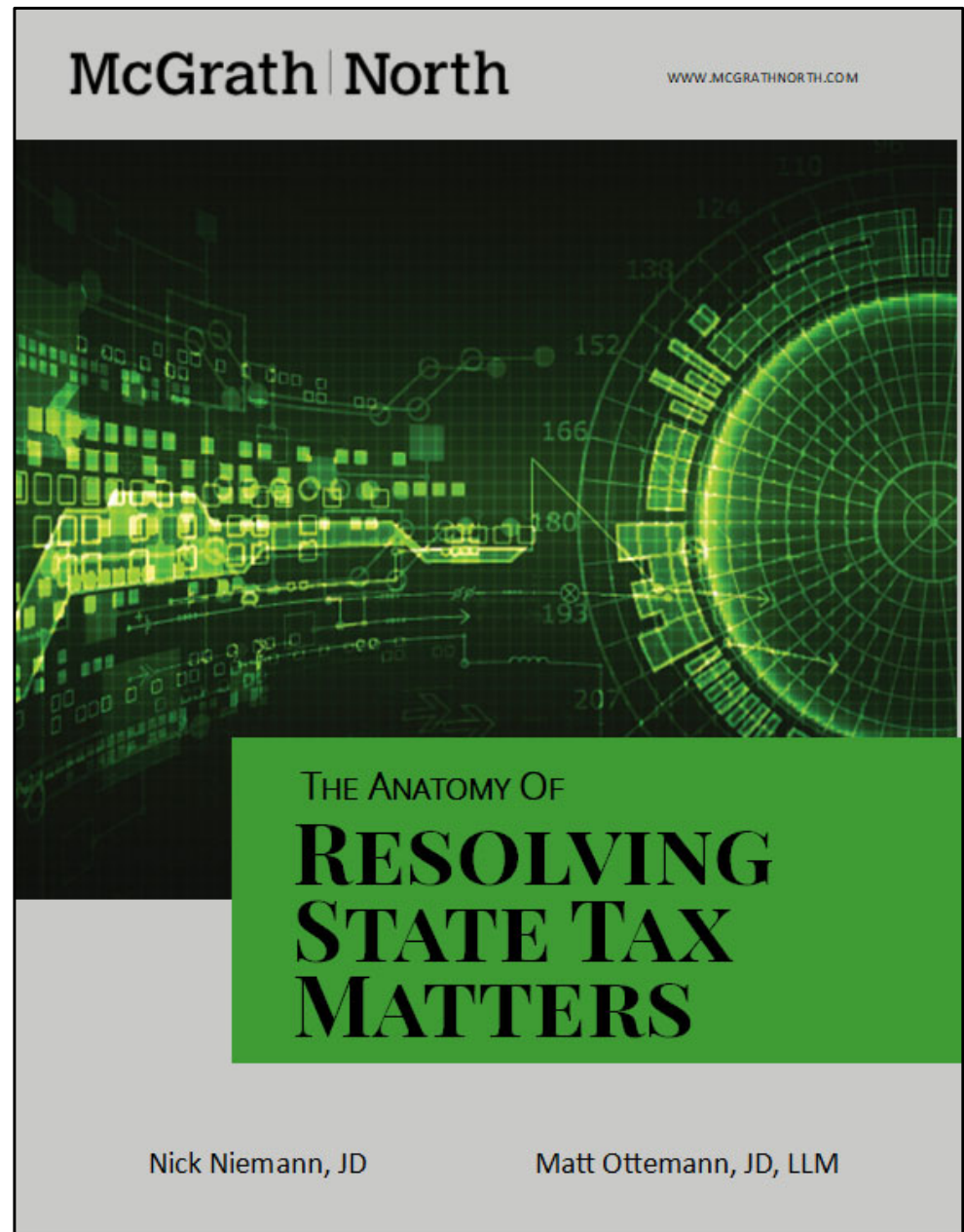
# TODAY'S AGENDA



## Audits & Appeals



**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

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## 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**



# **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

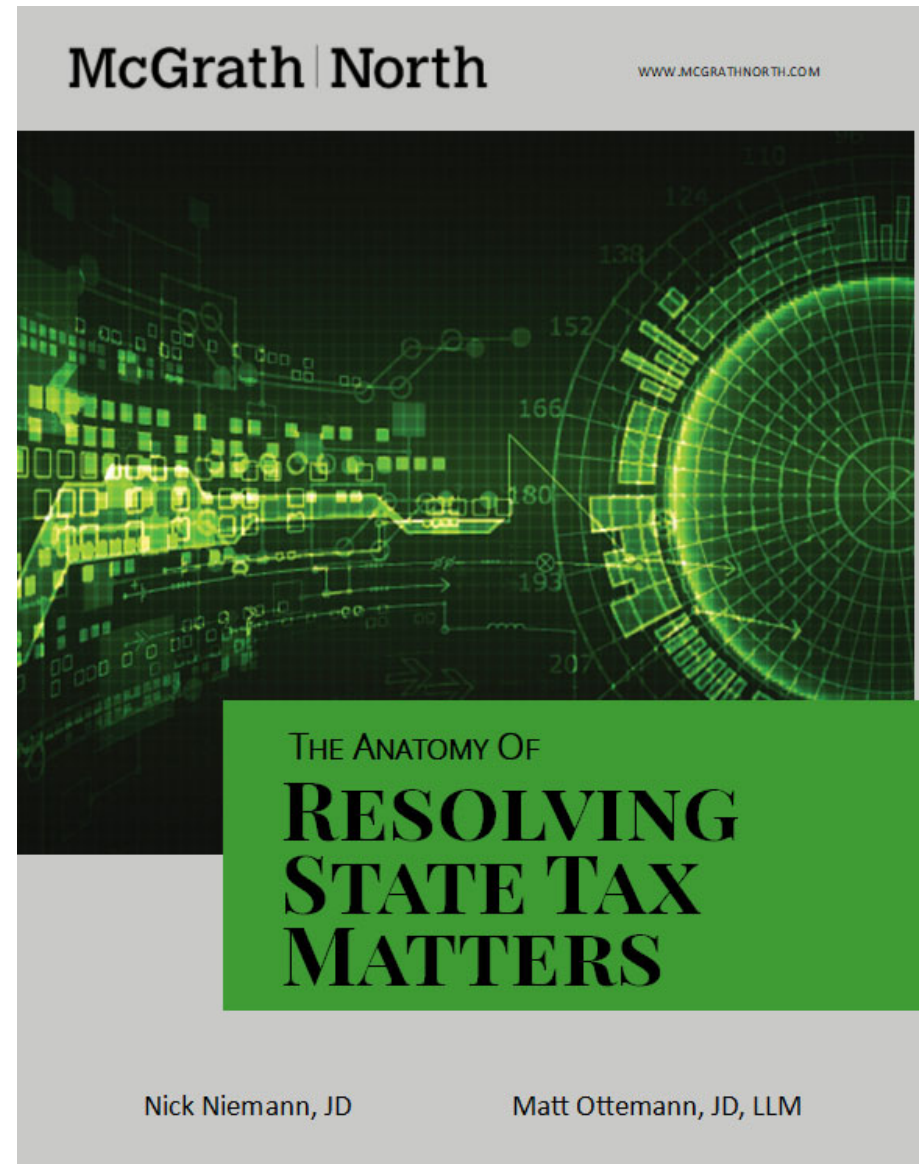
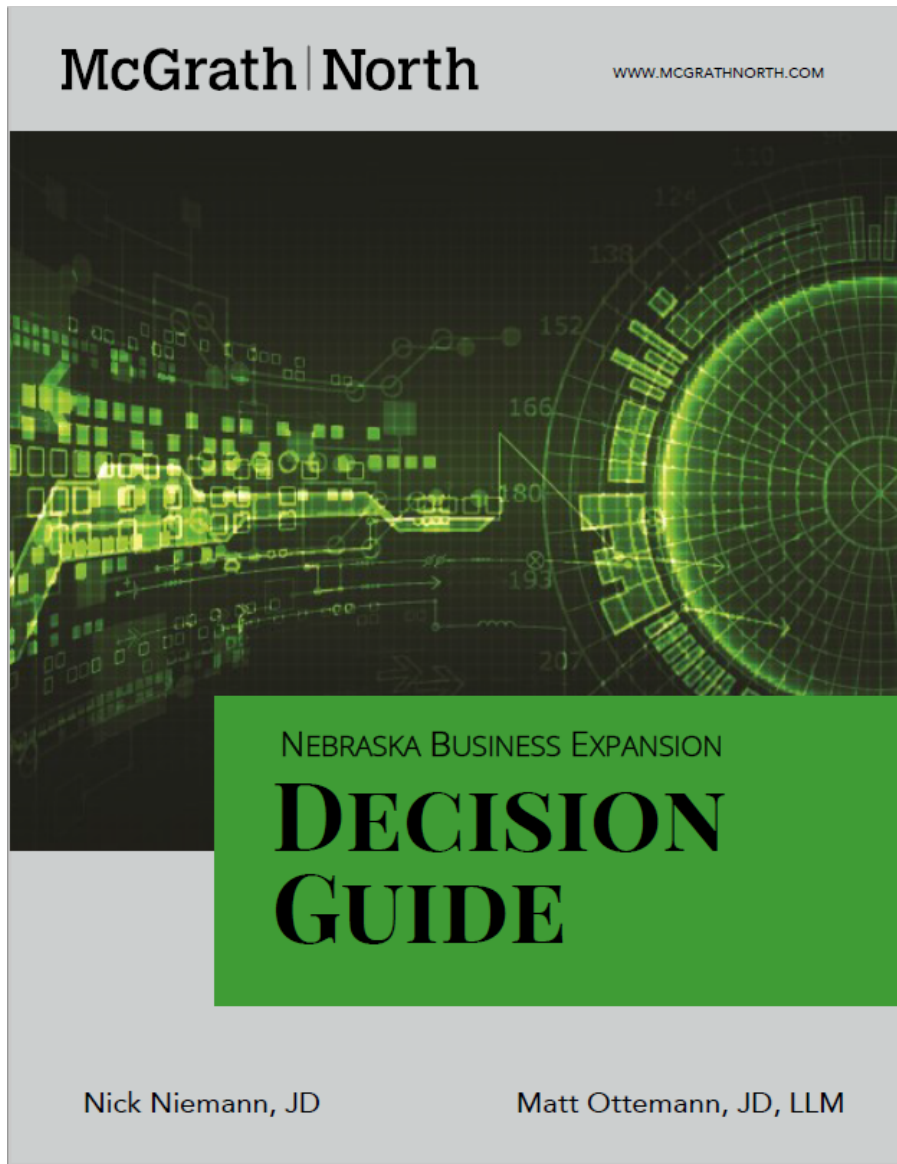
### 11. Resolving Tax Disputes

- 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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  - Nebraska Bar Association – Taxation Section
  - American Institute & Nebraska Society of CPA's
  - Council On State Taxation (COST) - Practitioner
- Creighton
  - College of Business 1978 (Summa Cum Laude)
  - School of Law 1981 (Magna Cum Laude)
  - Adjunct Faculty – State Tax
- Best Lawyers In America (Tax Law and Litigation & Controversy – Tax)
- “Lawyer of the Year” – Best Lawyers (Omaha) – Litigation & Controversy - Tax
- “Lawyer of the Year” – Best Lawyers (Omaha) - Tax
- 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.
- 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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    - State and Local Taxes Committee
  - Nebraska Bar Association – Taxation Section
  - American Institute & Nebraska Society of CPA's
- Creighton
  - College of Business 1999 (Summa Cum Laude)
  - School of Law 2006 (Summa Cum Laude)
  - Adjunct Faculty – Estate Planning / Estate & Gift Tax
- Alabama - LL.M in Taxation 2010 (Magna Cum Laude)
- Chambers USA – America's Leading Lawyers for Business (Nebraska, Tax-Band 1)
- Matt Ottemann assisted in the preparation of this Program. Matt works with Nick Niemann in the areas of tax incentives, site selection and state tax defense and planning for businesses.
- Co-designer and co-drafter of 2020 Imagine Nebraska Act
- Matt works with company tax department personnel and their outside CPA firms and/or legal counsel, to address site selection, state tax planning opportunities, tax incentives, tax audits and appeals, and refund claims and appeals.
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# State Tax, Incentives And Economic Development Update And Impact

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