The background of the slide is a dark green field filled with various abstract data visualizations. On the left, there are several overlapping bar charts and line graphs with green and yellow data points. On the right, a large circular radar chart or sonar-like display is visible, featuring concentric circles and radial lines, with numerical values like 110, 124, 138, 152, 166, and 180. The overall aesthetic is high-tech and analytical.

**61<sup>st</sup> Annual Great Plains  
Federal Tax Institute  
November 30, 2023**

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

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

ATTORNEYS

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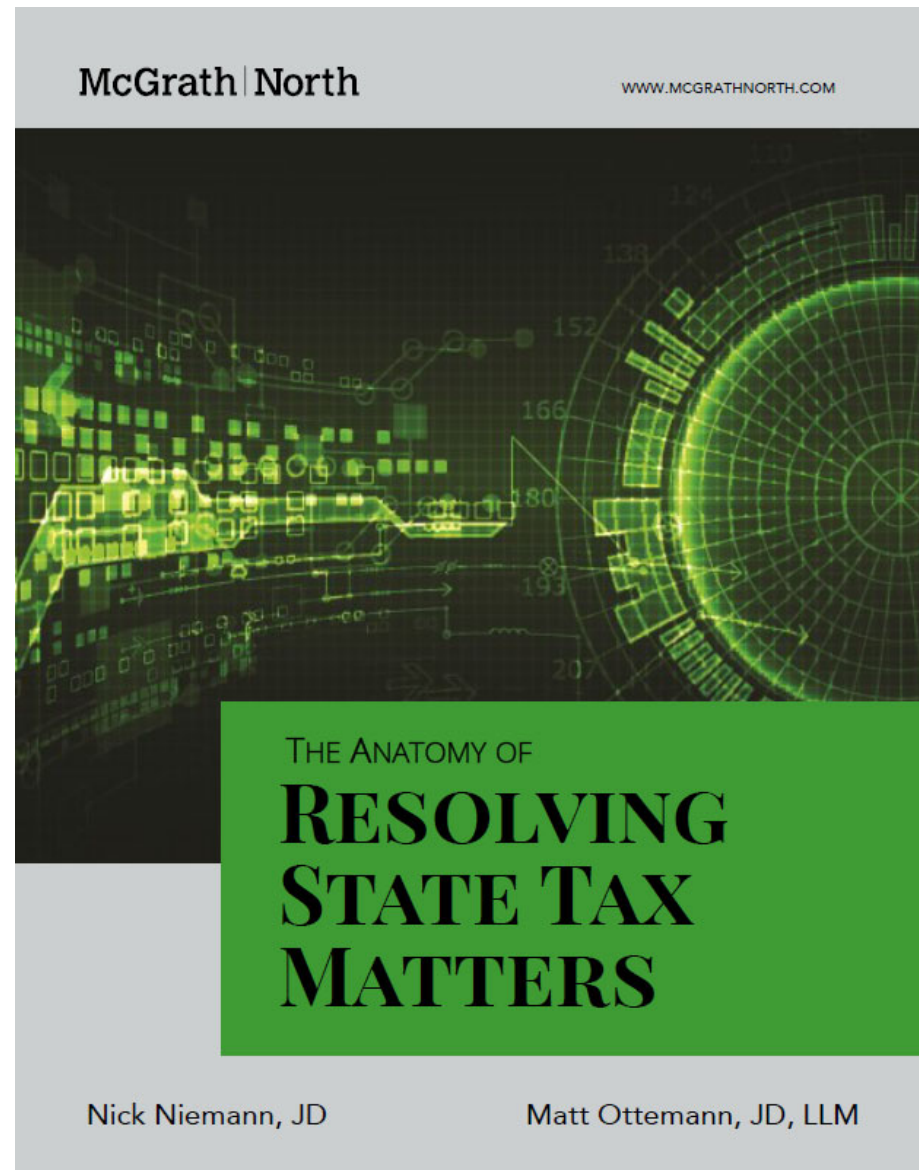
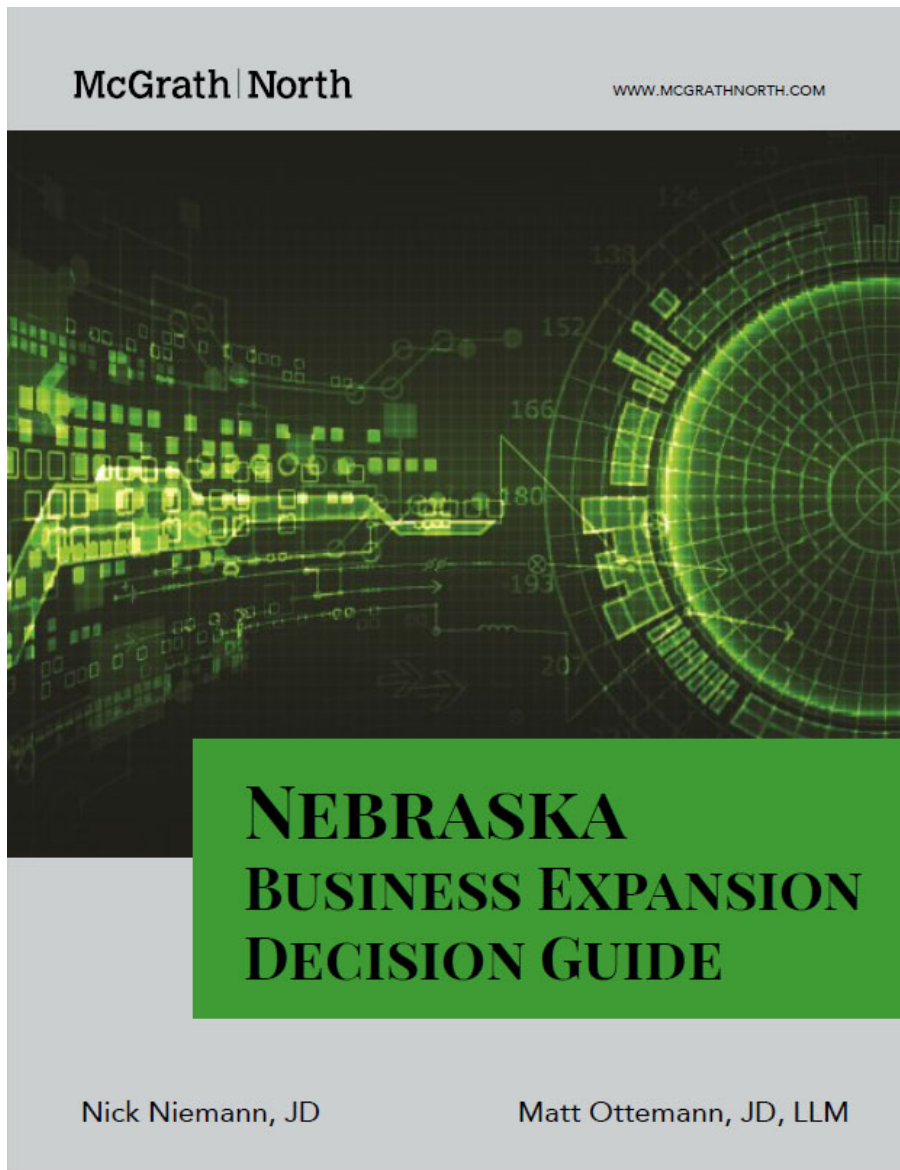
### Resolution

- ☐ New Cases
- ☐ Audits & Appeals

### What Next

- ☐ A Look Ahead to 2023
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# MORE INFORMATION IN THESE 2 BRIEFINGS



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# TODAY'S AGENDA



## Business Climate Report Card



# The Ongoing Competition – Across America



Healthy Companies

Business Expansions

Site Expansions

Competing State Business Climates

Utilizing State Business Incentives

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

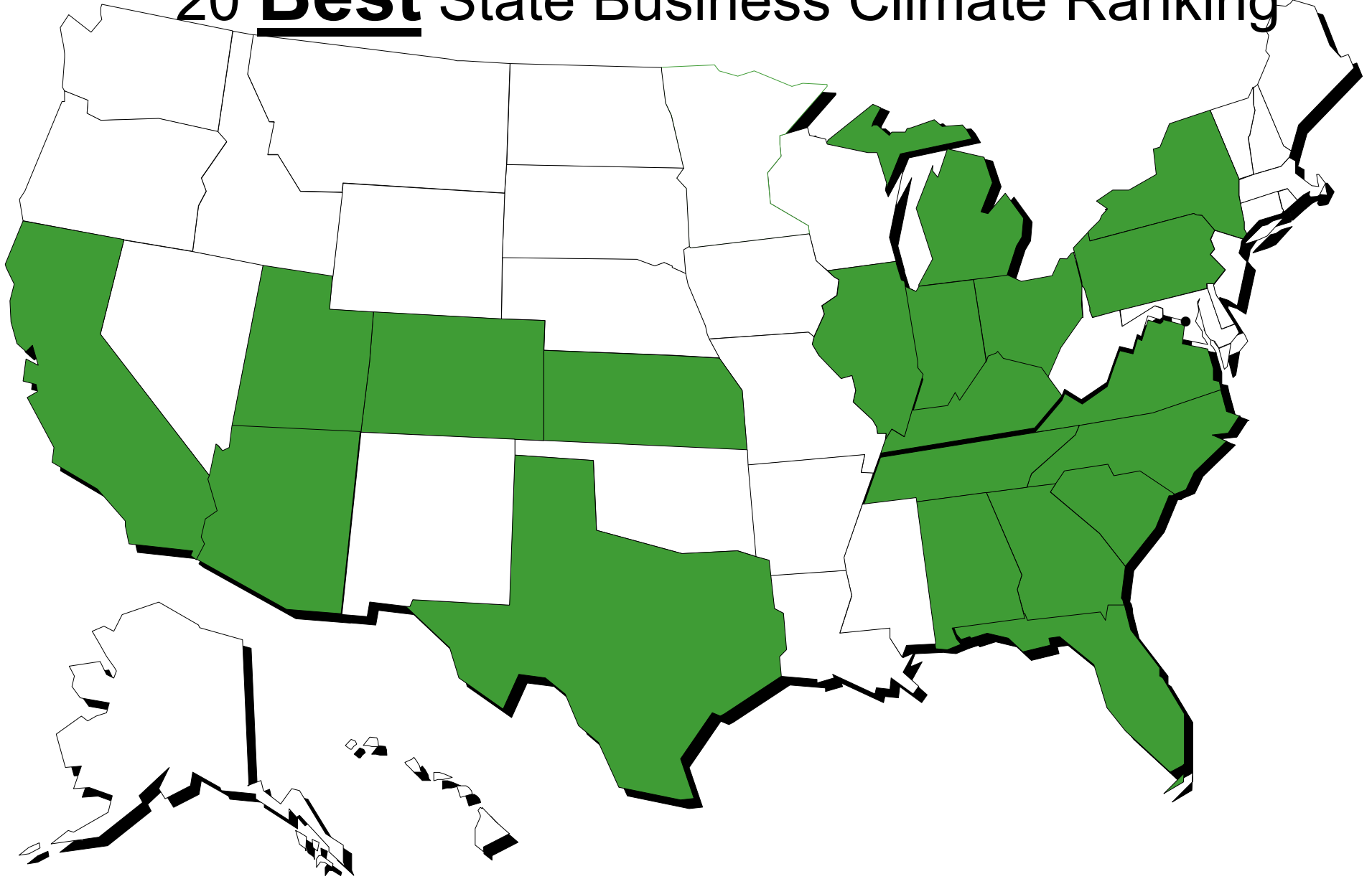
Economic development  
strategy

Utilities (cost, reliability)

Workforce development

# SITE SELECTION MAGAZINE

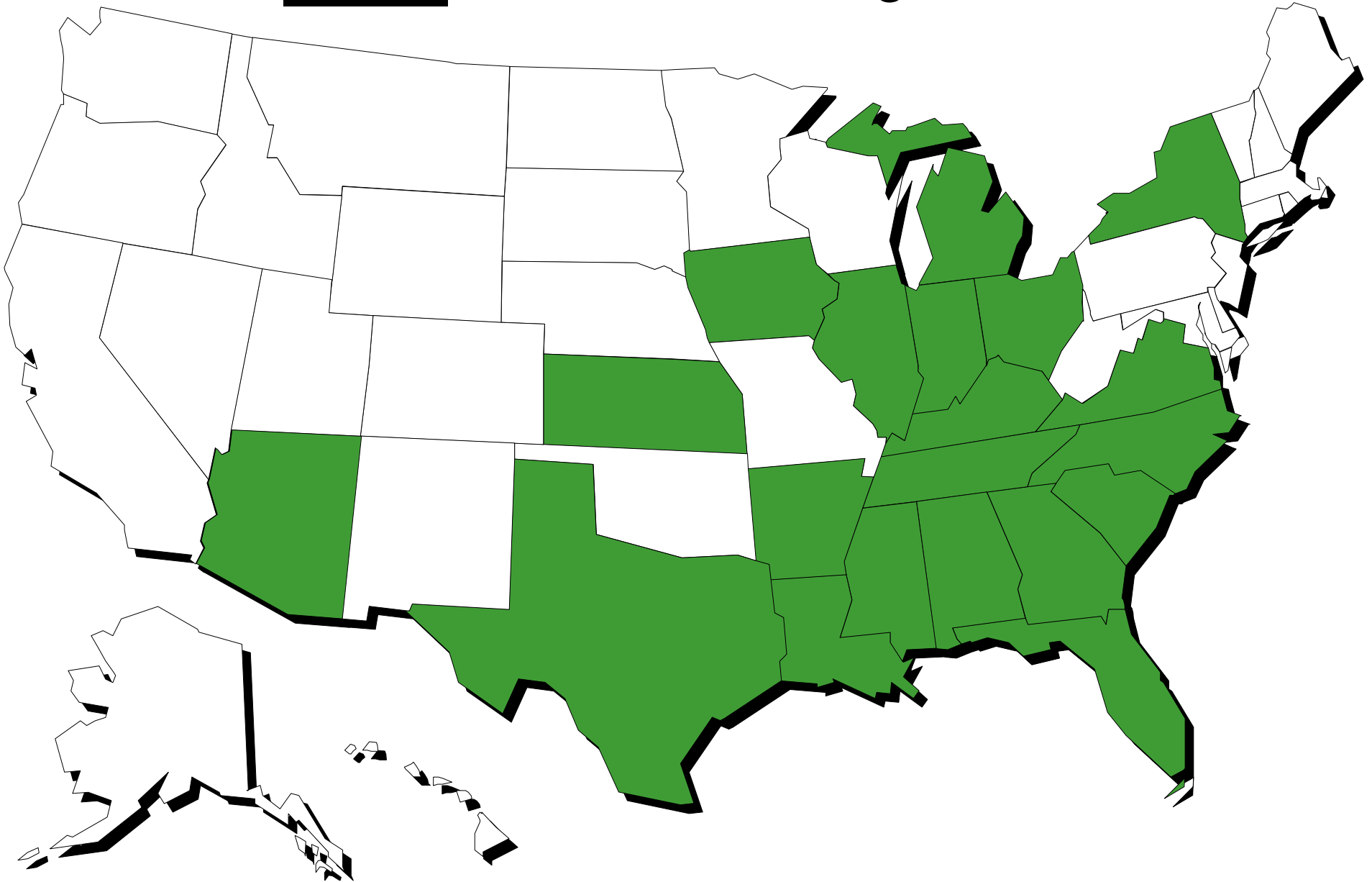
## 20 **Best** State Business Climate Ranking



Source: Site Selection Magazine, Nov. 2023

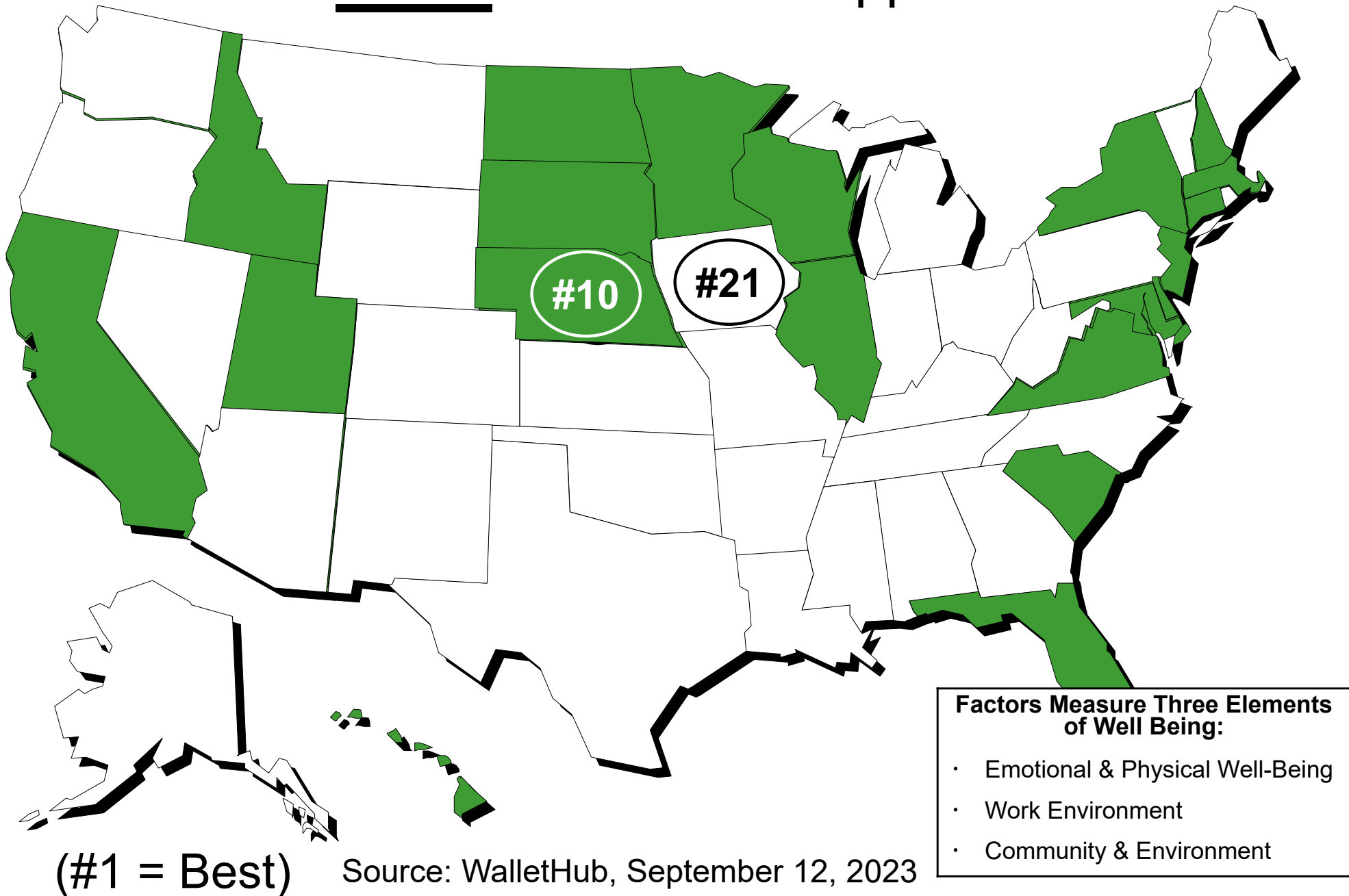
# AREA DEVELOPMENT

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

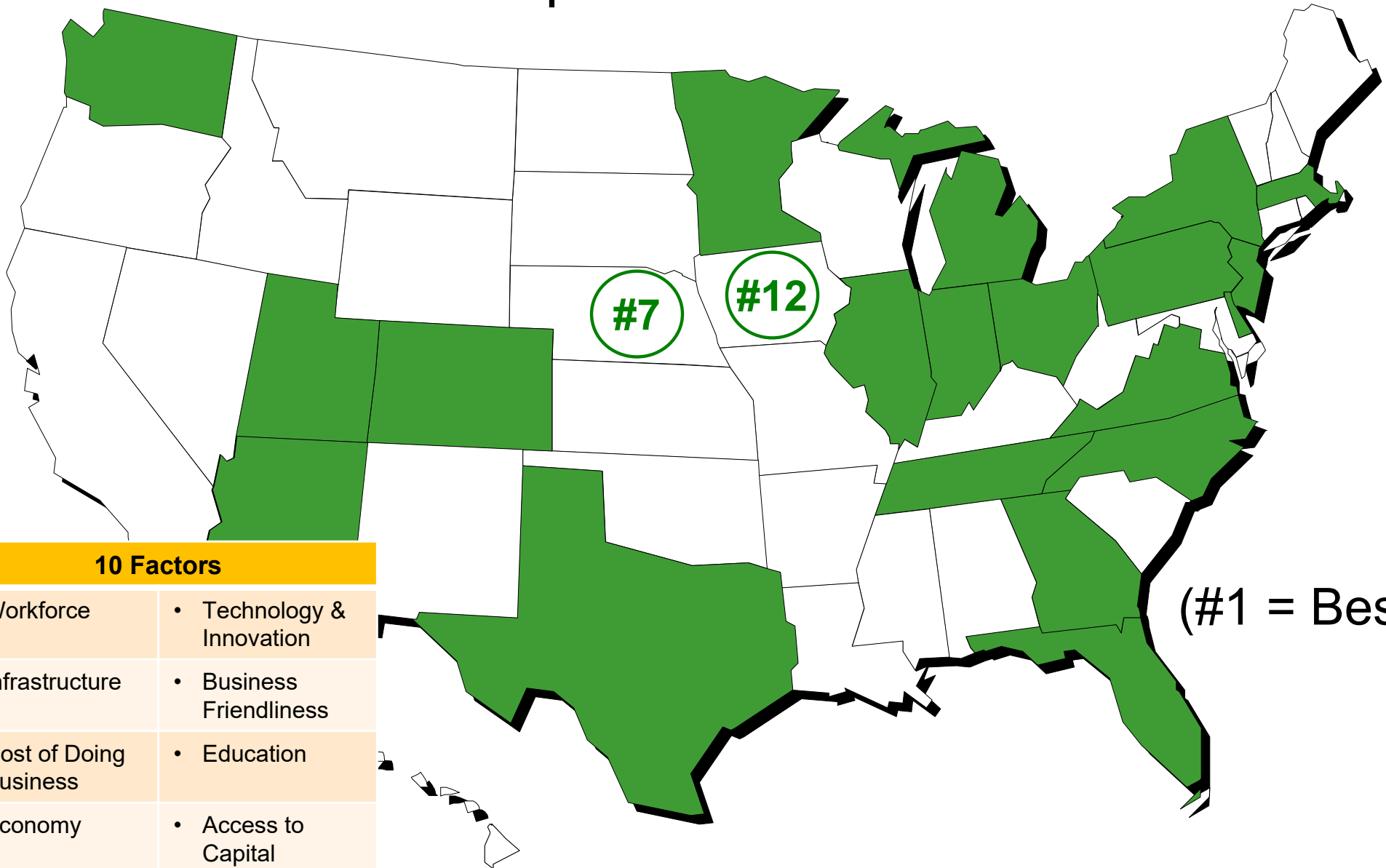


Source: Area Development Magazine, Q3 2023

## 20 **Best** States For Happiness



# America's Top 20 States for Business



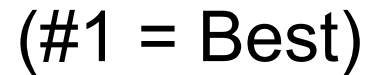
(#1 = Best)

Source: CNBC, July 11, 2023

## 10 Factors

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

## 20 Best States For Business



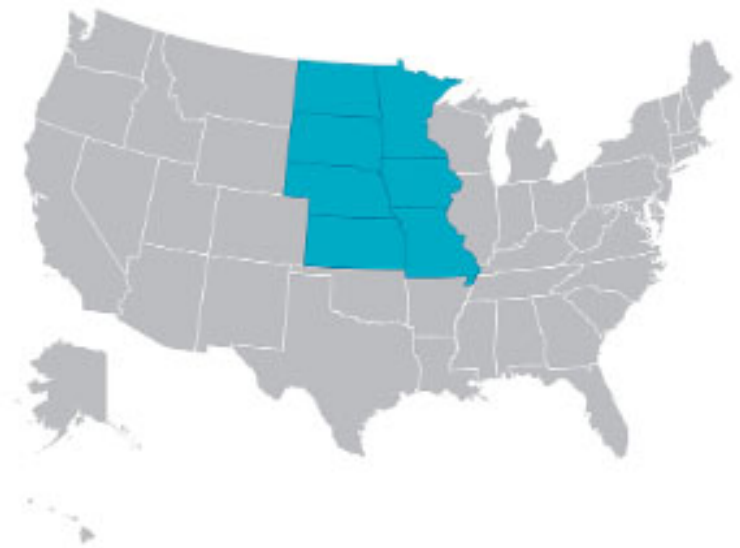
Source: Chief Executive Magazine, 2023  
Based on Survey of CEOs.

# SITE SELECTION

## 2023 Prosperity Cup – 2023 State Rankings By Region

### West North Central Region

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

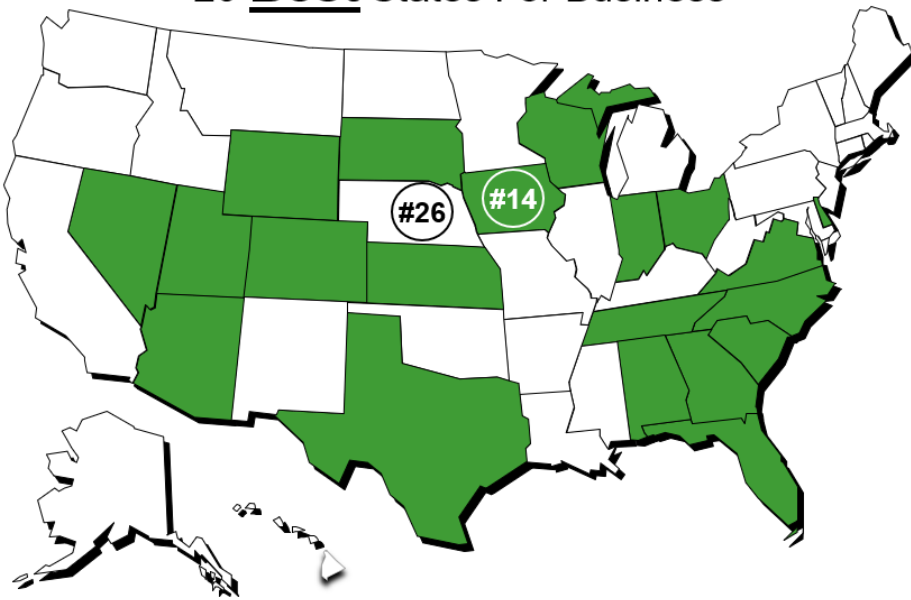


Source: Site Selection Magazine (May 2023)

# CHIEF EXECUTIVE MAGAZINE

2018

20 **Best** States For Business

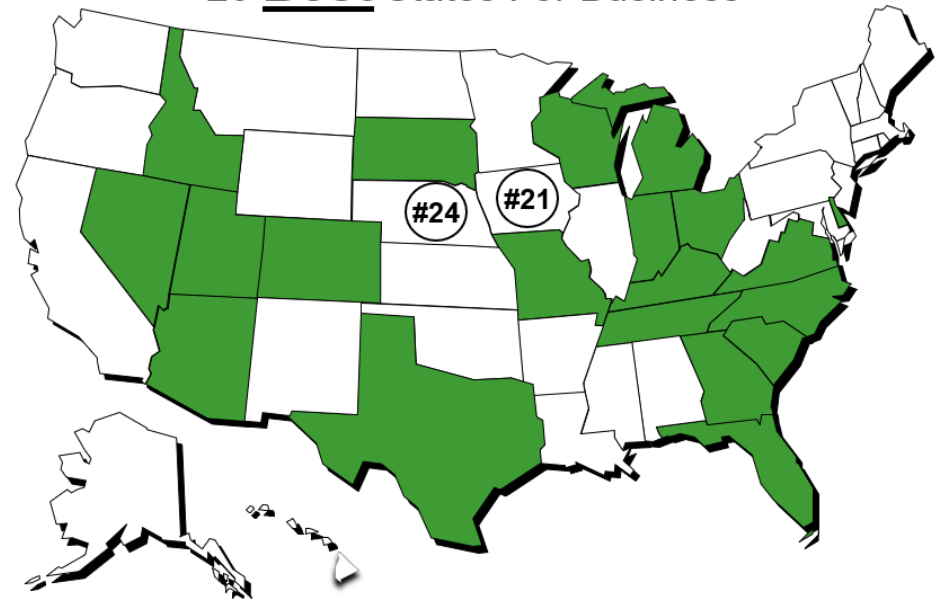


(#1 = Best)

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

2023

20 **Best** States For Business



(#1 = Best)

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

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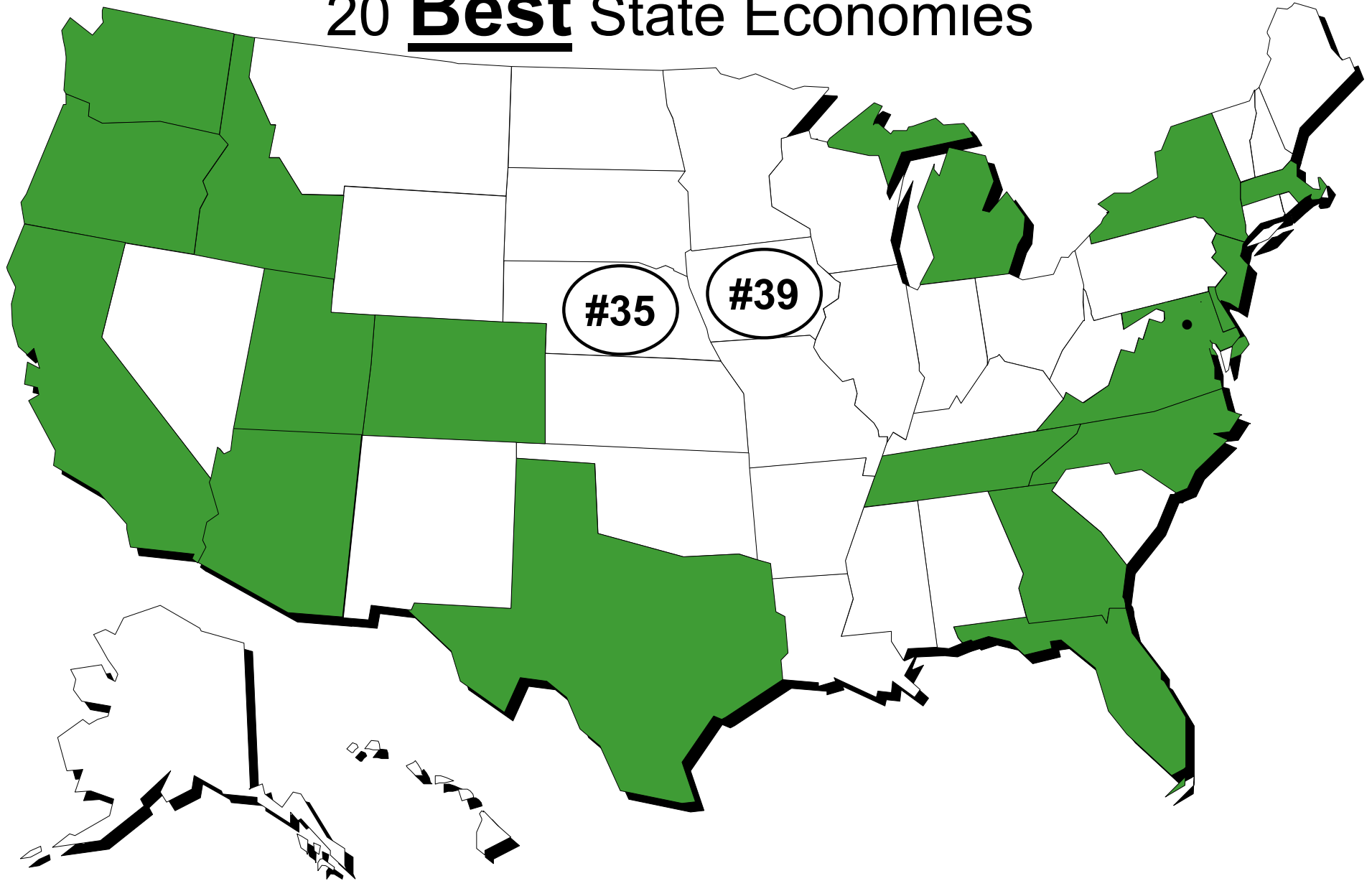
# TODAY'S AGENDA



## Fiscal Report Card



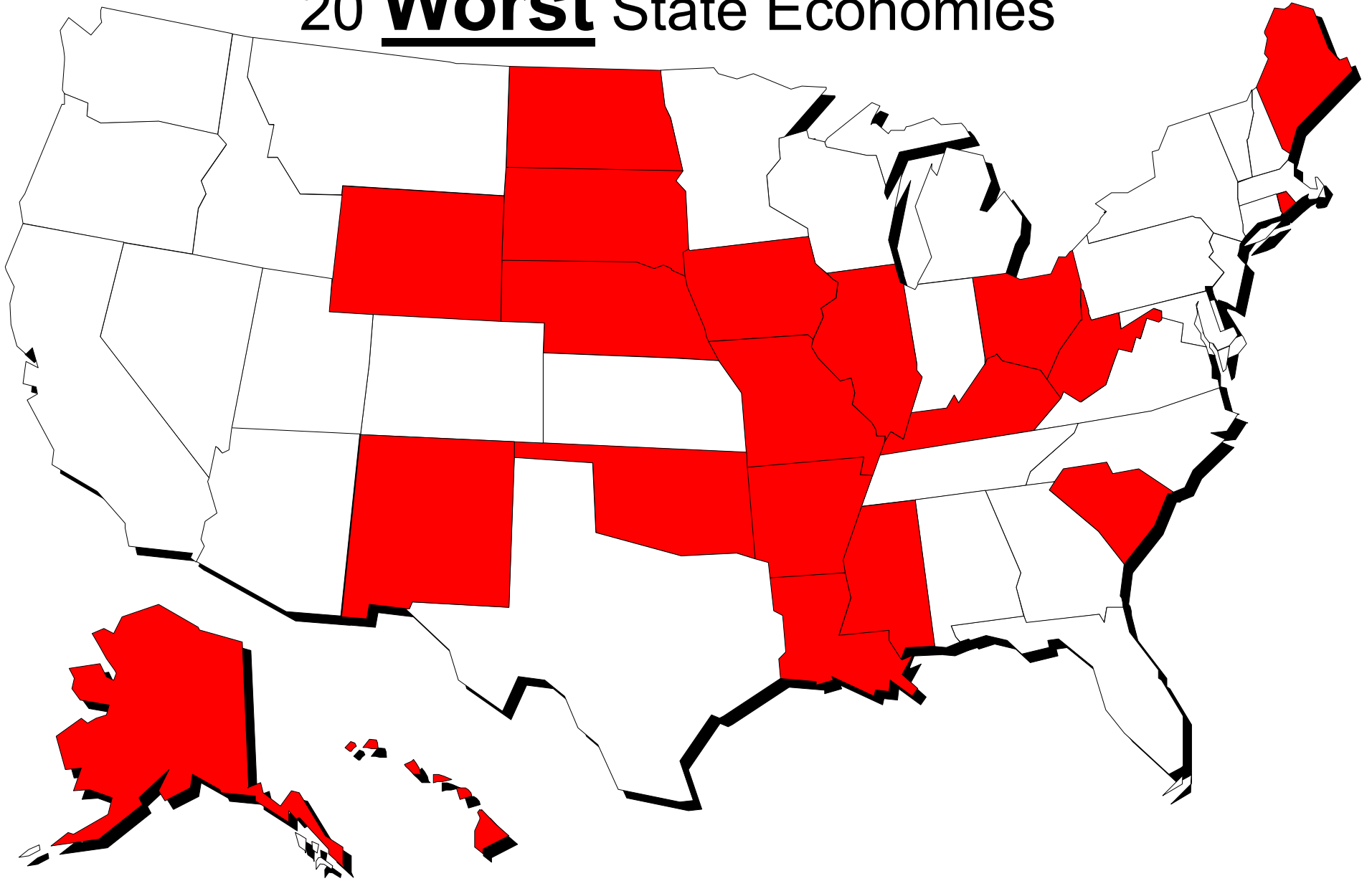
## 20 Best State Economies



Source: WalletHub, June 5, 2023

(#1 = Best)

## 20 Worst State Economies



Source: WalletHub, June 5, 2023

(#1 = Best)

# AMERICAN LEGISLATIVE EXCHANGE COUNCIL

## Economic Performance Rankings

(Based on 3 policy variables)

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

(#1 = Best)

Nebraska = #25; Iowa = #30

Source: American Legislative Exchange Council, April 3, 2023

## **3 Policy Variables**

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

# AMERICAN LEGISLATIVE EXCHANGE COUNCIL

## Economic Outlook Rankings

(Based on 15 policy variables)

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

Nebraska = #36; Iowa = #32

(#1 = Best)

Source: American Legislative Exchange Council, April 3, 2023

# 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 3, 2023

# AMERICAN LEGISLATIVE EXCHANGE COUNCIL

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## Economic Outlook Rankings (Based on 15 policy variables)

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

Nebraska = #28; Iowa = #29

(#1 = Best)

Source: American Legislative Exchange Council, April 17, 2018

2023

## Economic Outlook Rankings (Based on 15 policy variables)

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

Nebraska = #36; Iowa = #32

(#1 = Best)

Source: American Legislative Exchange Council, April 3, 2023

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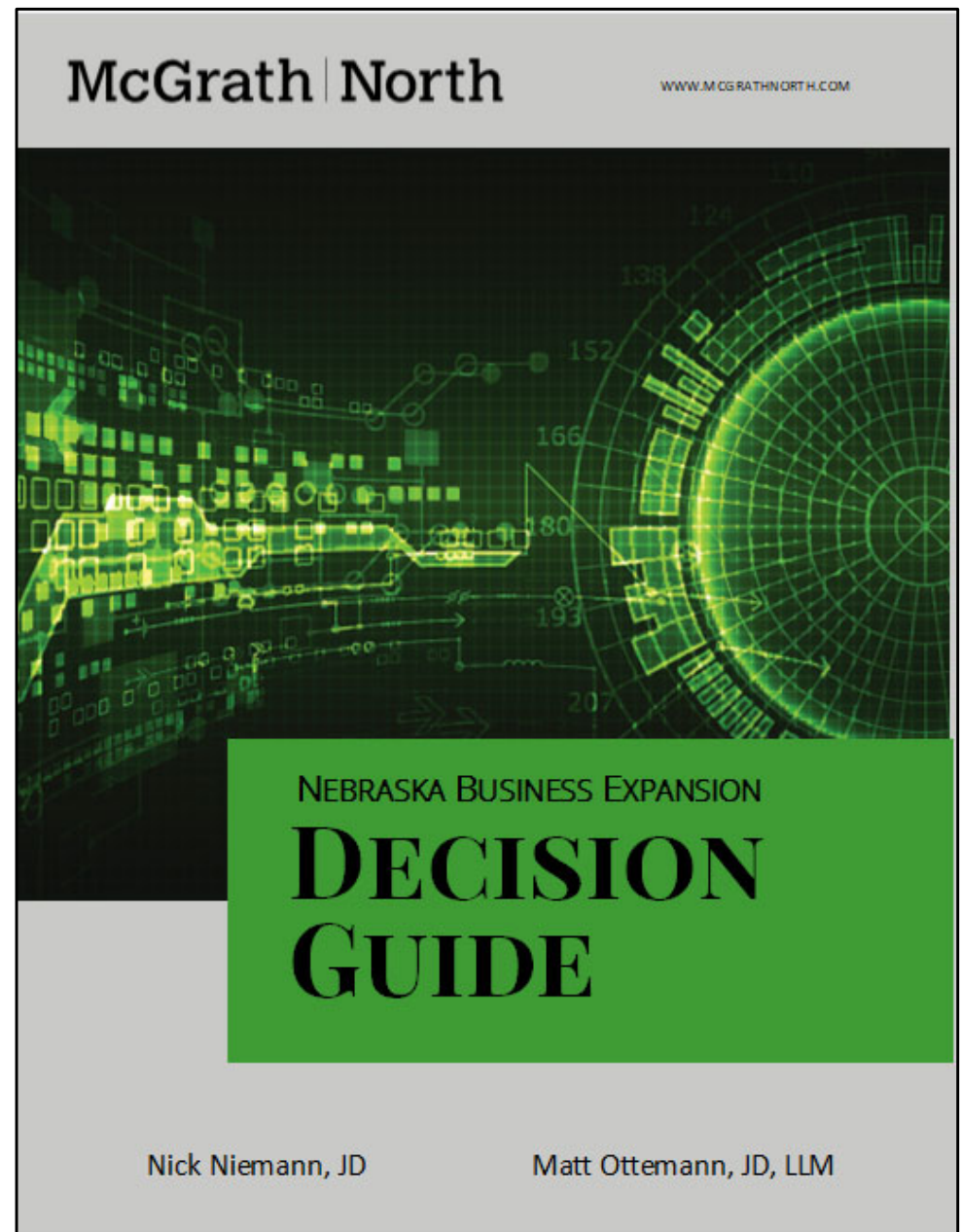
# TODAY'S AGENDA



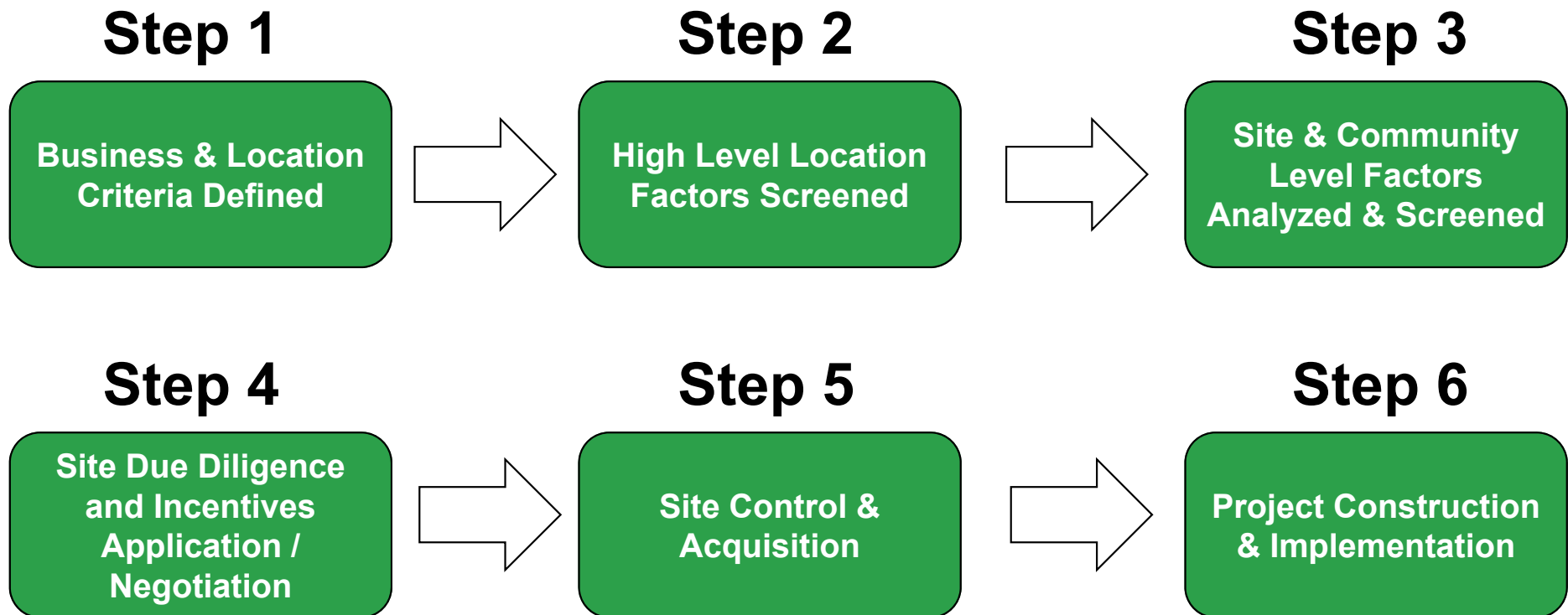
## Expansion Decision Process



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



# THE BUSINESS EXPANSION DECISION MAKING PROCESS


























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

Key to success is team play and collaboration.

# A QUICK UPDATED HIGH LEVEL ANALYSIS

## Are These Nebraska Features:

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

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

# SITE SELECTION

## Tribal Economic Development

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

Don't  
Overlook:

## POTENTIAL FEDERAL INCENTIVES FOR NEBRASKA GROWTH ☒

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

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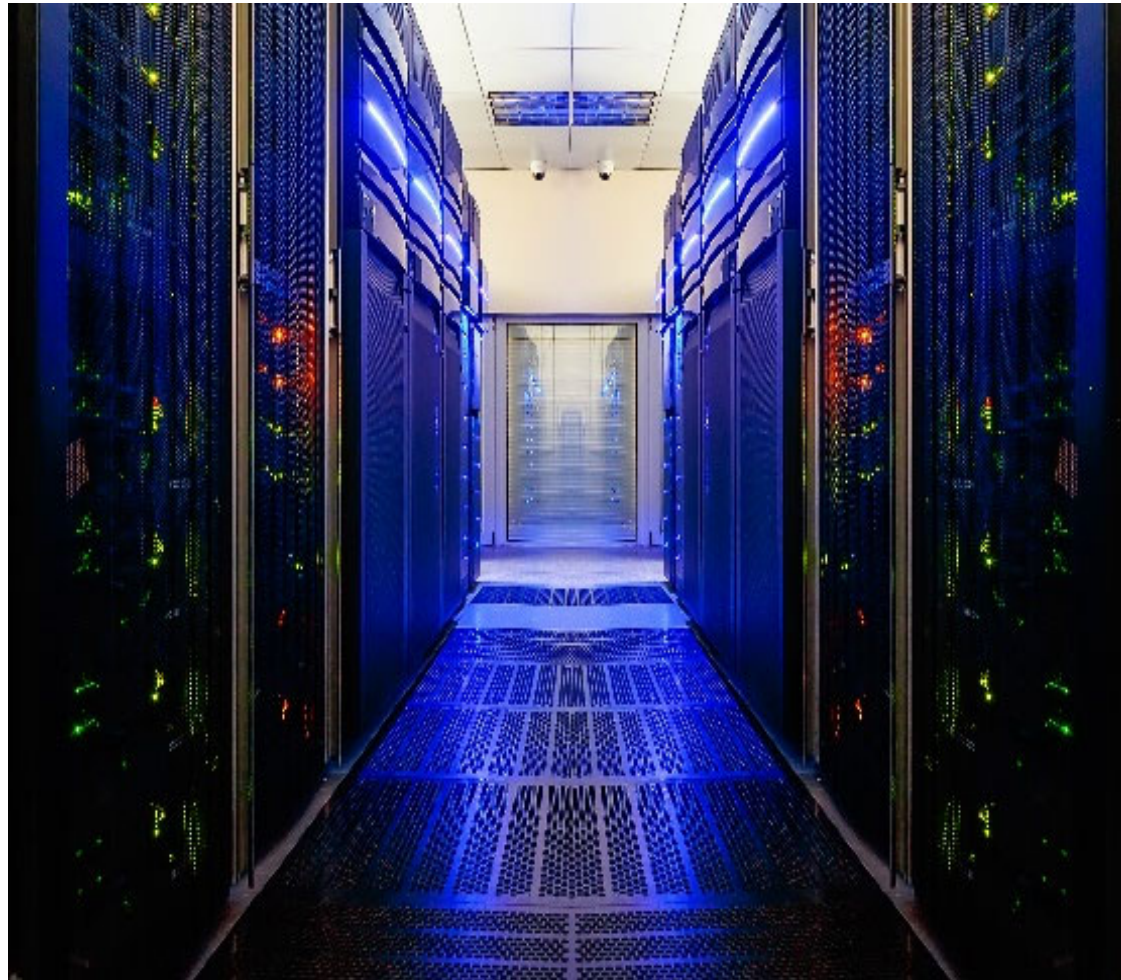
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# TODAY'S AGENDA



## New Projects



# 2022 PROSPERITY CUP

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

## Top 10 States

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

## West North Central Region

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

Source: Site Selection Magazine, May 2023

# IMAGINE NEBRASKA PROJECTS

## Imagine Nebraska Act Projects 3<sup>rd</sup> & 4<sup>th</sup> Quarters 2022 Projects 1<sup>st</sup> & 2<sup>nd</sup> Quarters 2023

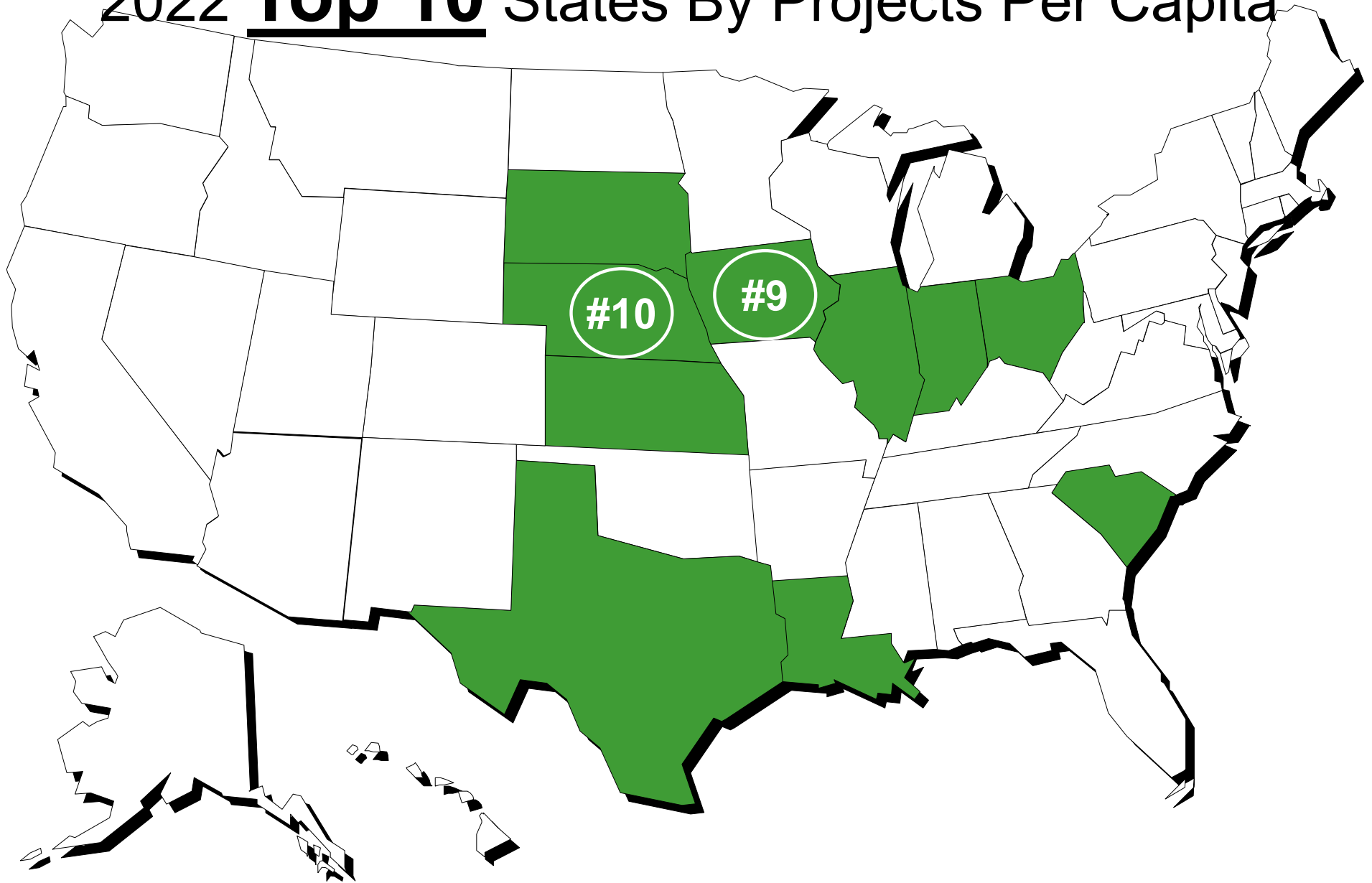
Bestorq	Mutual of Omaha Insurance Company	H&M Trucking, Inc.
Elliot Equipment Company, Inc.	Tenneco Automotive Operating Company, Inc.	Allo Communications, Inc.
Adams Industries, Inc.	Columbus Hydraulics Holdings, LLC	Royal Engineered Composites, Inc.
Hughes Mulch Product, LLC	Malnove Holding Company,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

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

(Source: Nebraska Department of Economic Development)

# GOVERNOR'S CUP

## 2022 Top 10 States By Projects Per Capita



Source: Site Selection Magazine, Mar. 2023

(#1 = Best)

# GOVERNOR'S CUP

## 2022 Top States By Projects Per Capita

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

Source: Conway Projects Database

## Top States by Projects Per Capita:

**#10 Nebraska**



### Prior Nebraska Rankings:

2021: #5

2020: #4

2019: #3

2018: #1

2017: #1

2016: #1

# TOP STATES BY TOTAL PROJECTS

## West North Central Region

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

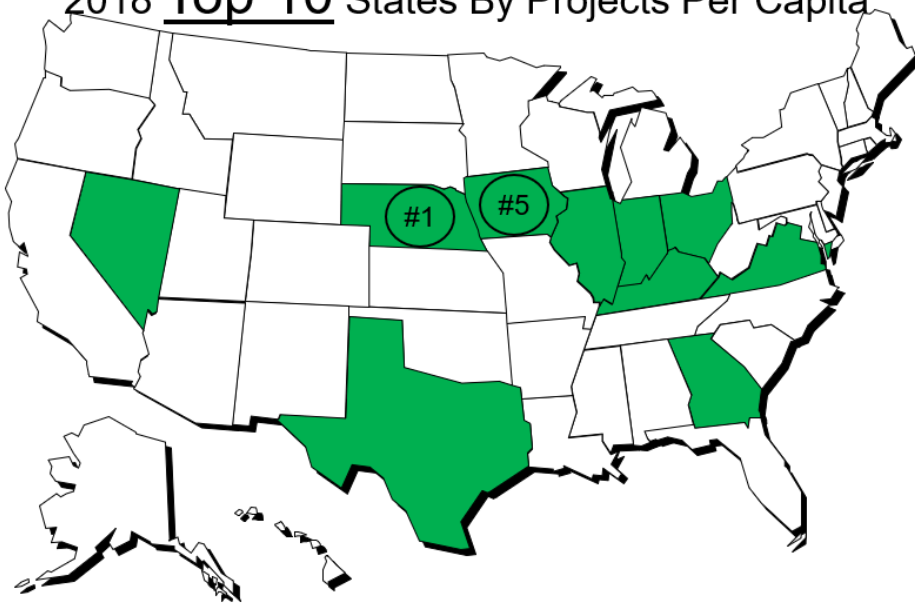
Source: Site Selection Magazine, March 2023

# TOP STATES BY PROJECTS PER CAPITA

2018

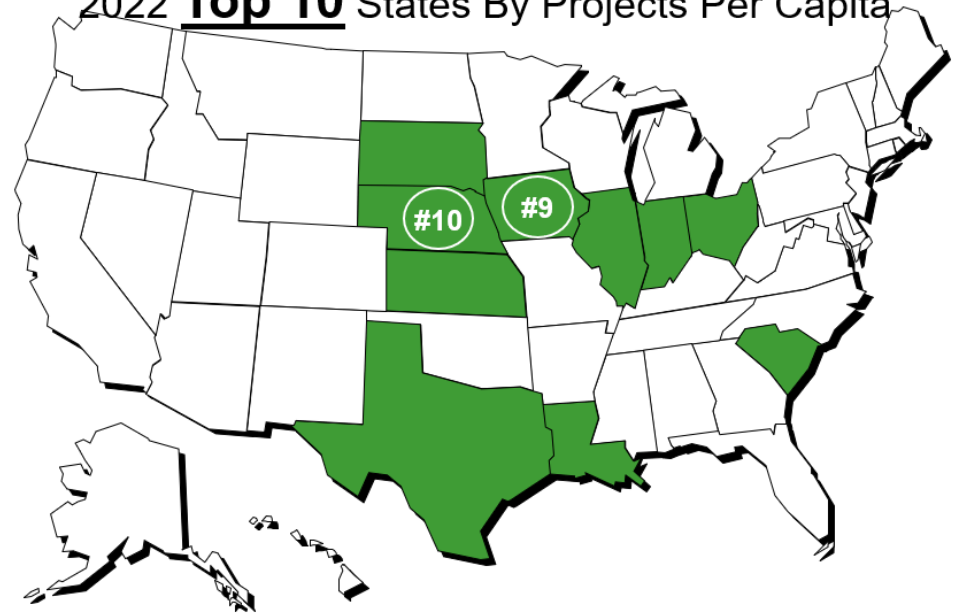
2022

2018 Top 10 States By Projects Per Capita



(#1 = Best)

2022 Top 10 States By Projects Per Capita



(#1 = Best)

Source: Site Selection Magazine, Mar. 2019

Source: Site Selection Magazine, Mar. 2023

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## Incentives Update



# BUSINESS INCENTIVE PLANNING

## What Should Occur Before Beginning Your Project or Expansion?

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

## What Are Some Key Incentive Planning Considerations?

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

# **Nebraska Incentives**

# NEBRASKA'S APPROACH TO BUSINESS INCENTIVES

## Main Incentive Platform

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

**These programs have incented the creation of:**

- **Over 950 expansion projects**
- **Over \$35 billion of capital investment**
- **Over 100,000 new jobs in Nebraska**

## Variety of Other Incentive Programs

# INCENTIVE BENEFIT ILLUSTRATIONS

## For Just The Imagine Nebraska Act:

<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

**Main Issue: Actually Getting Your Money**

# BUSINESS GROWTH INCENTIVES

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

# NEBRASKA INCENTIVES

## Changes to ImagiNE Nebraska Act

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

Two new activities at qualified locations:

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

## Nebraska Advantage Rural Development Act

(LB 727) (Operative September 2, 2023)

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

## Nebraska Advantage Research and Development Act

(LB 727) (Operative September 2, 2023)

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

## Good Life Transformational Projects Act

(LB 727) (Operative June 7, 2023)

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

## Good Life Transformational Projects Act

(LB 727) (Operative June 7, 2023)

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



# **lowa Incentives**

# **SITE SELECTION**

## **Iowa Intelligence Report Five Ways Iowa Is Innovating For Growth**

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

Source: Site Selection Magazine (May 2023)

# 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

# IOWA INCENTIVES

## Net Capital Gain Exclusion (HF 2317)

### Qualified Corporation Requirements

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

# IOWA INCENTIVES

## Retired Farmer Lease Income Exclusion (HF 2317)

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

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

# TODAY'S AGENDA

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# TODAY'S AGENDA



## Workforce Development



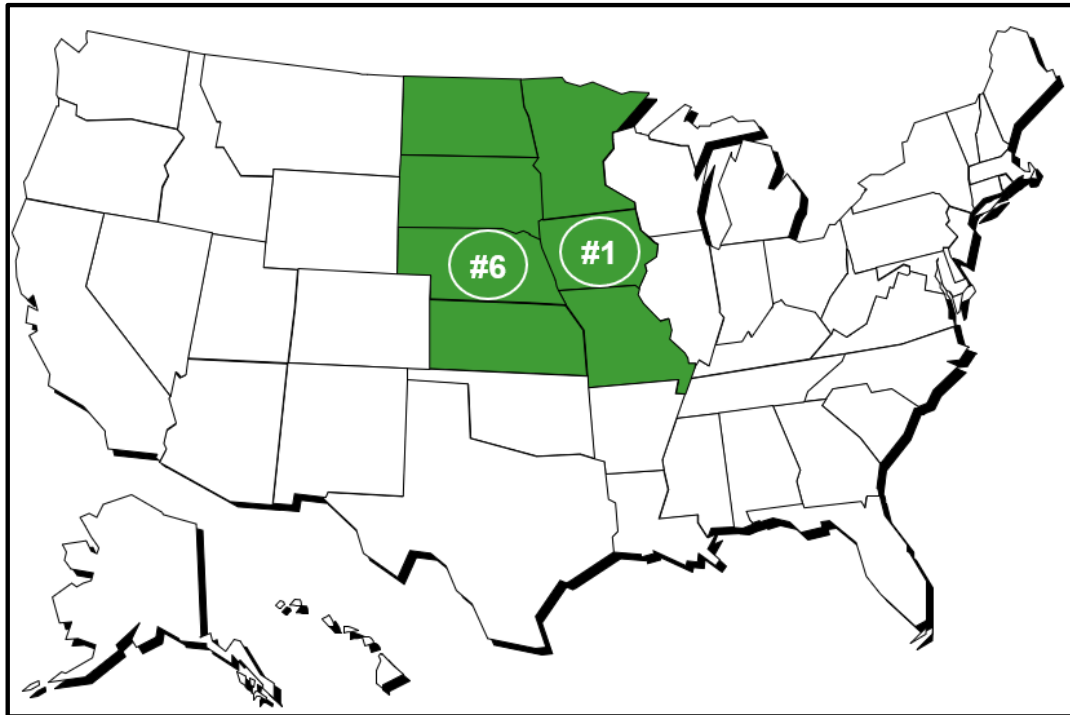
# **SITE SELECTION**

## **Locations Are Working Harder To Deliver Today's Workforce**

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

# SITE SELECTION MAGAZINE

## 2023 Regional Workforce Development Rankings



(#1 = Best)

Source: Site Selection Magazine, January 2023

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

States are ranked based on their rank in the following:

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

# SITE SELECTION

## Workers Shortages Dictate Site Selection Choices Like Never Before

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



- 75% significant effect
- 25% some effect

Source: Site Selection Magazine (January 2023)

# SITE SELECTION

## The 2023 Regional Workforce Development Rankings

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

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

Source: Site Selection Magazine (January 2023)

# REMOTE EMPLOYEE REALITIES

## Use of Remote Employees

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

## Remote Employee Taxation

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

# WITHHOLDING TAX FOR REMOTE EMPLOYEE

## Specific NDR Regulation

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

## General NDR Regulation

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

# POTENTIAL REMOTE EMPLOYEE FIXES

## **Potential 2024 Legislation**

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

## **Address Short Term Employees**

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

## **Hoping For Interim Nebraska guidance**

# SITE SELECTION

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

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

### Best U.S. Cities For Remote Workers

---

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

Source: Site Selection Magazine (September 2023)

# **GOVERNORS WORKFORCE DEVELOPMENT WORKING GROUP**

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

# TODAY'S AGENDA

60TH ANNUAL GREAT PLAINS  
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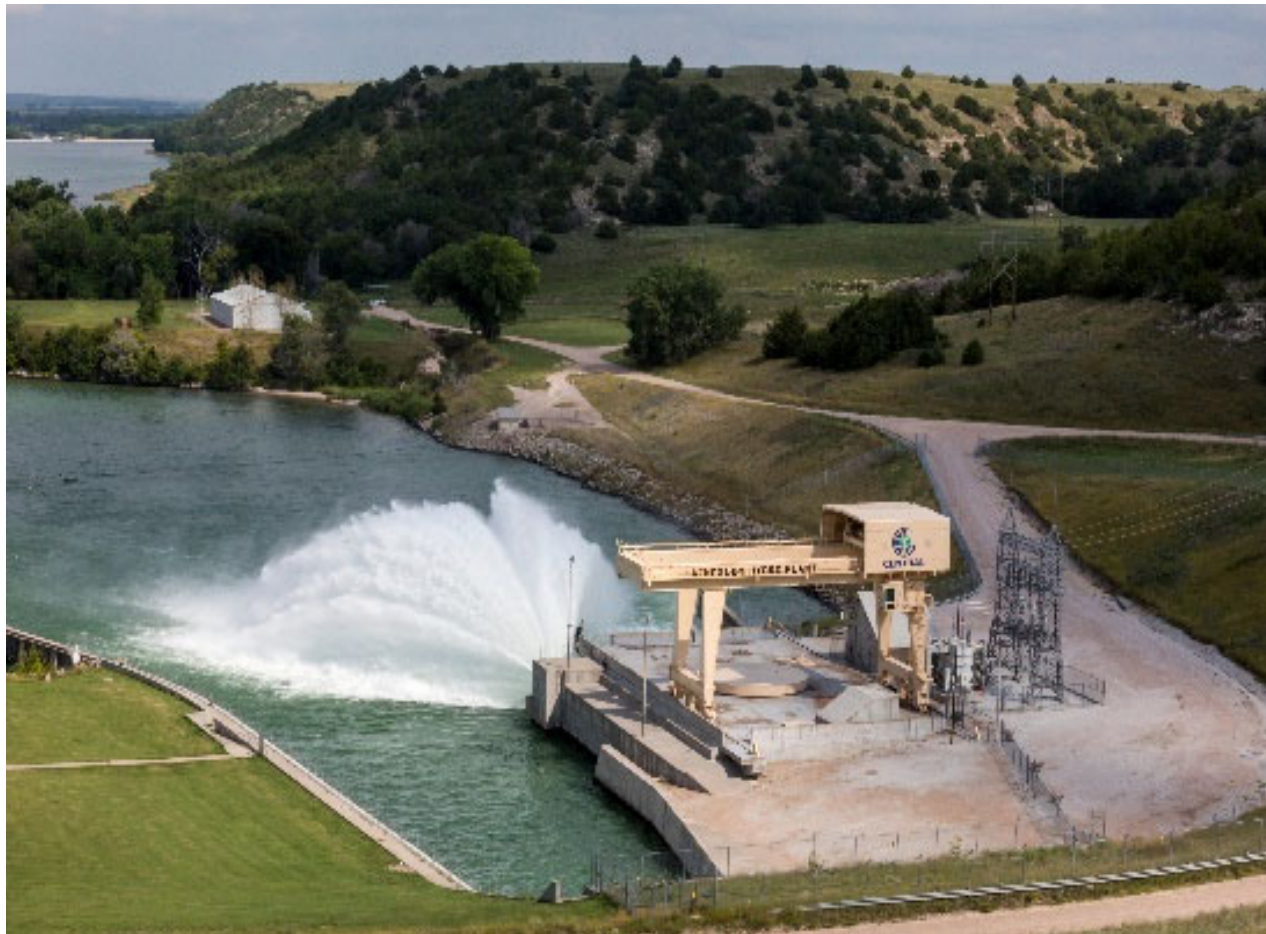
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- ☐ Closing Thoughts

# TODAY'S AGENDA



## Political Impact



## 2022 Migration Trends As Tracked By:



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

Shows Where People Are Moving To

# POLITICAL IMPACT

## 2022 Migration Trends As Tracked By:



- Largest Net Loss of Trucks:
  1. California
  2. Illinois
  3. Michigan
  4. Massachusetts
  5. New York
  6. New Jersey
  7. Maryland
  8. Arkansas
  9. Oklahoma
  10. Alaska

Shows Where People Are Moving From

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# TODAY'S AGENDA



## National Events



# TOP 20 NORTH AMERICAN DEALS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Source: Site Selection Magazine, May 2023

# SITE SELECTION

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

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

Source: Site Selection Magazine (July 2023)

# SITE SELECTION

## Where & Why

### The Logistics Giants Are Expanding

#### Top 10 States For Logistics Facility Projects

Jan. 2018 – July 2023

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

Source: Site Selection Magazine (September 2023)

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# TODAY'S AGENDA



## International Events



# INTERNATIONAL EVENTS

## Global Best To Invest 2023

### Top 10 Countries

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

### Top 10 Countries Per Capita

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

Source: Site Selection Magazine, May 2023

## SITE SELECTION

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

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

# SITE SELECTION

## Top 30 Global Startup Ecosystems

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

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

# SITE SELECTION

## From Rarity To Reality

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

# SITE SELECTION

## From Rarity To Reality

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

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

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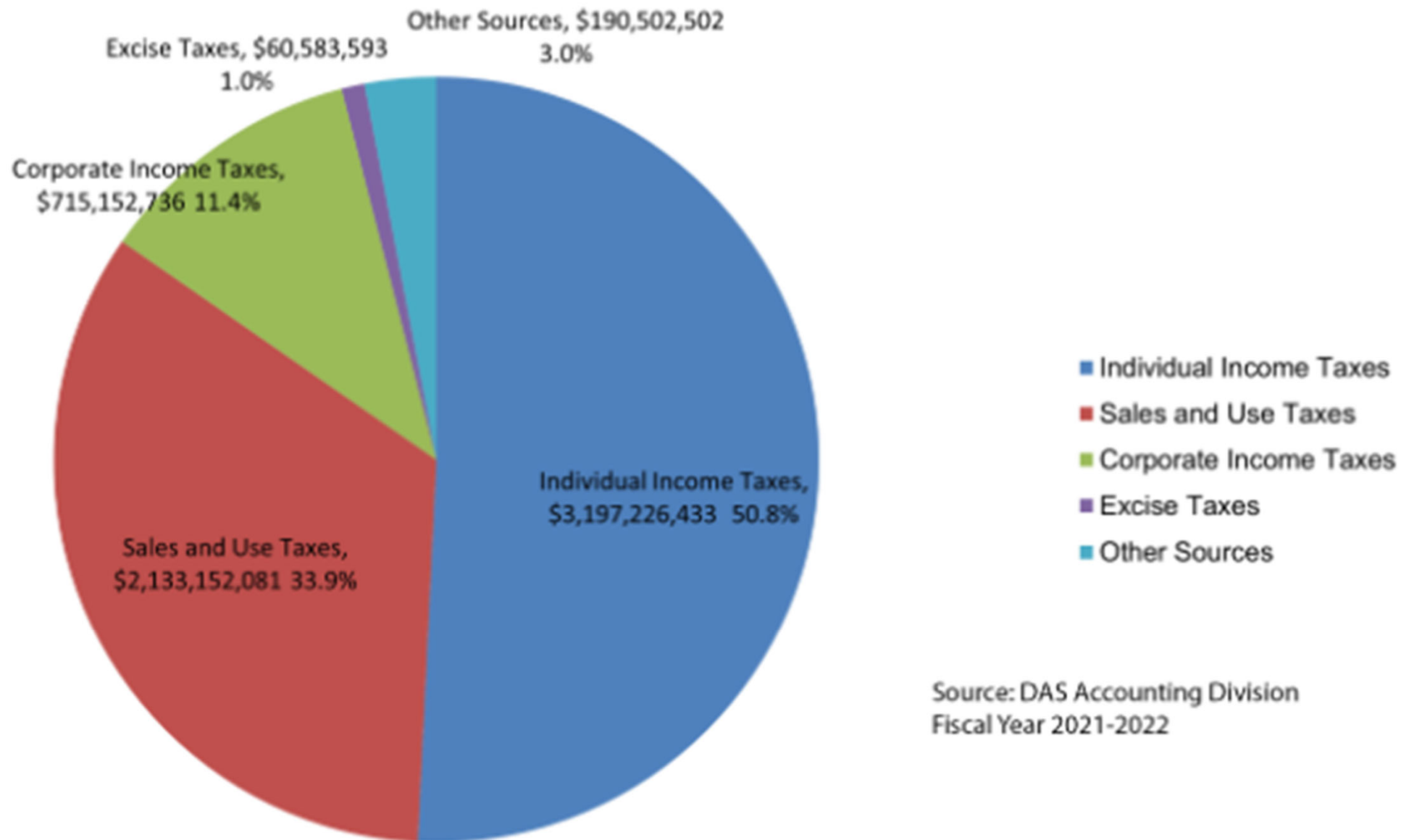


## Nebraska Tax Report Card



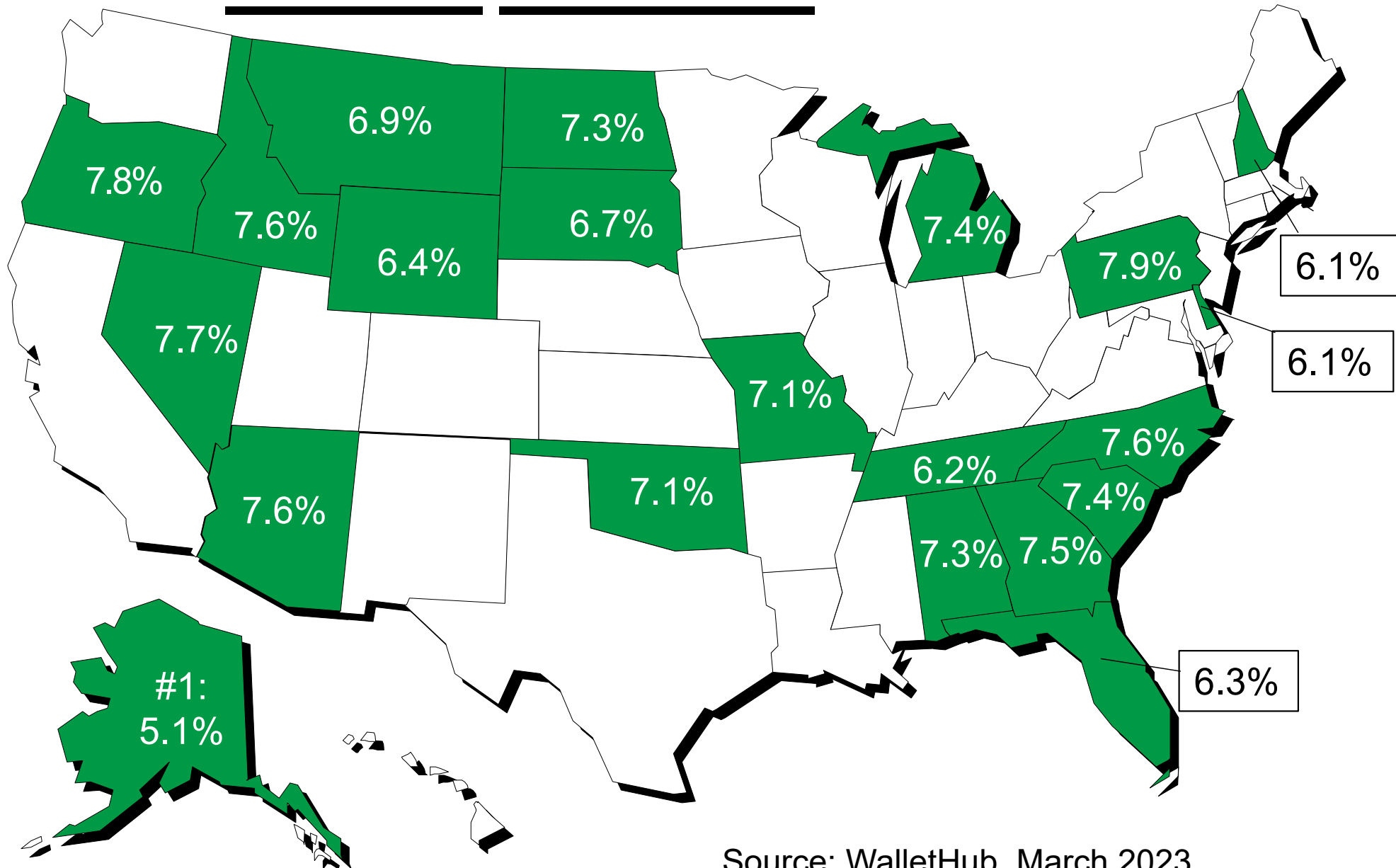
# Nebraska State Tax Revenue Sources

**Where the General Fund Dollars Come From**



Source: DAS Accounting Division  
Fiscal Year 2021-2022

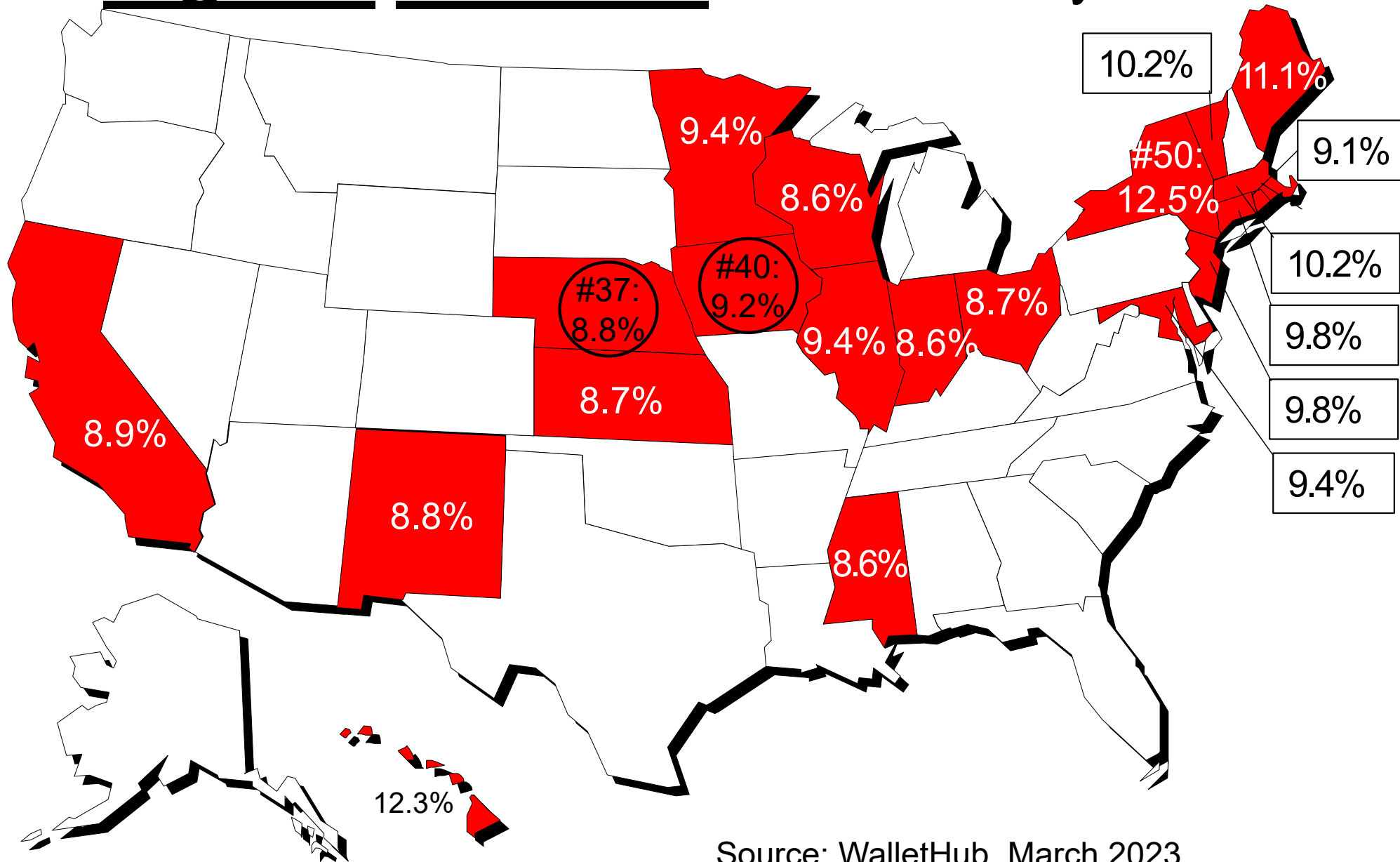
# Lowest Personal Tax Burden



Source: WalletHub, March 2023

(#1 = Best)

# Highest Personal Tax Burden by State

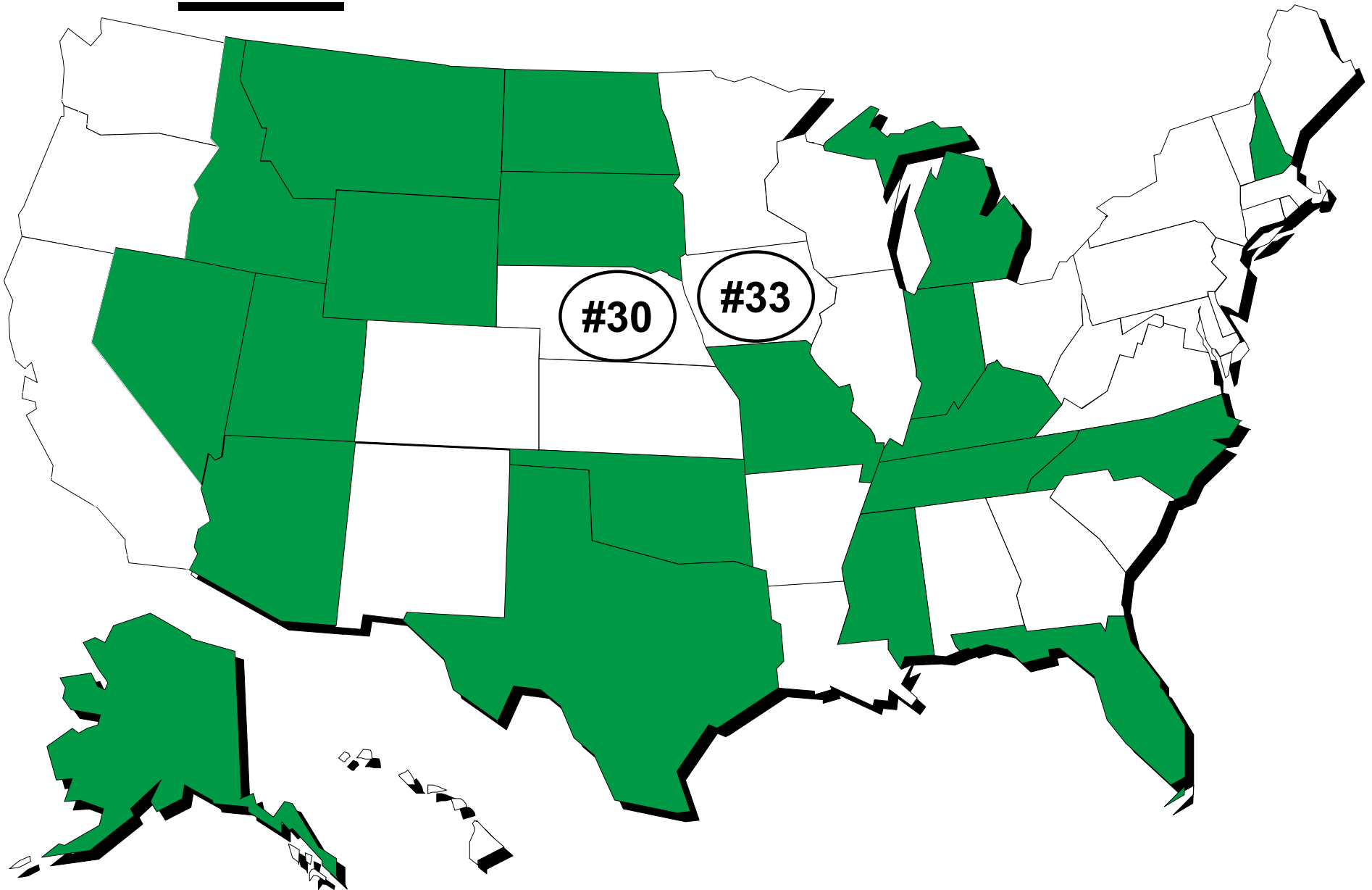


Source: WalletHub, March 2023

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# TAX FOUNDATION

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

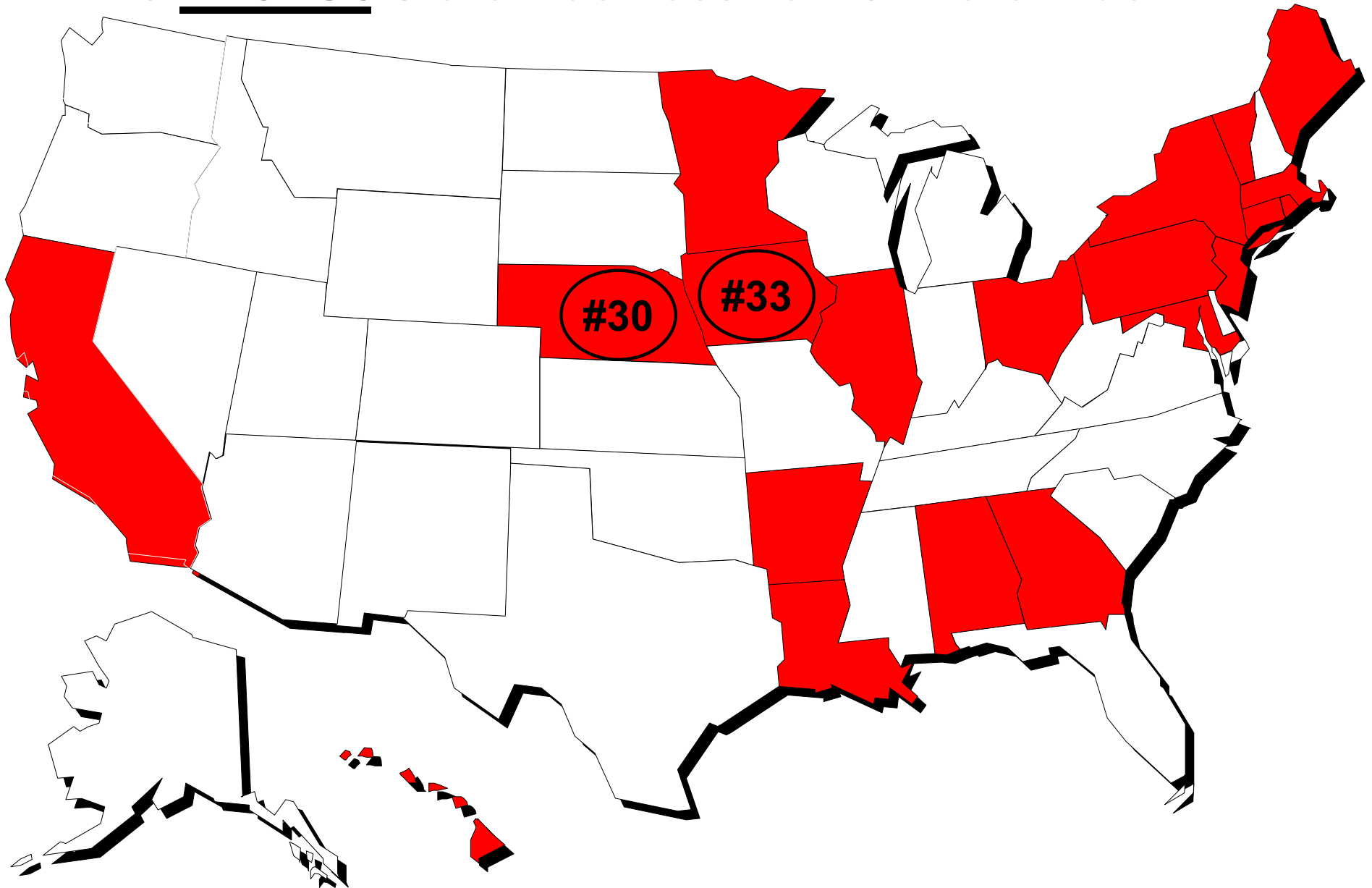


Source: Tax Foundation, October 24, 2023

(#1 = Best)

# TAX FOUNDATION

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



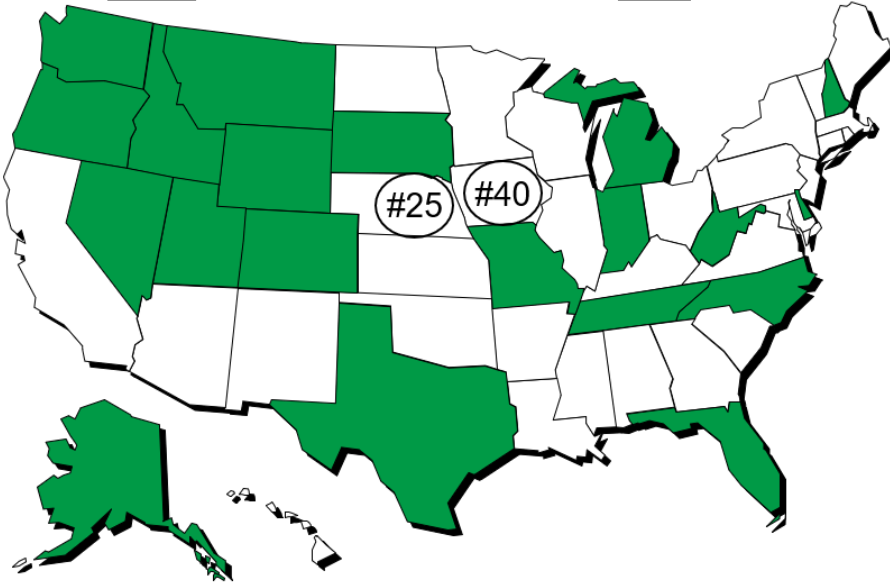
Source: Tax Foundation, October 24, 2023

(#1 = Best)

# Tax Foundation Comparison

2017

20 Best States For Business Tax Climate

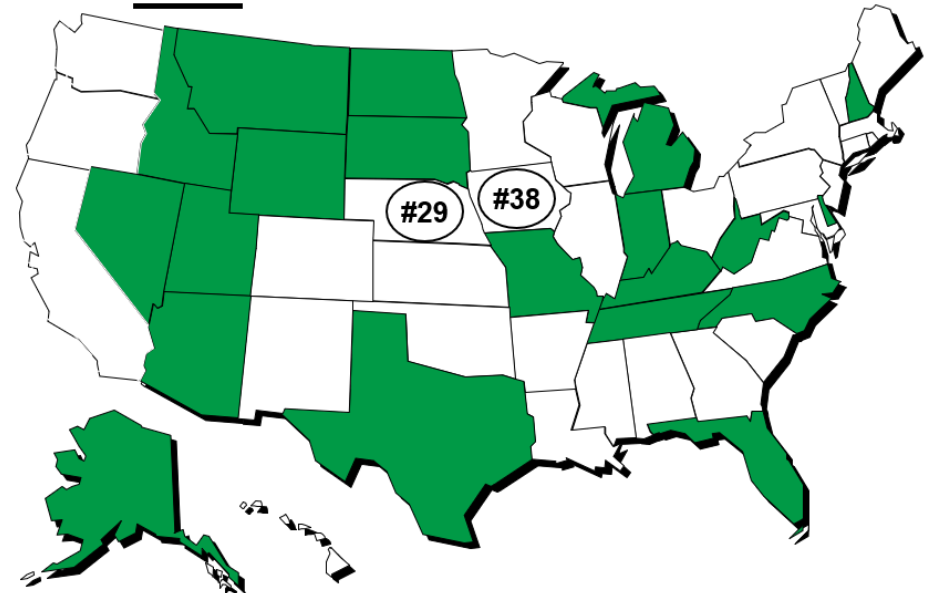


(#1 = Best)

Source: Tax Foundation (Oct. 17, 2017)

2022

20 **Best** State Business Tax Climate Index



(#1 = Best)

Source: Tax Foundation (October 25, 2022)

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# TODAY'S AGENDA



## Nebraska Income Tax Update



## Taxation of Social Security Benefits

### Prior Law: LB 873, (2022)

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



## Taxation of Social Security Benefits

(LB 754) (Operative for 2024 and later)

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



## Federal Retirement Income Exclusion

(LB 754) (Operative for 2024 and later)

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



# NEBRASKA INCOME TAX

## Individual and Fiduciary Rate Change

(LB 754) (Operative for 2024 and later)

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



# NEBRASKA INCOME TAX

## Corporate Rate Change

(LB 754) (Operative for 2024 and later)

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



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

(LB 754) (Operative June 1, 2023)

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

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

(LB 754) (Operative June 1, 2023)

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

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

(LB 754) (Operative June 1, 2023)

### After Election

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

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

(LB 754) (Operative June 1, 2023)

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

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

(LB 754) (Operative June 1, 2023)

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

## Credit for Tax Paid to Another State Expanded

(LB 754) (Operative June 1, 2023)

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

## Adopt the Opportunity Scholarships Act

(LB 753) (Operative January 1, 2024)

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

## Adopt the Opportunity Scholarships Act

(LB 753) (Operative January 1, 2024)

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

## **Adopt the Opportunity Scholarships Act**

(LB 753) (Operative January 1, 2024)

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

## Adopt the Opportunity Scholarships Act

(LB 753) (Operative January 1, 2024)

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

## Child Care Tax Credit Act

(LB 754) (Operative January 1, 2024)

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

## Child Care Tax Credit Act

(LB 754) (Operative January 1, 2024)

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

## Child Care Tax Credit Act

(LB 754) (Operative January 1, 2024)

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

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# TODAY'S AGENDA



## Nebraska Sales Tax Update



## Buyer-Based Exemption

(LB 727) (Operative July 1, 2026)

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

## Agricultural Machinery & Equipment Exemption

(LB 727) (Operative October 1, 2023)

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

## Exemption for Governmental Projects Expanded

(LB 727) (Operative July 1, 2023)

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

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## Nebraska Property Tax Update



## Special Valuation

(LB 727) (Operative June 7, 2023)

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

## Tax Deeds and Notice to Property Owners

(LB 727) (Operative June 7, 2023)

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

## Homestead Exemption

(LB 727) (Operative January 1, 2024)

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

## TIF Financing

(LB 531) (Operative June 7, 2023)

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

## Refundable Income Tax Credit (Property Tax Incentive Act)

(LB 243) (Operative September 2, 2023)

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

## **Refundable Income Tax Credit (Property Tax Incentive Act)**

(LB 243) (Operative September 2, 2023)

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

## Refundable Income Tax Credit (Property Tax Incentive Act)

### How many credits are being wasted?

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

## School District Property Tax Limitation Act

(LB 243) (Operative January 1, 2024)

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

## School District Property Tax Limitation Act

(LB 243) (Operative January 1, 2024)

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

## Property Tax Credit Act

(LB 243) (Operative September 2, 2023)

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

## **Property Tax Credit Act**

(LB 243) (Operative September 2, 2023)

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

## Community College Levy Authority

(LB 243) (Operative September 2, 2023)

### Fiscal Year 2024-2025 and Later:

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

## Community College Levy Authority

(LB 243) (Operative September 2, 2023)

### Fiscal Year 2024-2025 and Later:

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

# **GOVERNORS WORKFORCE DEVELOPMENT WORKING GROUP**

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

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## Iowa Tax Update



## Pass-Through Entity Tax

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

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

## **Withholding on Retirement Income**

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

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

## Employer Child Care Tax Credit

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

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

## Tax Filing Status

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

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

## Settlement Authority

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

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

## Estimation of Tax

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

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

## Property Tax Assessment Fix

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

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

## Levy Limitations

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

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

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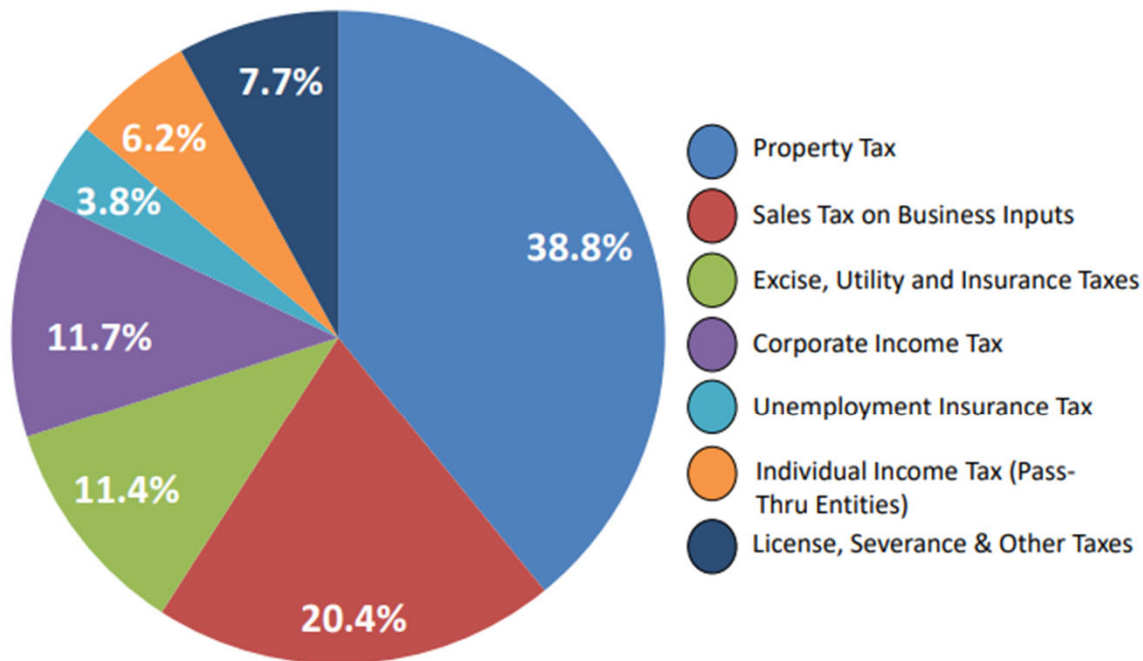


## National Tax Update



# STATE AND LOCAL BUSINESS TAX BURDEN STUDY

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



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

## How Much Do Businesses Pay?

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

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

# U.S. CONSTITUTIONAL CHALLENGE TO IRC 965 INCOME

## Moore v. United States

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

### Issue

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

### Facts

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

# U.S. CONSTITUTIONAL CHALLENGE TO IRC 965 INCOME

## **Moore v. United States**

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

### **Arguments**

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

### **Notes**

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

## Expansion of Combined Reporting

### Legislation Proposed But Not Enacted

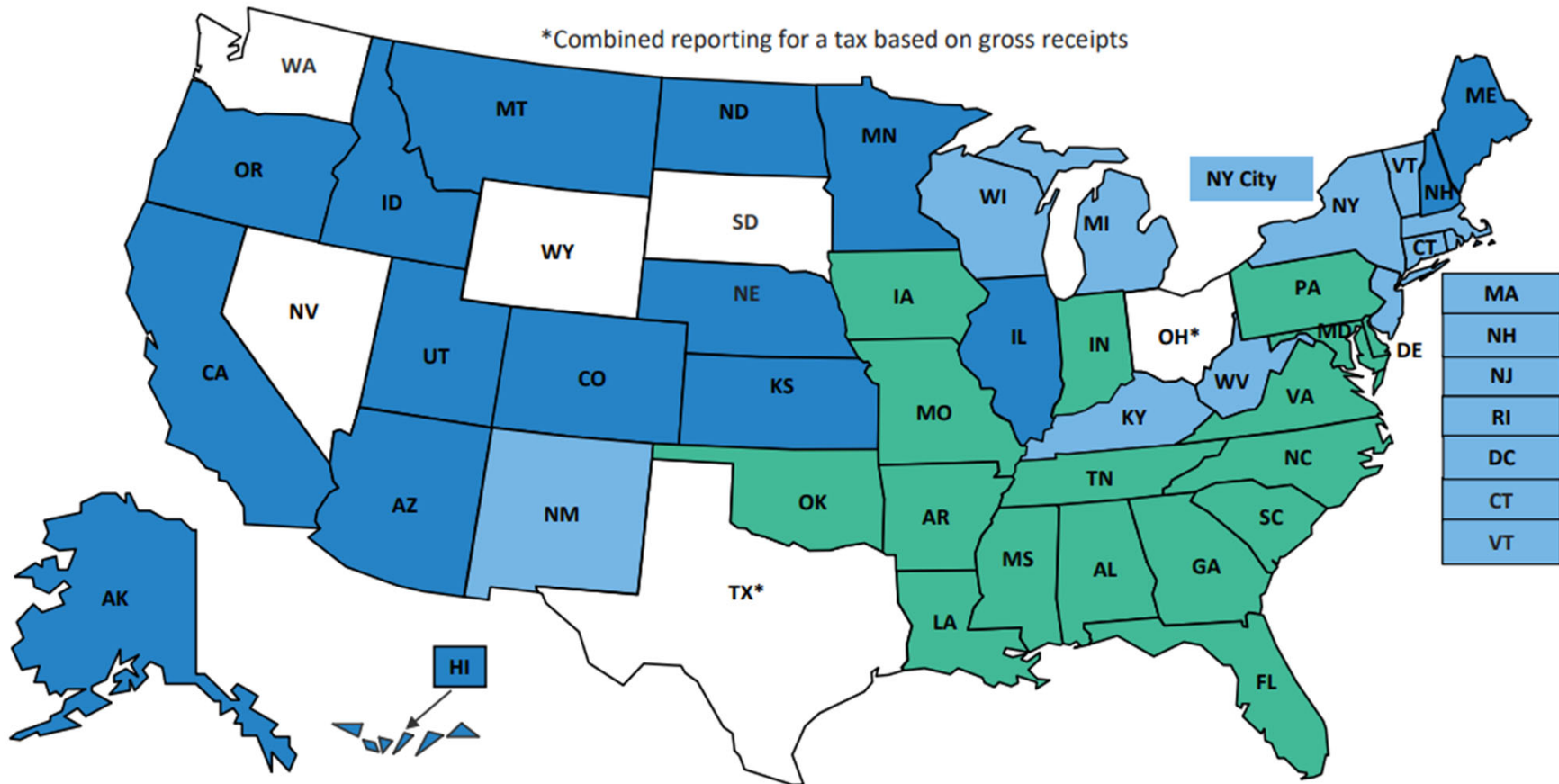
- Florida: Water's Edge
- Maryland: Water's Edge
- Hawaii: Worldwide
- Oregon: Worldwide
- Minnesota: Worldwide
  - Enacted 50% tax on GILTI and certain dividends
- New Hampshire: Worldwide (now Water's Edge)
  - Still pending
- Pennsylvania: Water's Edge
  - Still pending

# COMBINED REPORTING

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

**Source:** Council On State Taxation

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



## **COST Scorecard on State Tax Administration**

(December 28, 2022)

### **Nebraska Grade: B-**

#### Negatives:

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

## **COST Scorecard on State Tax Administration**

(December 28, 2022)

### **Iowa Grade: B-**

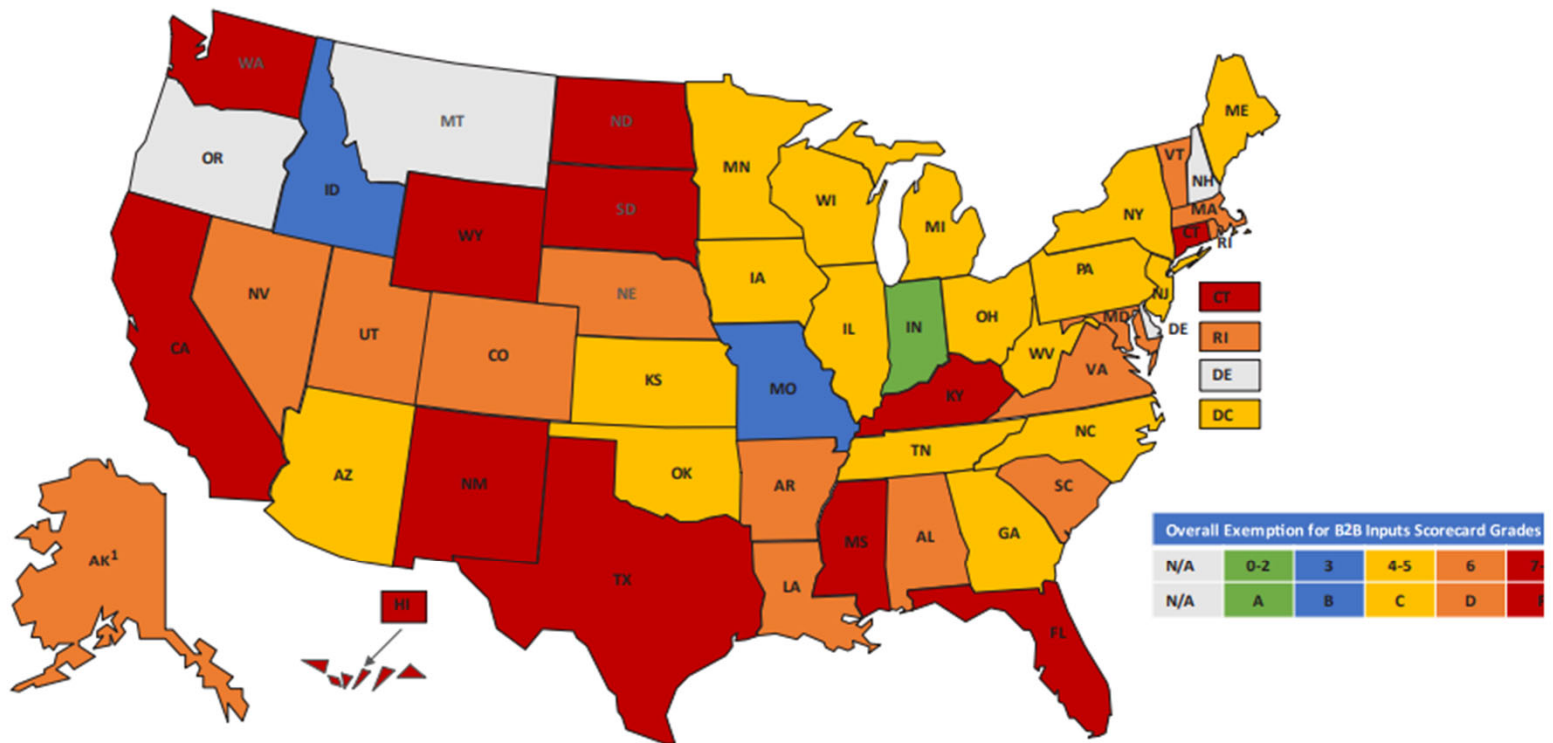
#### Negatives:

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

# COST Scorecard on State Tax Administration

(December 28, 2022)

## Exemption for Business Inputs: Overall Grades



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**Source:** Council On State Taxation (COST)

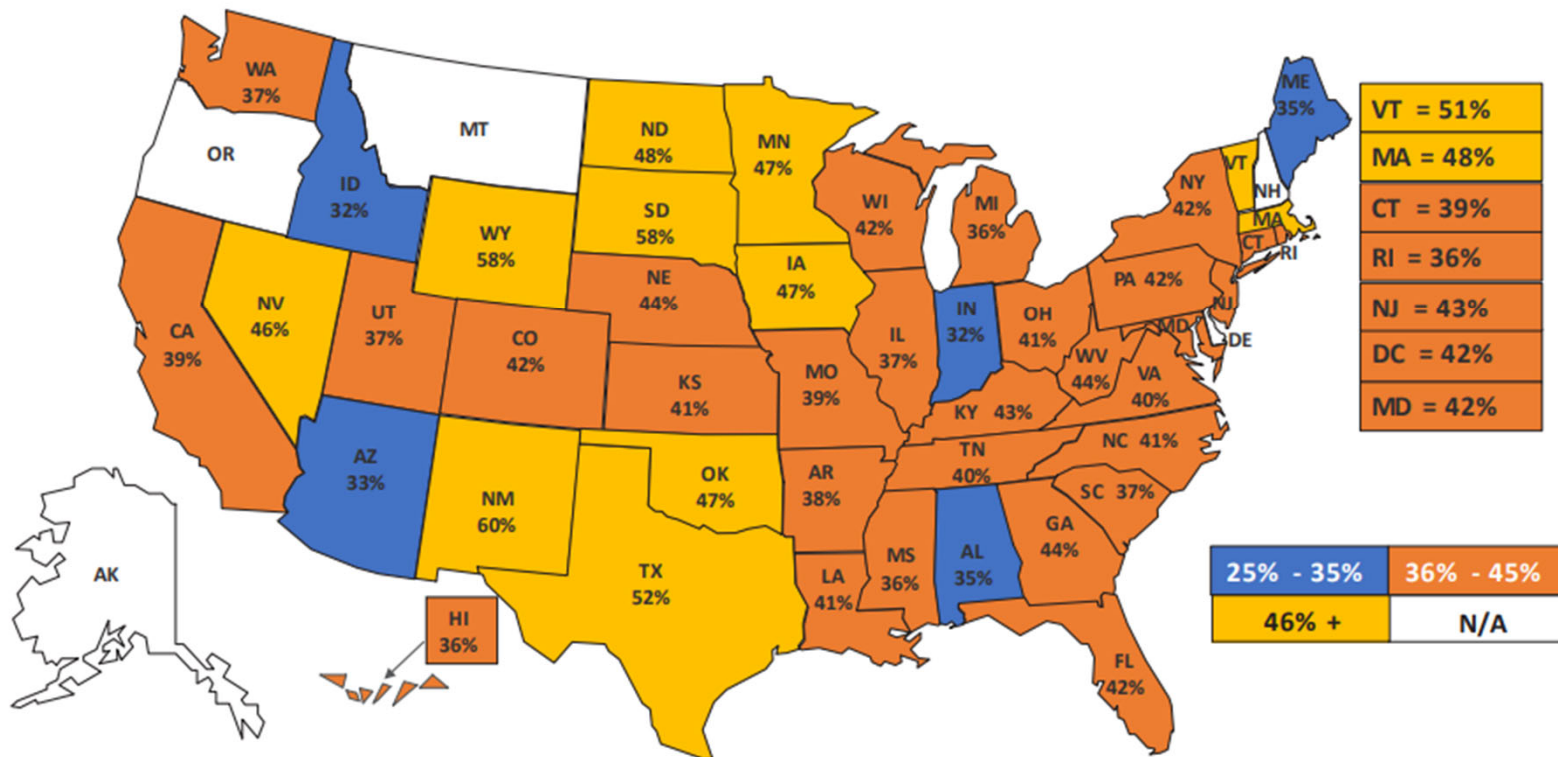
<sup>1</sup>AK - Data is based on local municipalities since Alaska does not have a state-wide sales tax

## COST Scorecard on State Tax Administration

(December 28, 2022)

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

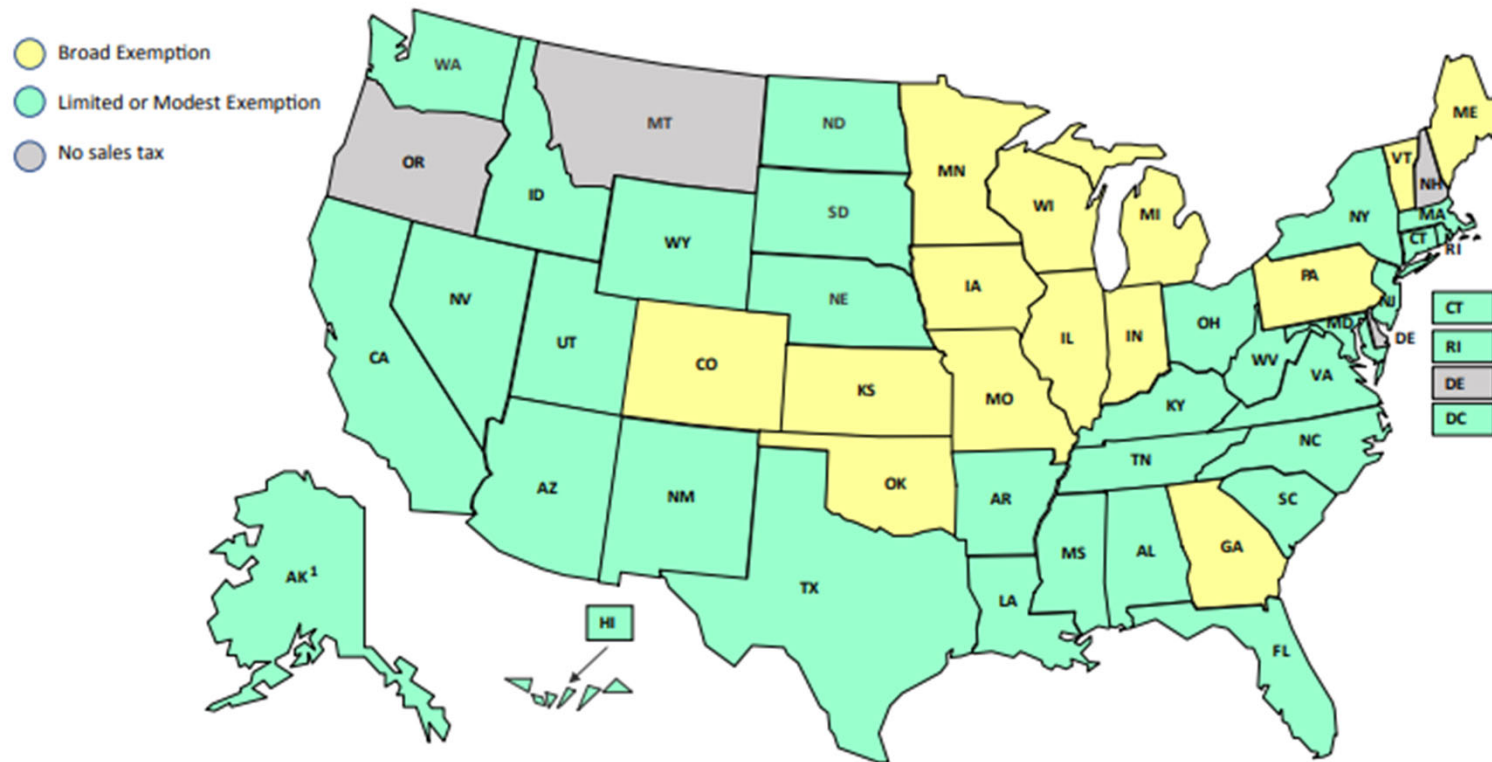
Business Inputs Share of Total Sales Tax Collected



## COST Scorecard on State Tax Administration

(December 28, 2022)

### Breadth of States' Manufacturing Inputs Exemption



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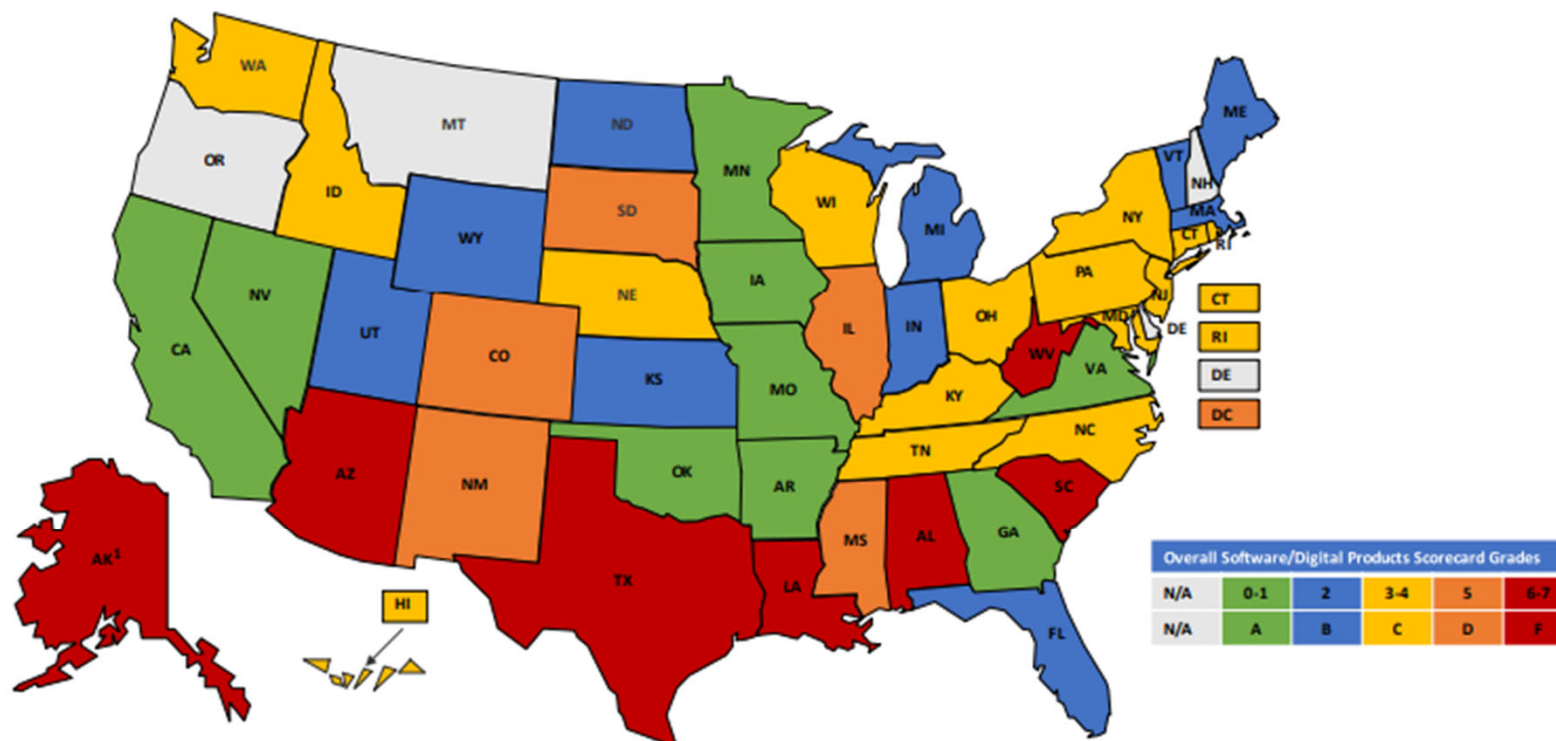
**Source:** Council On State Taxation (COST)

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## COST Scorecard on State Tax Administration

(December 28, 2022)

### Taxation of Software and Digital Products: Overall Grades



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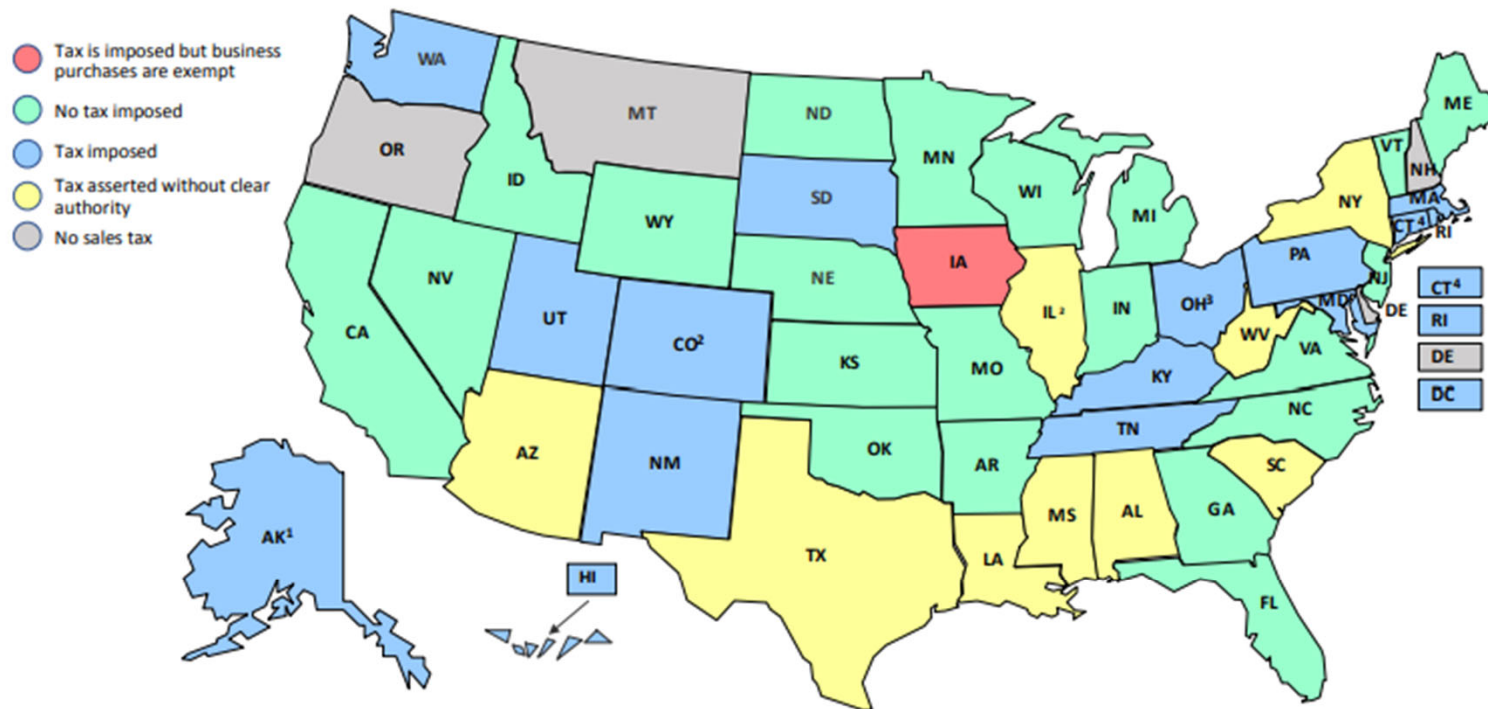
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# COST Scorecard on State Tax Administration

(December 28, 2022)

## Tax on Digital Software Accessed Remotely (SaaS)



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

**Source:** Council On State Taxation (COST)

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

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

<sup>3</sup>OH - Tax only applies to businesses

<sup>4</sup>CT - Electronically delivered software is taxed at 1% rate for businesses

## ADP, LLC v. Arizona Dep't of Revenue

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

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

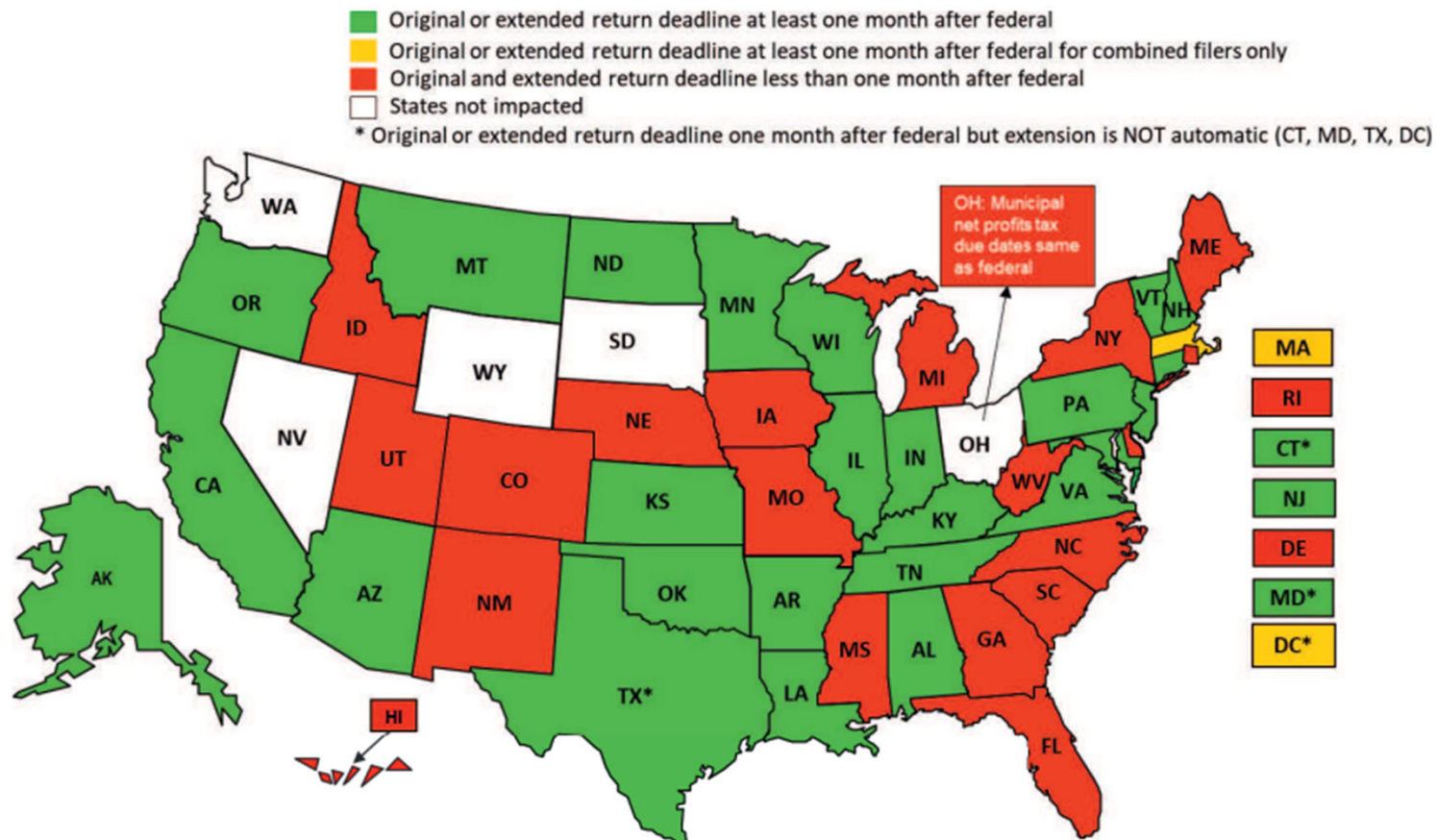
## Digital Advertising and Data Services

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

# TAX ADMINISTRATION

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

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

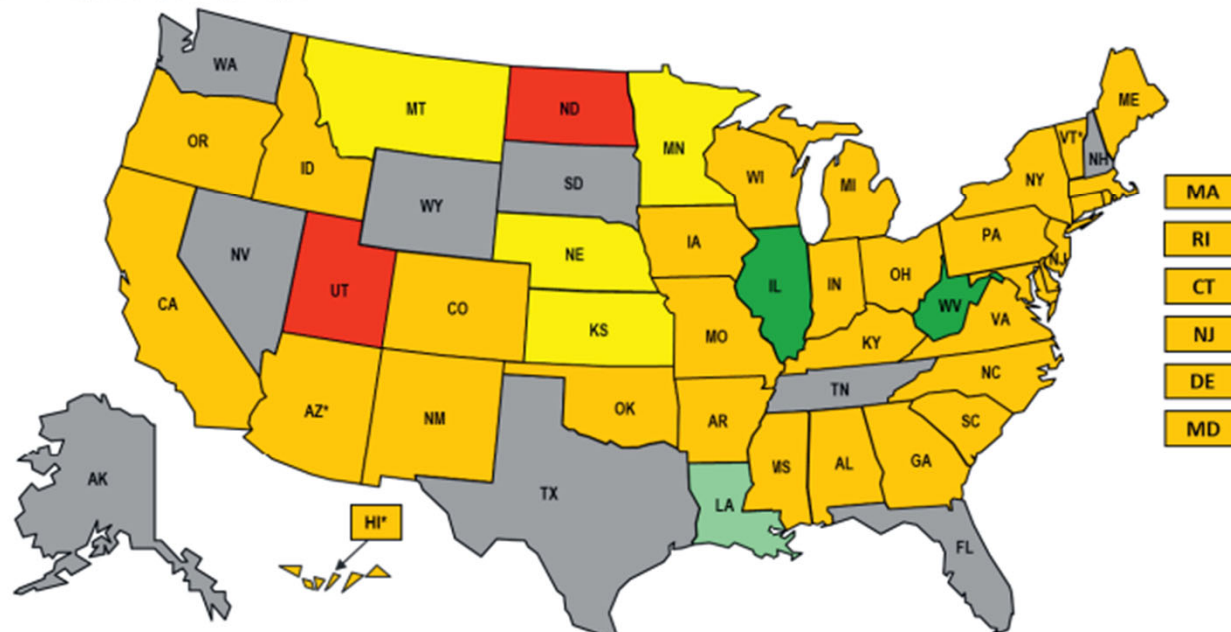


# TAX ADMINISTRATION

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

### 2. Provide a 30 day Safe Harbor for Personal Income Tax Filing Obligations of Traveling Employees and Corresponding Withholding for Employers

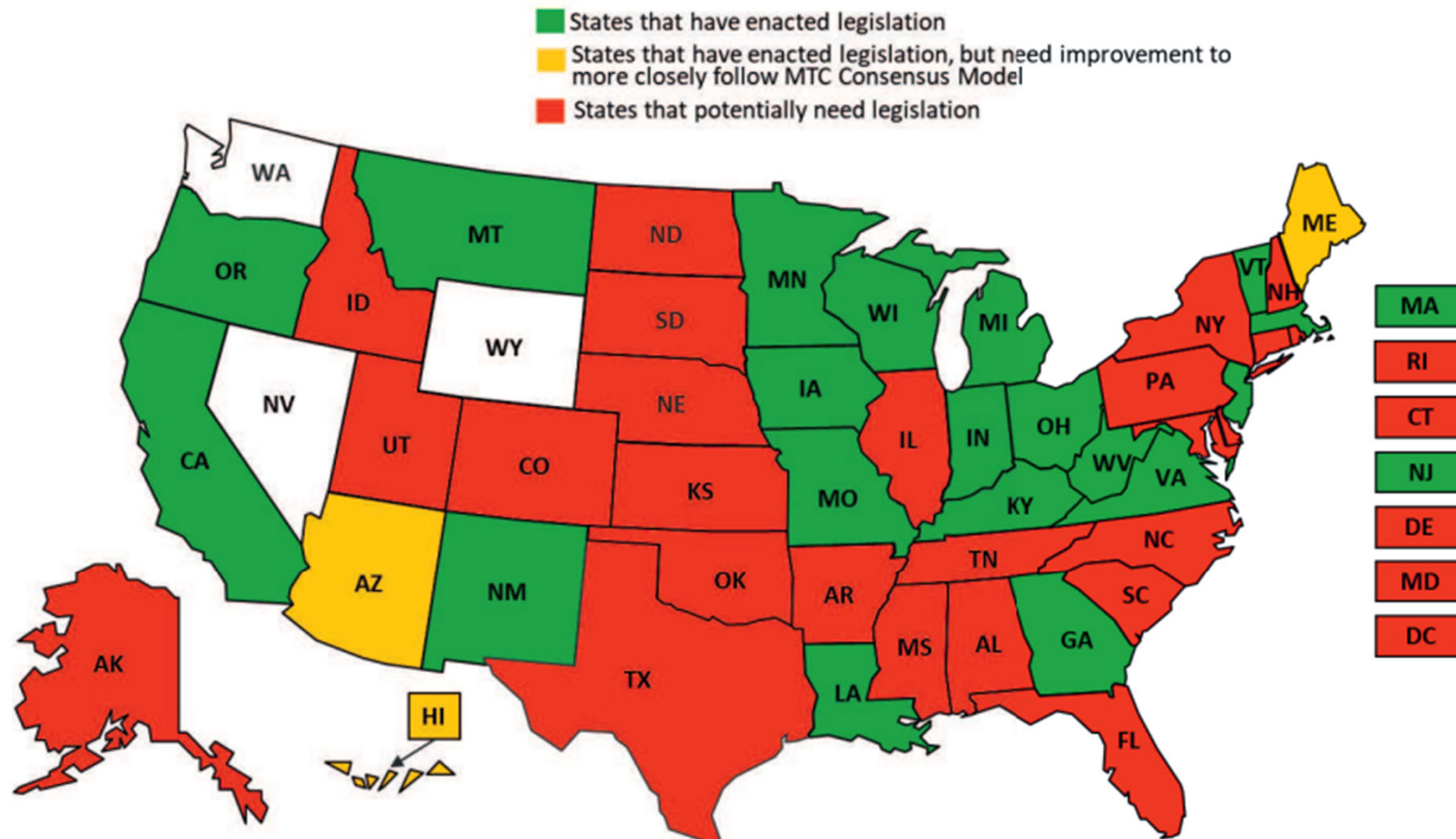
- State has enacted the COST model statute with a 30-day threshold for both filing and withholding
- State has enacted the COST model statute with a 25-day threshold for both filing and withholding
- States that need a 30-day safe harbor for both filing and withholding obligations  
(\*AZ and HI have a 60-day, and VT has a 30-day threshold for withholding only)
- States that need a 30-day safe harbor for filing and withholding obligations and they have enacted the MTC model statute with a 20-day threshold and additional complicated provisions based on wages earned
- No general state personal income tax
- States with legislation pending this year



# TAX ADMINISTRATION

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

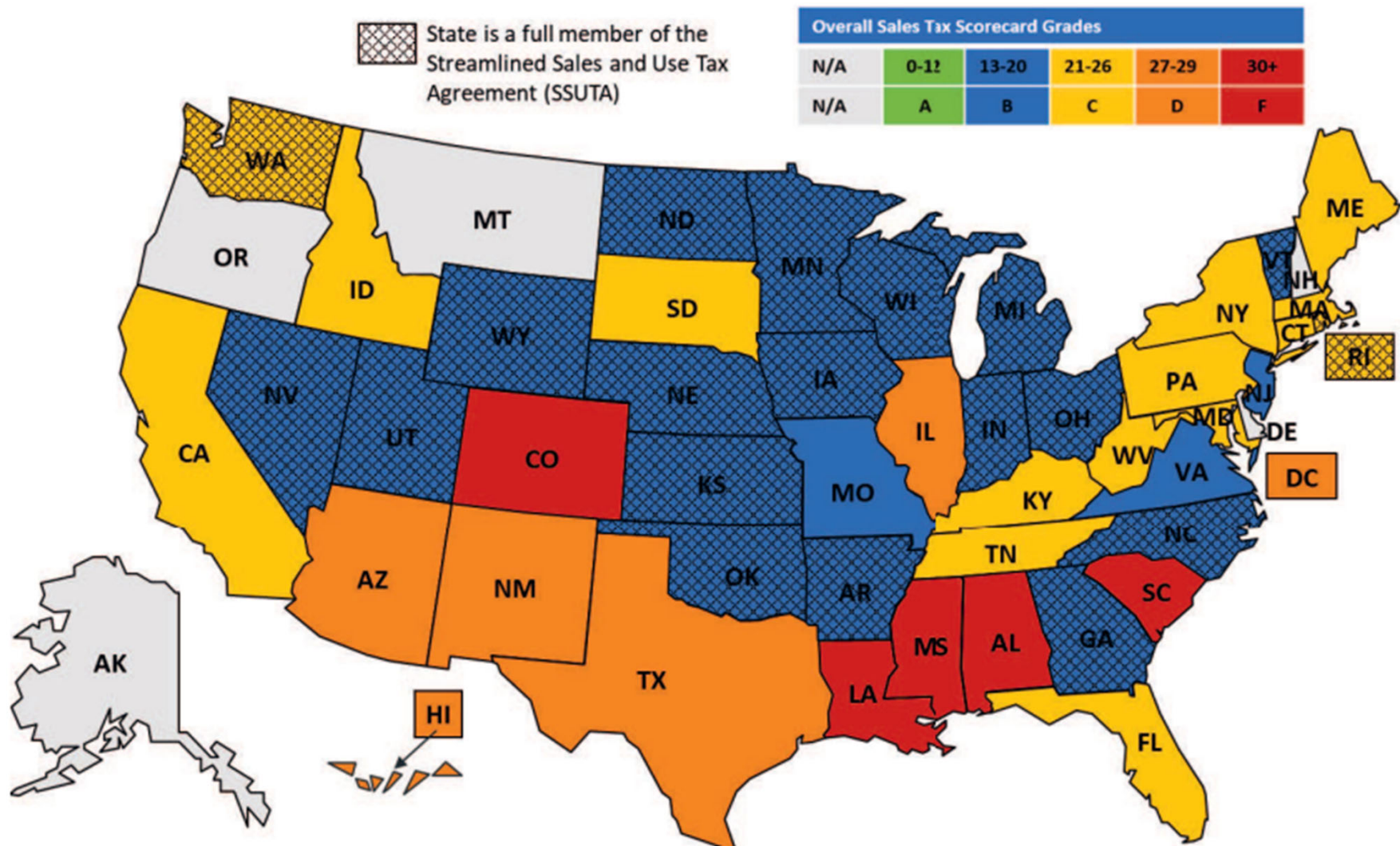
### 3. Improve Taxpayer Reporting of Federal Tax Adjustments By Incorporating the New MTC Consensus Model



# TAX ADMINISTRATION

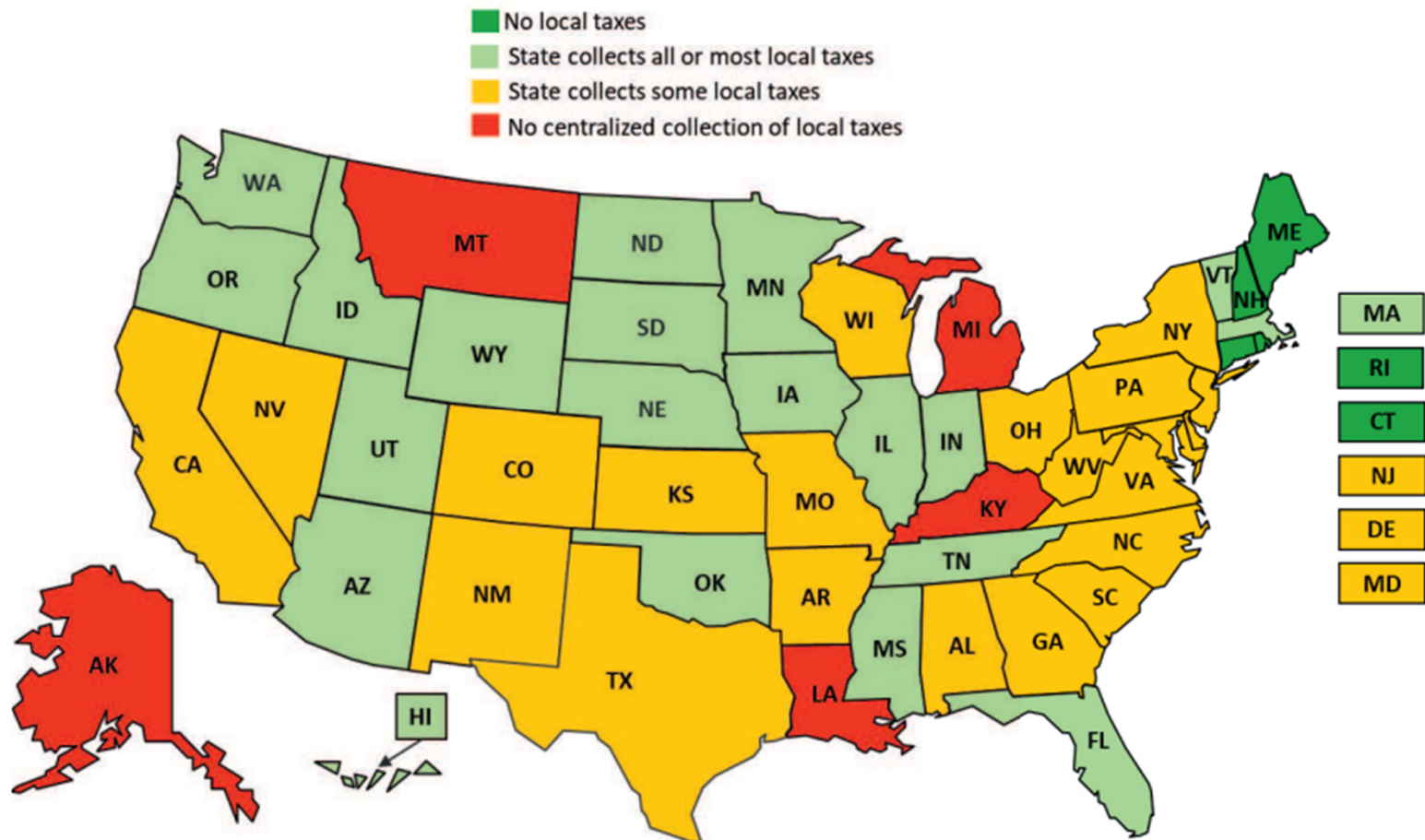
## COST: Five State Tax Policy Changes That Would Modernize Laws & Ease Administration & Compliance

### 4. Participate in the Streamlined Sales Tax Project



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

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



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

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## New Cases



# NEBRASKA INCOME TAX

## Precision Castparts Corp.

## v. Dep't of Revenue

Neb. Court of Appeals

### Background

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

# NEBRASKA INCOME TAX

## Precision Castparts Corp.

## v. Dep't of Revenue

Neb. Court of Appeals

## PCC's Position

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

# NEBRASKA INCOME TAX

**Precision Castparts Corp.**

**v. Dep't of Revenue**

**Neb. Court of Appeals**

**Tax Commissioner Ruling**

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

# NEBRASKA INCOME TAX

## **Precision Castparts Corp.**

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

**Neb. Court of Appeals**

### **Appeal to District Court**

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

### **Appeal to Neb. Court of Appeals**

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

# 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
- Parties settled case in May 2023

# NEBRASKA INCOME TAX

## Welch v. Dep't of Revenue

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

### Facts

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

# NEBRASKA SALES TAX

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

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

### **Background**

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

# NEBRASKA SALES TAX

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

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

### **Tax Commissioner Analysis**

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

### **Case Pending**

#### **Note:**

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

# NEBRASKA SALES TAX

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

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

### **District Court Decision**

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

# NEBRASKA SALES TAX

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

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

### **Background**

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

# NEBRASKA SALES TAX

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

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

### **DOR Arguments**

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

# NEBRASKA SALES TAX

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

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

### **District Court Decision**

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

### **Case Appealed**

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

# NEBRASKA SALES TAX

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

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

### **District Court Decision**

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

### **Case Not Appealed**

- NDR did not appeal decision

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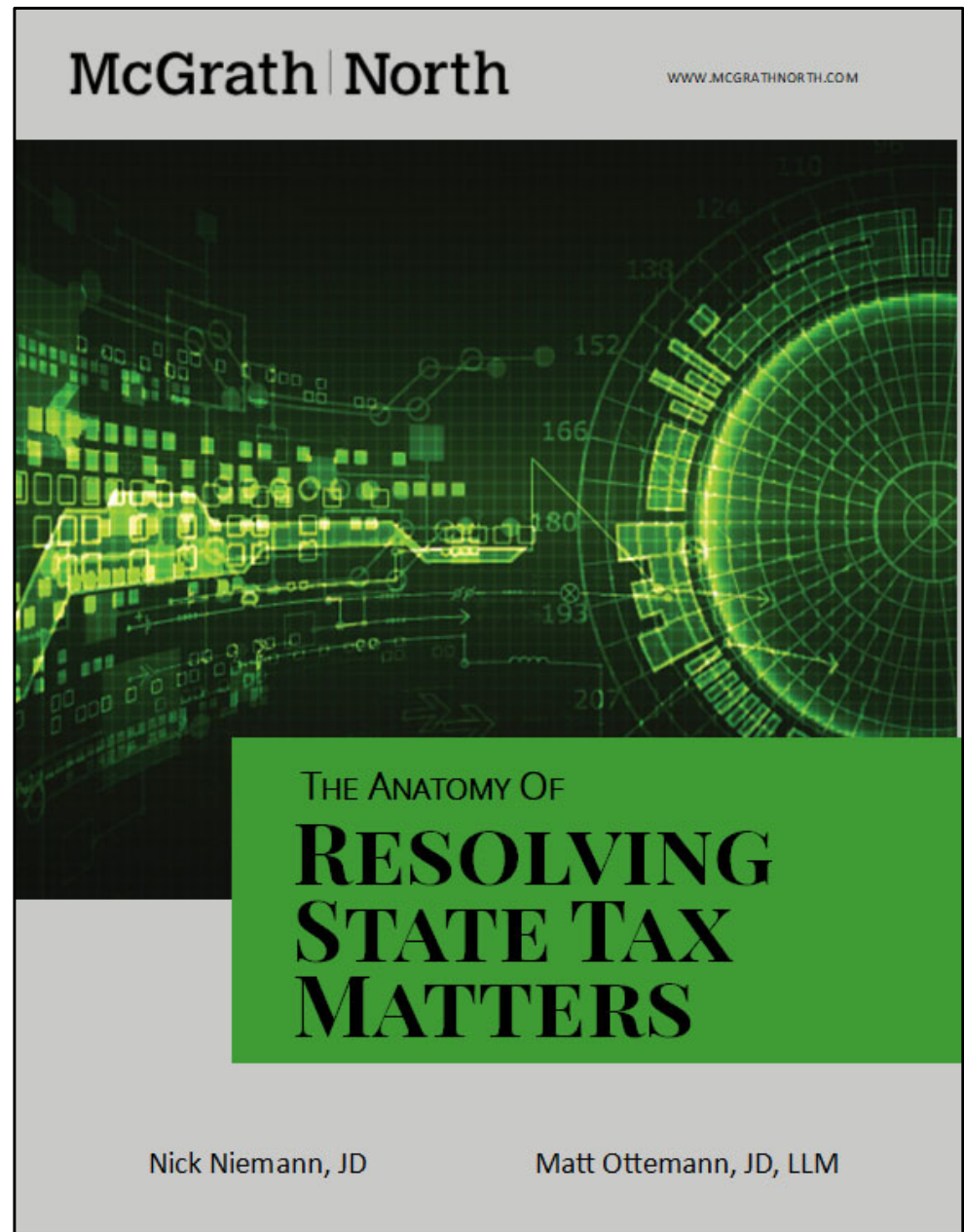
# TODAY'S AGENDA



## 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

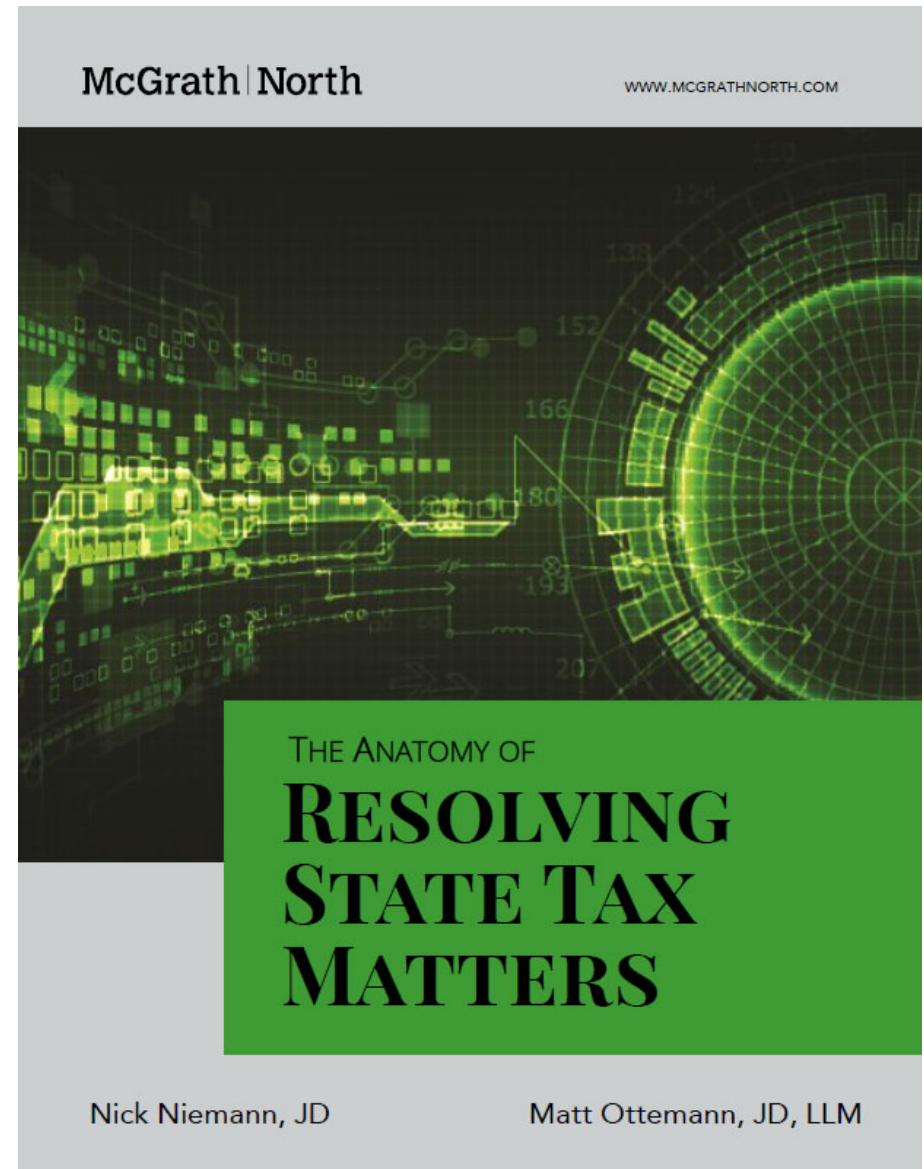
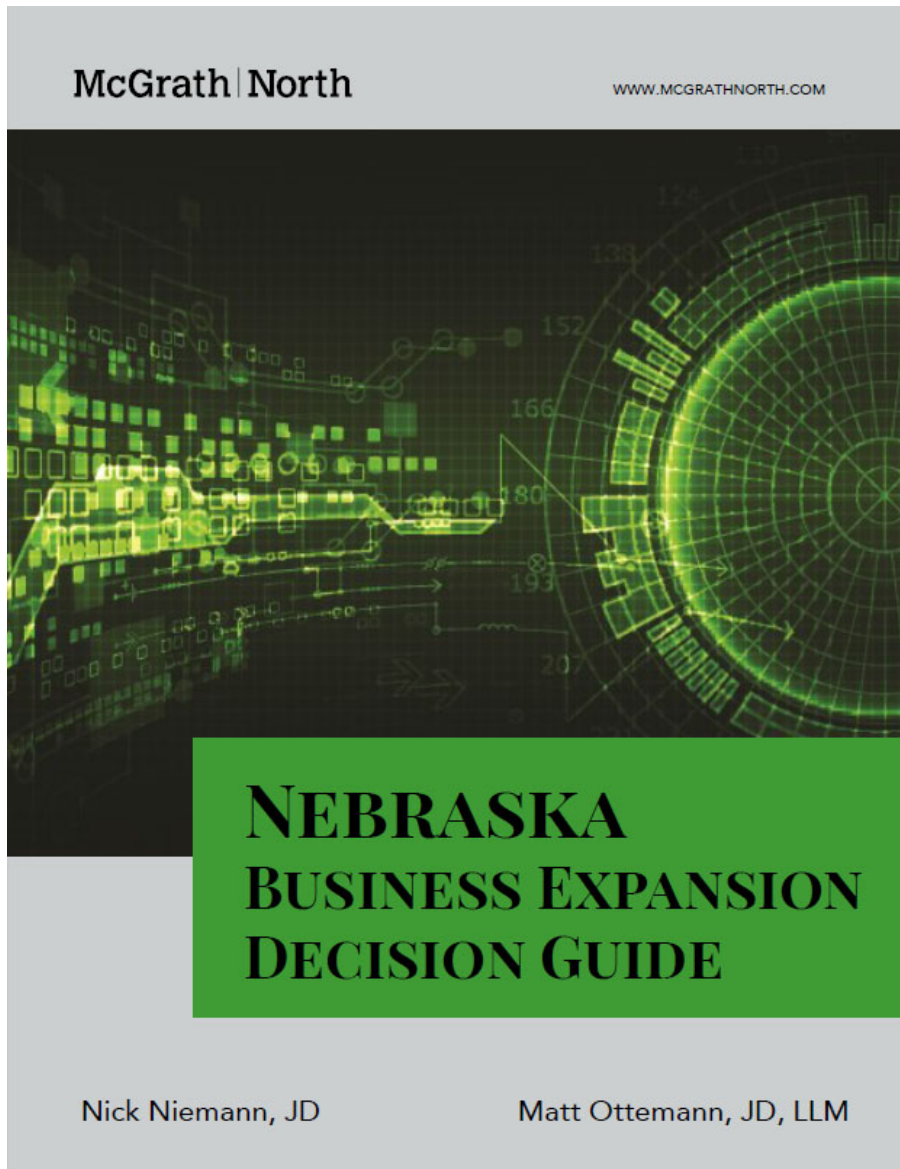
### 11. Resolving Tax Disputes

- 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!



**Nick Niemann and Matt Ottemann**

**[nniemann@mcgrathnorth.com](mailto:nniemann@mcgrathnorth.com)**

**[mottemann@mcgrathnorth.com](mailto:mottemann@mcgrathnorth.com)**

**402-341-3070**

**State and Local Tax and Incentive Attorneys**

**McGrath North Law Firm**

**[www.NebraskaStateTax.com](http://www.NebraskaStateTax.com)**

**[www.NebraskaIncentives.com](http://www.NebraskaIncentives.com)**

# Nick Niemann

- Partner - McGrath North Law Firm
- Member
  - American Bar Association – Section of Taxation
  - State and Local Taxes Committee
  - 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.
- Contact Info: [nniemann@McGrathNorth.com](mailto:nniemann@McGrathNorth.com) Website: [www.McGrathNorth.com](http://www.McGrathNorth.com)  
(402) 633-1489 [www.NebraskaStateTax.com](http://www.NebraskaStateTax.com)  
[www.NebraskaIncentives.com](http://www.NebraskaIncentives.com)



# Matt Ottemann

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# State Tax, Incentives And Economic Development Update And Impact

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