Platte INSTITUTE

Nebraska's Path to the Top Ten

Four More Years of Tax Reform

NOVEMBER 2023

6910 Pacific Street, Suite 216 | Omaha, NE 68106
402.452.3737 | platteinstitute.org

Introduction

Tax policy analysts in Nebraska used to tell a joke about tax relief in Nebraska, saying you probably won't get it. Now, after two legislative sessions that resulted in $3,000 of tax relief per Nebraska household, tax policy comedians have to come up with new material.

The comedic era has been replaced by Nebraska's competitive new era, and the focus has turned to the content of future tax reforms. Now, Nebraska policymakers face a challenging question. What should come next for a state that delivered such significant tax reforms in so little time?

Nebraska is not alone in facing this question. Leading tax reform states like North Carolina have shown that transformational tax reform should be followed up with spending discipline and an iterative, annual approach to ongoing tax reforms. In the decade since North Carolina's first significant tax reforms, the Tar Heel State has iteratively improved its tax code. Furthermore, Nebraska is joined by states like Iowa, West Virginia, Mississippi, and Arizona, all of whom overhauled their income taxes in recent years, and all of whom must chart a course of ongoing tax reform.

Nebraska's unanticipated revenue surpluses led to rapid tax reforms in 2022 and 2023. Lawmakers enjoyed a target-rich tax reform environment and delivered transformational reforms to Nebraska's income tax, along with substantial relief to Nebraska property tax payers.

Now, Nebraska must build upon tremendous momentum to continue tax reform. Yet policymakers cannot assume the recent gusher of state revenue growth in Nebraska will persist. Like other states that have been cutting taxes against revenue growth, Nebraska lawmakers should be ready to channel the state's momentum into structural reforms in case revenue grows less rapidly than in recent years.

Whether or not rapid revenue strength continues, Nebraska should advance towards a top 20 tax code, and then, towards a top 10 tax code. That means fixing the structure of the state's tax code even as rate reductions phase in over the next five years.

Nebraska's situation is faced by several other states. The recommendations developed in this document, while targeted for Nebraska, apply across dozens of other states that are similarly situated on a given tax policy. All states should build upon the tax revolution of 2020-2023, and for many, that means advancing structural tax reforms in 2024-2028.

So, what should come next after Nebraska's two-year tax transformation?

Four more years.

Nebraska's Two-Year Tax Transformation

Nebraska's policy leadership converted the state's 2021-2023 surpluses into rapid tax reforms in 2022 and 2023. Lawmakers leveraged these unanticipated tax revenues against a target-rich tax reform environment. As a result, Nebraska's income tax was substantially reduced and property tax relief was also delivered.

Nebraska's tax code stood in the way of success for generations, creating a barrier to growth and opportunity. The Cornhusker State's tax code has ranked as one of the least competitive in the region because of high income tax rates and a burdensome property tax. But now, these headline problems have been addressed. Nebraska's top income tax rate is scheduled to fall from 6.84% to 3.99%, and the top corporate rate is scheduled to fall from 7.25% to 3.99%. Social Security income was excluded from the income tax base.

Property tax relief enacted in 2022-2023 included the repeal of the community college property tax, which is approximately 5.5% of the total property tax burden. Credits provided under the Property Tax Credit Act and Property Tax Incentive Act were generously expanded to offset rising property taxes. Finally, a soft cap was placed on school property tax levies which requires a supermajority vote of a school board in order to raise revenues by more than statutorily allowed amounts. Once fully phased in, the reforms add up to $2.3 billion of tax relief per year. That comes out to $3,000 of tax relief per Nebraska household.

Nebraska's uncompetitively high income tax rates have been brought to reasonable levels, and more property tax relief is being deployed each year. Now, lawmakers should focus on spending controls, ensuring tax relief reaches taxpayers, and updating Nebraska's tax code to reflect the 21st century economy.

Spending Reform Fuels Tax Reform

Tax reform is a product of spending restraint. Nebraska's tax reforms in 2022 and 2023 were made possible because of spending restraint leading up those years, and because revenues unexpectedly shifted upwards after the pandemic. Nebraska's state revenue surge was not a one-off increase that went away after a year or two. Across the country, state revenues ratcheted up and held at a higher level in a permanent increase to the revenue baseline, with revenues growing by more than 16% in both 2021 and 2022 across the country. Lawmakers were able to use this structural increase in revenues to reduce tax rates.

The first fiscal reform objective for Nebraska policymakers is to secure the transformational tax reforms enacted in 2022 and 2023. Nebraska must maintain spending discipline in coming years in order to lock in the next five years of tax rate reductions that have already been put into law.

One of Governor Pete Ricketts' key fiscal achievements was taming the growth rate of Nebraska's state spending. Upon leaving office, Ricketts noted that the Cornhusker state averaged a 2.8% spending growth rate per annum, while revenues grew by 4.5% per year.[1] Ongoing tax reform is possible when spending growth is held consistently below revenue growth.

For example, suppose Nebraska's general funds budget is roughly $5 billion per year. A revenue growth rate of 4.5% would mean collections would increase by $225 million per year. If state spending grows by only 2.8%, that means outlays increase by only $140 million per year. The $85 million difference between revenue growth and spending growth becomes a structural surplus that can be used to cut taxes.

Governor Jim Pillen's first budget called for spending increases of 2.2% per year, a lower spending growth rate than even Ricketts' disciplined budgeting. And even against his spending restraint, Gov. Pillen vetoed spending growth in the budget, arguing that "Hard-working taxpayers are demanding that their money

be returned."[2] Indeed, the best way to deliver relief to hard-working taxpayers is to consistently keep spending growth below the rate of revenue growth. If, for example, Gov. Pillen experiences Ricketts-era revenue growth of 4.5% while keeping spending growth at 2.2%, he will have $110 million in new surpluses each year to deploy for tax relief.

Furthermore, Governor Pillen is dedicating resources to find significant savings in state spending. Pillen's administration has engaged in a four-year contract with an outside consultant to find "breakthrough savings" through 25% efficiency gains through cost savings and quality improvement. The contract calls for savings of 3% in the first fiscal year and 6% in the second fiscal year, which would provide over $300 million of annual, ongoing savings.[3] Such efficiency gains, if achieved, would put Nebraska on an even stronger fiscal footing.

Governor Ricketts' spending record creates the parameters for a spending rule that can be built upon. While spending grew by 2.8% under Gov. Ricketts, inflation as measured by the consumer price index ran at a rate of 3.1% per year.[4] Nebraska's population growth was 0.75% per year.[5] In the most generous scenario, spending growth should be kept below the combined growth of inflation plus population. However, Ricketts proved that state spending growth can and should be kept below the rate of inflation irrespective of population growth, and so spending growth below inflation should be Nebraska's goal. If inflation runs unusually high, spending growth should be kept under control in order to unlock tax relief for Nebraskans who are hit in the pocketbook with high prices.

Texas Governor Greg Abbott, who came into office in 2015, has adhered to a similar spending program as the Ricketts-Pillen record. As a result, Texas codified a spending rule in 2021 in Senate Bill 1336. This spending rule allows spending to grow by no more than the combination of inflation plus population.[6]

- Codify state spending growth rule below inflation plus population

It is critical for Nebraska lawmakers to continue the practice of spending discipline. And it would be even better to codify a spending rule to cap spending growth from one budget cycle to the next to no more than inflation plus population.

Target 2024

Nebraska's 2023 tax reforms will phase in over the next five years, which means that Nebraska's tax code will continually improve each year so long as state government maintains disciplined spending controls. Spending discipline is especially important in 2024 and 2025 as the revenue impact of the tax reforms becomes more certain.

Nonetheless, lawmakers should continue to advance tax and spending reforms in the meantime, and the best time to begin is in 2024. In fact, two key forms Nebraska should achieve in 2024 carry no implications for state revenues. Nebraska should reform property taxes, repeal the state's inheritance tax, and provide a safe harbor for remote workers who visit Nebraska.

Property taxes

Nebraska homeowners are calling for relief after skyrocketing property valuations across the state. And Nebraska is not alone in facing this problem. Policymakers across the country are proposing solutions to provide relief in the face of soaring property tax bills.

Fortunately, Nebraska has several policy levers already in place that can be amended and enhanced to provide property tax relief. The correct approach for Nebraska is to cap property tax levies and to simultaneously buy down property tax burdens. Nebraska can do both in a straightforward manner. In contrast, freezing property tax rates would fail to protect taxpayers in the event of soaring property valuations, while capping valuation increases would result in significant distortions to the property market over time, and would fail to protect taxpayers against increased levy rates.

Levy limits constrain the overall growth of property tax revenues within a taxing jurisdiction. In effect, when valuations go up, a levy limit forces levy rates to go down to offset the valuation increase. Thirty-four states have some form of tax levy limit, yet many have little effect in actually restraining property taxes.[7] Nebraska can redesign its current laws to make an ideal, two-tiered levy limit to serve as a model for the nation. The lower threshold cap should be a softer cap imposed by the Truth in Taxation process, and the higher threshold cap should be a harder cap for levy increases beyond an allowable percentage growth in the levy.

Upgrade Nebraska's Truth in Taxation Law

Nebraska's Truth in Taxation law is a form of a property tax levy limit. The law was enacted as Nebraska's Property Tax Request Act in 2021, and brought Truth in Taxation to Nebraska's counties, cities, school districts and community college districts. [8]

Nebraska's Truth in Taxation law contains two key elements: a property tax levy limit that triggers a public transparency process, and then the public process itself. The levy limit is the amount the property tax levy can increase before the public transparency process is triggered. The levy limit is defined as 2% plus "real growth," which includes property improvements, annexations, and other changes that increase the amount of taxable property value within a local jurisdiction. Local jurisdictions that exceed the allowable growth percentage must engage in a public transparency process that includes informing every property owner of their pending property tax increase, and holding public hearings to present the justification for such tax increases.

Nebraska should make two key changes to the current law.

- First, the allowable growth percentage should be scrapped so that the Truth in Taxation public transparency process should applies for the first dollar of levy increase. Utah and Kansas each have a Truth in Taxation law, and in those states, the process kicks in if the levy is increased by a single dollar.
- Second, the truth in taxation process should occur earlier in the budget cycle so that it impacts the budget rather than occurring after spending decisions have already been made. The process should coincide with budgetary decisions that would result in a tax increase.

Nebraskans have learned that Truth in Taxation is a powerful tool to have on the books and one which more states should adopt. The Nebraska law should be amended to extend transparency into all levy increases, and the timing should be adjusted so that Truth in Taxation is a part of a budget process, not an after affect.

Harden and Extend the Soft Property Tax Cap for School Districts

Nebraska's School District Property Tax Limitation Act was enacted in 2023 in LB 243. The new levy limitation applies to school districts, restraining them from raising property taxes beyond certain allowable percentages. The limit can be overridden by a supermajority of the school district board. Several school boards have overridden their levy limit during their first budget cycle.

The School District Property Tax Limitation Act should be hardened and extended to other taxing jurisdictions. While the Truth in Taxation transparency process should apply to the first dollar of a property tax levy increase, the hardened levy limitation law should apply after an allowable growth percentage. For example, the levy limit can kick in for a property tax proposal that would increase the levy by more than the combination of inflation plus population growth of the taxing jurisdiction.

Instead of allowing a local government board to decide to override its own levy limit, a levy increase beyond the allowable growth percentage should only be permitted if it is approved in a voter referendum, which can occur shortly after the Truth in Taxation hearings. Section 77-3444 of Nebraska's state code already provides for a property tax increase referendum for schools that seek to raise taxes above a certain tax rate.[9]

This statute can be amended to add language requiring that property tax rates fall to offset valuation increases, and requiring voter approval for any tax increase beyond a defined levy limit. This reform would mirror Texas' HB 2[10] and HB 3[11], enacted in 2019, which require tax rates to fall in order to keep the overall tax levy capped, and voter approval to override the levy cap. After all, the best way to ensure local control is to give local voters a true stake in decisions about the taxes and services that impact their properties. In addition, this harder cap should apply to all jurisdictions, not just school districts.

- Harden the Property Tax Limitation cap by having tax rates automatically roll back when valuations increase, and requiring approval via voter referendum for any levy increase greater than inflation plus population.
- Extend this hardened cap beyond school districts to cover all taxing jurisdictions.

This two-tiered approach to property tax levy limits would create a new ideal for state property tax controls. The transparency provided by Truth in Taxation would flow directly into the referendum vote when local officials want to exceed both of their levy limit thresholds. And most importantly for Nebraska taxpayers, this system would ensure that if valuation go up, tax rates will go down, solving the problem that currently afflicts taxpayers.

Transform Property Tax Incentive Act Credits Into a 30% School Property Tax Cut

Nebraska lawmakers may be forced to revisit the state's Property Tax Incentive Act, which will provide $650-$700 million in credits by the end of the decade. The Nebraska Property Tax Incentive Act created a property tax credit that is refundable on a taxpayer's income tax return against a portion of school district property taxes paid.

The total value of the credit was $548 million in 2023. Unfortunately, as of mid-September 2023, $128 million worth of the credit was left unclaimed, or about 23 percent of the total credit value. In 2022, approximately $200 million in credit value was unclaimed, or about 40 percent of the $500 million of credits.[12]

The fundamental challenge with the refundable tax credit under the Property Tax Incentive Act is that it is taxpayer active, meaning that taxpayers must engage in a paperwork process or hire an accountant to do the same in order to help them get tax relief. A better solution would look more like the credit created under Nebraska's Property Tax Credit Act, a program that provides a more direct form of tax relief. Funds distributed to counties are then applied by the county directly to property tax bills.

The dollars allocated to tax relief under the Property Tax Incentive Act should be sent to school districts proportionate to each district's share of statewide taxable property value. This distribution of funds would mirror the distribution of credit dollars under the Property Tax Credit Act. School districts must then apply that revenue received from the state towards levy reduction on a dollar-for-dollar basis. Then, property tax revenues could be raised by no more than 3% after the levy reduction. This would result in a one-time school property tax cut of 25%-30%. Going forward, the school district would then be subject to the two-tiered property tax levy restraint described in this section.

- Turn Property Tax Incentive Act funds into a permanent 25-30% reduction in school property tax levies, after which levies would be capped.

Even within the Property Tax Incentive Act, lawmakers transformed the credit for community college property taxes paid into direct relief by eliminating community college property taxes altogether, shaving 5.5% off property tax bills statewide. Turning the school district credit into direct school district aid will simplify Nebraska's tax code and keep taxpayers as economically well-off as they would be with the credit. This change would eliminate the problem of a taxpayer-active refundable tax credit that results in hundreds of millions of dollars in unclaimed tax credits and lost tax relief each year.

November Bond Elections

The property tax limit in Nebraska's Property Tax Request Act, also known as Nebraska's Truth in Taxation law, excludes property taxes levied to pay bonds. "The amount to be levied for the payment of principal or interest on bonds issued or authorized to be issued by a school district," does not fall under Truth in Taxation. Similar language excluding bond payments from tax limits exists elsewhere in Nebraska law. This is a normal feature of tax levy limits. However, bonded debt cannot become a workaround to tax limits.

Nebraska allows school bond elections to run in May, which results in low turnout votes that can be dominated by those who favor more spending. For example, two Omaha area school bond elections in spring 2023 resulted in overwhelming 2-1 votes in favor issuing new bonds to allow hundreds of millions in new spending.[13] These bond elections should only be allowed in November, and should be subject to a Truth in Taxation transparency process that informs taxpayers of the impact of the new bonds on their property tax bills.

- Require bond elections to be held in November and subject them to the Truth in Taxation notification and hearing process.

Iowa lawmakers faced a similar challenge and solved it in the spring of 2023. Nearly a week before the Omaha-area bond elections were held, Iowa Governor Kim Reynolds signed into law HB 718, a model for Nebraska and other states to adopt.[14] The new Iowa law requires that all local bond elections be held on a November ballot, thereby guaranteeing higher turnout and broader voter participation in financial decisions. November bond elections provide greater fiscal transparency and accountability and can serve to tighten up the bond loophole in a property tax levy limit.

Inheritance Tax

Founding Father Benjamin Franklin admonished that nothing can be certain in this life except death and taxes. That may be so, but they ought not be packaged together.

Nebraska is one of seventeen states that still imposes a death tax, which can come in the form of an inheritance or estate tax. Of those, only six impose an inheritance tax, including Nebraska, Iowa, Kentucky, Pennsylvania, New Jersey, and Maryland.

Unlike other states, Nebraska's inheritance tax generates revenues for county governments, making repeal a stickier issue. Yet inheritance tax revenue is especially unstable at the county level and an inappropriate source of funding for county programmatic spending.

Not only does an inheritance tax fail to provide steady revenues, it does not fit in a modern tax code. Tax mobility is higher than ever and taxpayers can change states to avoid placing a tax burden on their loved ones after death.

Estate and inheritance taxes were originally incentivized by favorable federal treatment that provided taxpayers with a credit for the value of their state death taxes for use

STATES THAT HAVE AN INHERITANCE TAX

against their federal tax burden. Yet in 2005, that federal provision was repealed, setting off a wave of states that eliminated their death taxes.[15] It's time for Nebraska's inheritance tax to join those others in the dust bin of state tax history.

- Repeal Nebraska's inheritance tax in the 2024 legislative session; or
- Send the question of inheritance tax repeal to Nebraska voters in November 2024.

Nebraskans polled on the issue overwhelmingly support repeal of the estate tax. Seventy-eight percent of Nebraskans would eliminate the tax if given the choice.[16] And while counties resist the prospect of losing a revenue source, the entire state loses out on lost economic activity and other forms of foregone tax revenues when a family or business relocates to avoid Nebraska's inheritance tax, or when a business is broken up to pay for it.[17]

Income Tax Treatment of Remote workers

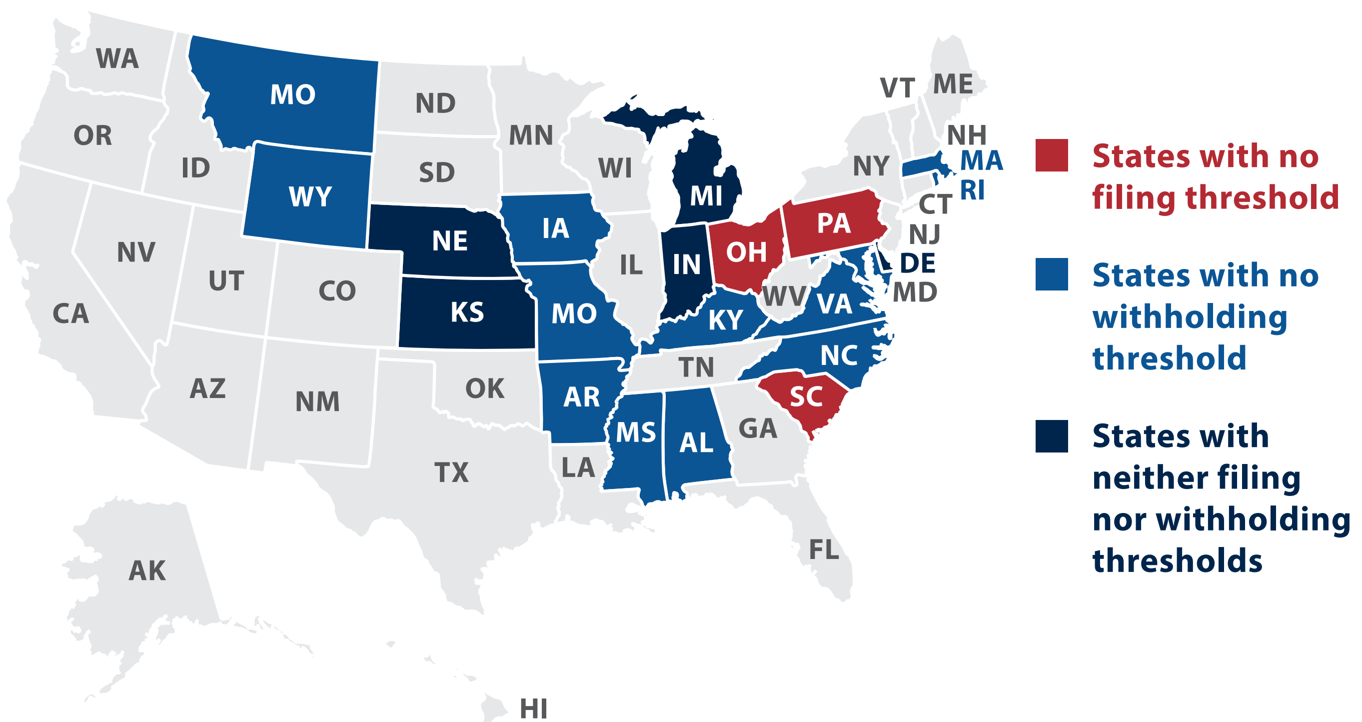
Millions of Americans switched to remote or hybrid work during the coronavirus pandemic, shining a light on how states treat temporary remote workers for tax purposes. Nebraska ranks second-worst in the country for unduly taxing remote workers according to an analysis by the National Taxpayers Union.[18]

Nebraska law has neither a filing nor a withholding threshold, meaning that taxpayers must file a tax return with the state for a single work day of spent in Nebraska, and businesses must withhold income tax for the same. Nebraska is one of five states with neither a filing threshold for individuals nor a withholding threshold for businesses. Three other states have no filing threshold for individuals, and 13 states have no withholding threshold for businesses.

All these states have the opportunity to improve their tax competitiveness and become a friendlier place for remote workers.

- Nebraska should enact a 30-day filing threshold for remote workers.
- Nebraska should enact a 30-day withholding threshold for companies that employ remote workers.

Nebraska also imposes a "convenience of the employer" rule. The only other states to impose this rule are Delaware, New York, and Pennsylvania. This rule captures taxpayers that should no longer should be



subject to Nebraska's income tax. For example, a worker who commutes from Iowa into Omaha is subject to Nebraska's income tax. However, if that worker permanently stops commuting into Nebraska, he or she should be free of the Nebraska tax burden. But a "convenience of the employer" rule requires the worker to continue paying taxes in Nebraska.

LB 754[19] became law in 2023. An earlier version of the bill featured provisions to enact 30-day filing and reporting thresholds and to eliminate Nebraska's "convenience of the employer" rule. Thesef changes would substantially improve Nebraska's attractiveness for remote workers.

Corporate Tax Reform

Corporate tax reform was one of the most compelling achievements of Nebraska's 2022-2023 tax reform cycle. Nebraska's two-rate corporate tax included a 7.25% top rate. The tax was transformed into a flat 3.99% tax. The corporate rate changes will phase in synchronously with individual income tax rate cuts. Nebraska's corporate rate will fall by 45%.

Although Nebraska's corporate tax rate will dramatically improve, the corporate tax base has been worsening in recent years. Nebraska's corporate tax base needs to be corrected to appropriately define the state income tax base. In fact, Nebraska's corporate income tax base will continue to deteriorate if the legislature doesn't intervene with policy changes.

Full Expensing

Just as Nebraska's corporate tax burden is being reduced by substantial rate cuts, Nebraska's corporate tax base is expanded in a way that raises taxes. The two policies are self-contradictory, and the tax base should be fixed through legislative action. It doesn't make sense to cut income tax rates on the one hand, and then allow the income tax base to inappropriately expand on the other hand. But that's what is happening in Nebraska.

Nebraska conforms with the federal tax code's Section 168(k), which determines how quickly businesses can recover their investment costs for purchases of short-lived assets such as machinery and equipment. These assets have a depreciation schedule of 20 years or less. The federal Tax Cuts and Jobs Act provided full expensing, or 100% bonus depreciation, from January 1, 2018 – December 31, 2022, which is the ideal tax treatment of capital expenditures. But beginning January 2023, full expensing will phase out. Bonus depreciation will fall from 100% in 2022 to 0% in 2027, and Nebraska's tax treatment of capital expenditures will be the same.

Nebraska's tax code automatically adopts the federal bonus depreciation schedule. So, the same $10 million investment in new machinery that could be immediately written off in 2022 will not be eligible for bonus depreciation at all by 2027. That means the business will have to write off the investment cost over 20 years. This is a significant worsening of the tax treatment of capital expenditures, particularly in the context of the federal government seeking to re-shore critical U.S. supply chains.

STATES THAT IMPOSE A "CONVENIENCE OF THE EMPLOYER" RULE

Year	Corporate bonus depreciation
2018-2022	100%
2023	80%
2024	60%
2025	40%
2026	20%
2027	0%

- Decouple from Internal Revenue Code Section 168 and Section 174 and make full expensing permanent in Nebraska's tax code

States have begun to act to protect their investment climate and attract critical supply chains. Oklahoma and Mississippi have enacted full expensing for short-lived assets while Tennessee has done so for research and experimentation costs.

Without full expensing, businesses are prevented from deducting the full cost of their investments. Enacting full expensing arguably produces the best economic impact per dollar of tax relief. Georgetown researchers found that state full expensing boosts business capital expenditures by 21.5% and wages by 5%.20 A Penn Wharton study similarly found it boosts manufacturing employment by nearly 10%.[21] And Tax Foundation estimated that federal full expensing would boost GDP by 2.3% and America's capital stock by 6%.[22] Full expensing is one of the most important reforms Nebraska can make.

GILTI

The 2017 Tax Cuts and Jobs Act shifted the U.S. corporate tax system from a worldwide system to a quasi-territorial system. Prior to the Act, and unlike most other countries, America's tax code included profits made abroad in the domestic tax base. This unusual provision incentivized profit-shifting out of the United States along with mergers that resulted in global corporations shifting their headquarters out of the United States.

STATES ACTING TO PROTECT THEIR INVESTMENT CLIMATE AND ATTRACT CRITICAL SUPPLY CHAINS

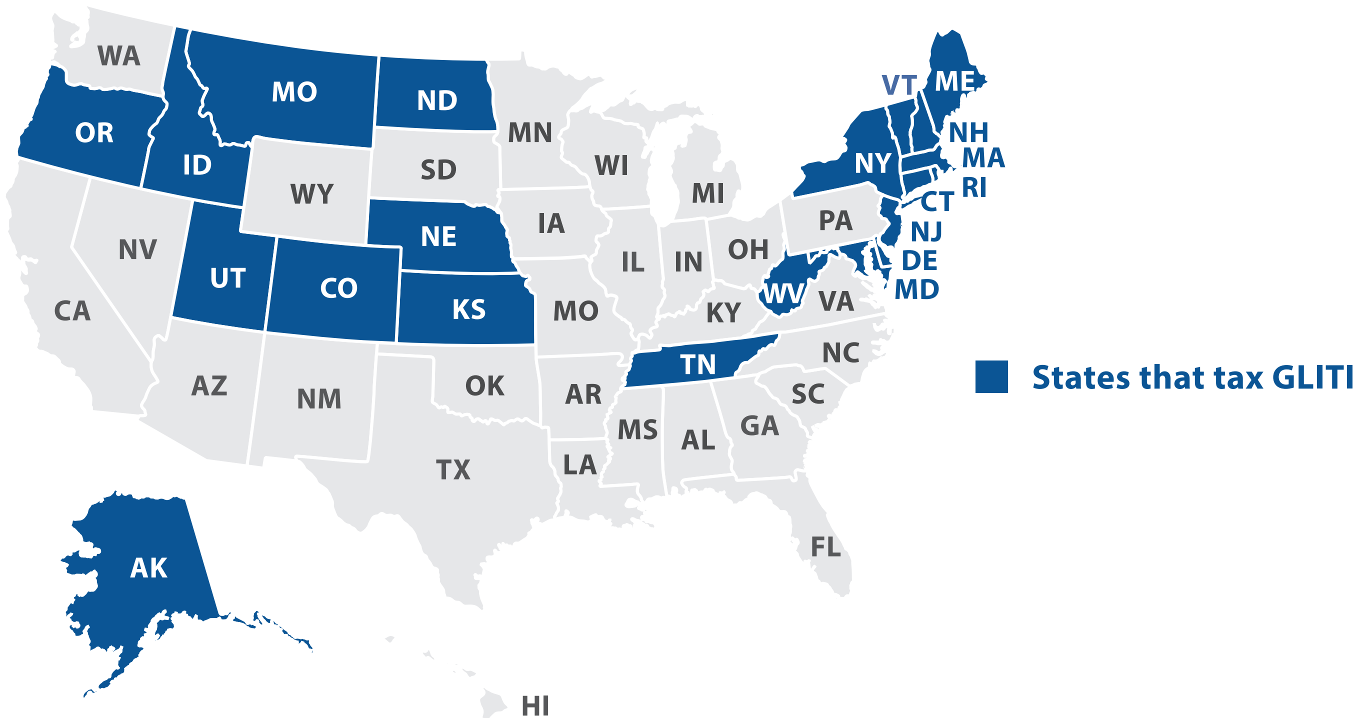
The Tax Cuts and Jobs Act ended the U.S.' worldwide tax system and excluded foreign profits from an American business' domestic tax base. But there was a catch. A new category of income was created called Global Intangible Low-Taxed Income, or GILTI.

GILTI is a type of income earned abroad from easily-movable intangible assets such as intellectual property and trademarks. The U.S. tax code imposes a tax of 10.5%-13.125% on returns on such assets, which, combined with the taxes of the foreign jurisdiction to which the asset has been shifted, results in a tax burden that approximates the U.S.' 21% corporate tax rate. So even while the U.S. worldwide tax regime was largely eliminated, GILTI still taxes some international income in the domestic tax base. The purpose of GILTI is to eliminate the tax incentive for multinational corporations to shift intangible assets abroad.[23]

States never participated in the U.S.' worldwide corporate tax system. Ironically, after the worldwide system was largely eliminated, many states like Nebraska ended up taxing GILTI, which is their first foray into taxing international corporate income. Today, twenty-two states impose a corporate tax on GILTI. And Nebraska is one of the twelve states that imposes a tax on 50% GILTI.

As Tax Foundation points out, Nebraska taxes GILTI in a way that disadvantages foreign income compared to

STATE TAXATION OF GILTI



in-state income, creating a constitutional challenge for Nebraska's tax program.

> *Furthermore, Nebraska apportions GILTI by including only net taxable national GILTI in its denominator, thus inflating the state's share of total GILTI. This disadvantages GILTI compared to other forms of income and could therefore be found to be in violation of the U.S. Constitution's Dormant Commerce Clause, which prohibits states from discriminating against interstate or international commerce.*

- Apply Nebraska's 100% dividends received deduction to GILTI.

Nebraska disincentivizes corporate investments in-state by promising to tax the global income of businesses that come to Nebraska. The Unicameral never authorized the taxation of GILTI, and neighboring Iowa repealed its tax on GILTI in 2020. Nebraska should remove this disincentive to in-state economic activity.

Capital Stock Tax

Nebraska's capital stock tax is also known as its occupation tax. The tax includes a lengthy schedule of annual taxes for businesses. The tax is based upon the amount of paid up capital stock they have in Nebraska. Paid up capital stock is the amount of authorized capital stock employed in business, which is the money paid-in in exchange for shares in the business. Nebraska's occupation tax is not only a complicated tax, it disincentivizes investment in Nebraska because the annual tax goes up as a business' capital footprint grows.

The capital stock tax is directly at odds with tax incentives Nebraska provides to encourage businesses to expand in the Cornhusker State. Furthermore, the tax structure is overly complicated with forty-three different tiers of taxation based upon forty-three different amounts of paid-up capital stock.[24]

Nebraska Paid-up Capital Stock	Annual Occupation Tax
under $10,000	$26
$10,000-$20,000	$40
$20,000-$30,000	$60
$30,000-$40,000	$80
$40,000-$50,000	$100
$50,000-$60,000	$120
$60,000-$70,000	$140
$70,000-$80,000	$160
$80,000-$90,000	$180
$90,000-$100,000	$200
$100,000-$125,000	$240
$125,000-$150,000	$280
$150,000-$175,000	$320
$175,000-$200,000	$360
$200,000-$225,000	$400
$225,000-$250,000	$440
$250,000-$275,000	$480
$275,000-$300,000	$520
$300,000-$325,000	$560
$325,000-$350,000	$600
350,000-$400,000	$666
400,000-$450,000	$730

Nebraska Paid-up Capital Stock	Annual Occupation Tax
continued...	
$450,000-$500,000	$800
$500,000-$600,000	$910
$600,000-$700,000	$1,010
$700,000-$800,000	$1,120
$800,000-$900,000	$1,230
$900,000-$1,000,000	$1,330
$1,000,000-$2,000,000	$2,130
$2,000,000-$3,000,000	$2,930
$3,000,000-$4,000,000	$3,730
$4,000,000-$5,000,000	$4,530
$5,000,000-$6,000,000	$5,330
$6,000,000-$7,000,000	$6,130
$7,000,000-$8,000,000	$6,930
$8,000,000-$9,000,000	$7,730
$9,000,000-$10,000,000	$8,530
$10,000,000-$15,000,000	$12,000
$15,000,000-$20,000,000	$14,660
20,000,000-$25,000,000	$17,330
$25,000,000-$50,000,000	$20,660
$50,000,000-$100,000,000	$21,330
$100,000,000+	$23,990

The fee schedule betrays how anachronistic the tax is. The assessment of paid-up capital stock as a business tax base was created before business income was considered taxable. And Nebraska's dizzying schedule of tax rates for different amounts of capital stock makes clear that the tax was not designed with the taxpayer in mind.

Nebraska will be one of only fourteen states to retain a capital stock tax after Mississippi and Connecticut complete the repeal of theirs.

Nebraska should enact an exemption for businesses with a small amount of capital stock, such as those with less than $50,000 of paid-in capital stock. Like the tangible personal property tax, a large part of the cost of such a tax is having to calculate and file it at all.

- Create $50,000 capital stock *de minimus* exemption for Nebraska Occupation tax

Nebraska's occupation tax is paid to the Secretary of State. These funds should be replaced by a general funds appropriation as a part of a full repeal of Nebraska's occupation tax.

- Repeal occupation tax and replace revenues with a general fund appropriation.

Business Tax Credits

Nebraska has historically provided generous corporate tax incentivize as a way to offset the state's high corporate tax rates.[25] Now, as Nebraska's corporate tax rate is cut by nearly 50%, Nebraska should cut its corporate incentives in half.

- Cut corporate tax incentives programs in half and use the savings for corporate tax reforms.

The Nebraska Advantage Package offers 3-10% investment credits and 3-6% wage credits.[26] The investment credits would better incentivize investment if they were applied to create full expensing for all short-lived assets. Full expensing could even be applied to the

CAPITAL STOCK TAX

States with capital stock tax

States phasing out capital stock tax

purchase of real property, too. And the wage credits along with other corporate incentives should be redirected towards corporate rate reductions.

In addition, Nebraska should work to offset the tax on tangible personal property (TPP), which would eliminate the need for a special TPP tax exemption for favored projects.

While it is rare for a state to a eliminate tax incentive programs entirely, the demand for such incentive programs is greatest where corporate taxes are least competitive. Nebraska's corporate tax code is becoming far more competitive under LB 754, and so corporate tax incentives should be scaled back.

Other tax considerations

Nebraska's targets in 2024 should include property tax reforms, inheritance tax repeal, and an income tax safe harbor for remote workers who are temporarily in Nebraska. Next, Nebraska needs to fix its business tax base so that GILTI and paid-in capital are no longer taxed, and so that capital expenditures are no longer punished in the tax code.

Over the next four years, Nebraska should adopt additional reforms. Tax triggers will schedule income taxes for automatic reduction. Tangible personal property tax reform will finally relieve businesses of an overwhelming burden on capital-intensive industries. And sales tax modernization, if it is possible, will make Nebraska's sales tax more neutral and provide revenues to accelerate the next round of Nebraska's tax transformation.

Tax Triggers

Nebraska has accomplished the hard work of income tax rate reform. But that doesn't mean lawmakers should take their foot off the gas pedal. In fact, Nebraska can schedule accelerated rate reductions under the condition that certain revenue thresholds are met.

Governors Ricketts and Pillen have maintained disciplined spending restraint across a decade of state budgets, keeping general funds spending growth below 3%. Nebraska can create a tax trigger law to automatically accelerate and extend rate cuts should revenues grow at such a rate that a significant surplus would be created if rate relief were not accelerated.

For example, if state spending continues to grow at 2.5%, a tax trigger can be put in place for automatic rate reductions should revenues grow more rapidly than 3.5%. Therefore, if general revenues came in at a 4.5% growth rate, the income tax rate would automatically be reduced in order to make lower the revenue growth rate from 4.5% to 3.5%, which is an income tax cut of more than $50 million per year. The trigger could be applied to individual income tax rates, corporate tax rates, or both.

- Create a tax trigger to automatically reduce income tax rates under defined revenue conditions.

North Carolina is culminating more than a decade of business tax reform by phasing out its corporate income tax entirely. The Tar Heel State used revenue triggers to help with the phase out so that rates fell in response to revenue growth.

Furthermore, if Nebraska expands its sales tax base, as recommended below, a tax trigger mechanism would automatically deploy the new sales tax revenue to income tax rate reduction to ensure Nebraskans didn't face a net tax increase in the context of sales tax modernization.

Tangible Personal Property Tax

Forty-three states including Nebraska tax tangible personal property (TPP). These taxes disincentivize locating assets within Nebraska and are especially burdensome for smaller businesses. Nebraska should take a two-step approach to easing the tax burden caused by TPP, a burden which is significant enough that the Nebraska creates a special exemption program to relieve some businesses of TPP taxes.[27]

First, policymakers should restore and expand the $10,000 de minimis exemption that was repealed in 2020. A In restoring a de minimis exemption, it should become both a payment threshold and a filing threshold to mitigate compliance costs for those small businesses that have historically had to file every year despite having less than $10,000 in TPP tax liability.

- Enact a $20,000 *de minimus* exemption and eliminate filing requirements for the swath of Nebraska small businesses that fall under the exemption level

Nebraska is one of twenty states that would benefit from a *de minimus* exemption.

Nebraska's TPP taxes heavily impact capital-intensive industries such as manufacturing and agriculture. These industries are already being deprived of full cost recovery because Nebraska lacks a full expensing law. The lack of full expensing and heavy TPP taxation significantly distorts economic decision-making for manufacturers and incentivizes them to invest elsewhere.[28] Along with creating a de minimus exemption, Nebraska should allow local governments to forego TPP taxation in order to incentivize competition between local jurisdictions and eventual removal of the tax.

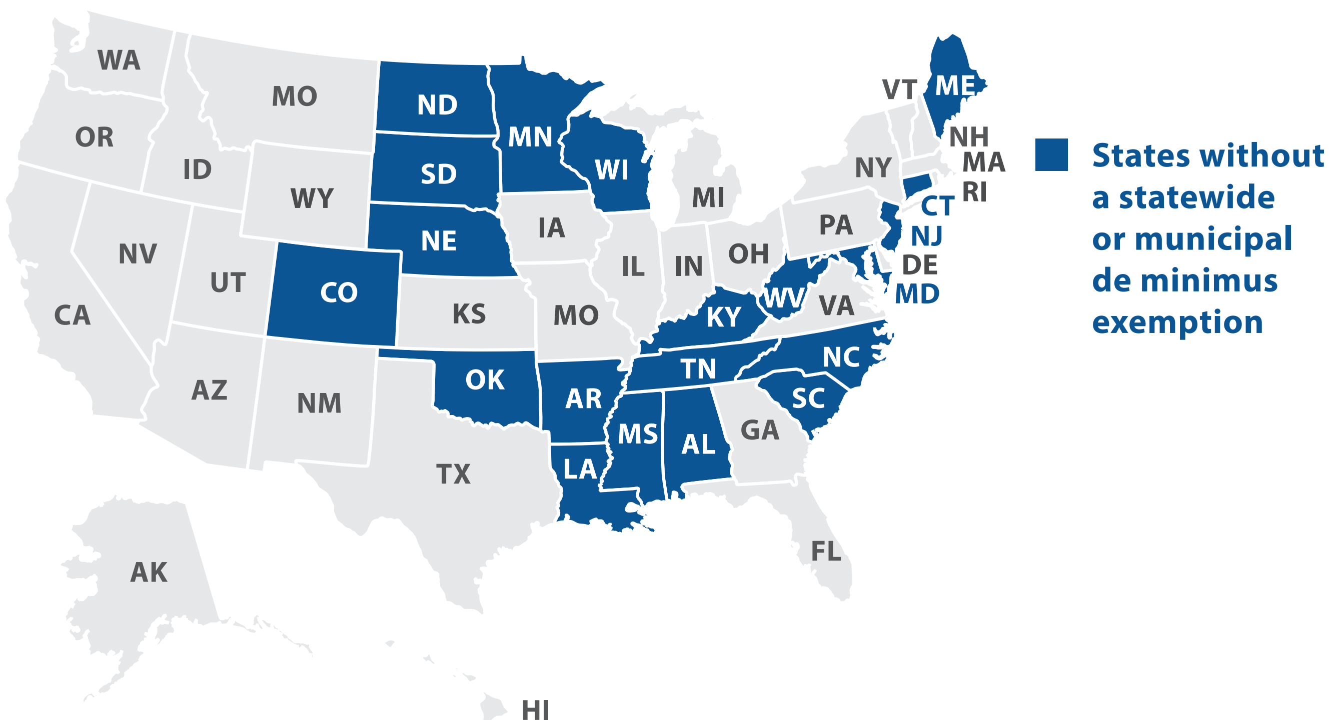
- Allow local governments to tax TPP at lower rates

Finally, Nebraska should phase out TPP taxation entirely over a longer timeline. This can be done by continually raising the *de minimus* exemption for TPP and accelerating the depreciation schedule for assets subject to TPP so that companies can write off their taxable value more rapidly. Local governments can impose lower tax rates on TPP in order to get ahead of the phase out. After the phase out is underway, Nebraska can schedule a full repeal with enough of a lead time to allow local governments to adjust their fiscal programs accordingly.

- Eliminate taxation of business tangible personal property

Sales Tax Modernization

Nebraska's retail sales tax is a form of consumption tax. Consumption taxes are levied upon the purchase of goods and services and can be constructed as retail sales taxes,



value added taxes (VAT), excise taxes, and even taxes upon income minus savings.

The purpose of a consumption taxation is to tax spending rather than savings and investment. For that reason, a consumption tax is more economically efficient than an income tax because unlike income taxation, a consumption tax does not distort the decision about whether to save and invest.

A well-structured sales tax should apply to all final personal consumption and to no business inputs. Nebraska exempts many consumer services and even some goods that should be subject to the sales tax while taxing too many business inputs. Sales tax modernization should treat the consumption of goods and services more evenly, and generate revenue to reduce other taxes.

Any sales tax expansion should strictly exempt purchases made by businesses. When business purchases are subject to sales tax, the cost of the tax becomes embedded within the product. On a long enough supply chain, sales tax pyramiding results in the same good or service being taxed over and over throughout the production process. This is a non-transparent form of taxation, and has the harmful economic effect of incentivizing business consolidation that otherwise would not make sense.

- Expand Nebraska's sales tax base to include more retail goods and services while exempting business inputs from the expanded tax.

Kentucky is an example of a state that has recently enacted a sales tax modernization, expanding the tax base in 2018 and in 2021 to include more than 30 personal services.[29] The largely-successful effort can be adopted by Nebraska with precautions taken to avoid taxing business inputs. Kentucky's inflation-adjusted sales tax revenues have grown by more than 30% as a result, creating substantial revenues for other state tax reforms.

A similar sales tax expansion in Nebraska would trigger state income tax rate reductions if Nebraska puts tax triggers into law. Yet a sales tax base expansion would incidentally create a local government windfall given that Nebraska's local governments can impose a local options sales with rates between 0.5% and 2.0%. For this reason, a sales tax base expansion should be coupled with the repeal of tangible personal property taxes so that the increased sales tax collections are offset by lower property tax collections.

- Leverage local sales tax windfall to repeal TPP

Nebraska's tax competitiveness

Nebraska set the national standard for tax reform in 2023, and its two-year tax transformation is the envy of other similarly-situated states. Now, policymakers must engage for the iterative, constructive work of ongoing tax reform each year. It would be as easy to make transformational reforms in one fell swoop, but it will be equally important to continue the virtuous cycle of tax reform that is already underway.

Heading into 2024, Nebraska's tax code is ranked the 30th most-competitive in Tax Foundation's 2024 *State Business Tax Climate Index*.[30] Nebraska's 2024 ranking does not include reforms that are scheduled to phase in over the next several years because they do not represent the status of Nebraska's tax code leading into 2024.

Index Components	2024 Rankings (Current *Index*)
Overall	30
Corporate Taxes	31
Individual Taxes	32
Sales Taxes	9
Unemployment Insurance Taxes	9
Property Taxes	40

**These are Nebraska's current 2024* Index *rankings.*

Index Components	Rankings with all reforms retroactively in effect
Overall	8
Corporate Taxes	7
Individual Taxes	17
Sales Taxes	8
Unemployment Insurance Taxes	9
Property Taxes	31

**These are the rankings accounting for the proposed reforms and those previously approved to be implemented in 2024-2027 (e.g., 3.99% CIT (flat rate), top rate of 3.99% PIT (3 brackets not 4).*

The solutions proposed in this document were scored within Tax Foundation's *State Business Tax Climate Index* as if they were in law ahead of 2024. If the reforms proposed in this study were already in effect, **and** if Nebraska's tax cuts from 2022-2023 had already fully phased in, then Nebraska would be ranked as the 8th-most competitive tax code in the country heading into 2024.

The Tax Foundation rankings frame the opportunity Nebraska can seize by continuing to advance substantive, structural tax reforms. Reforms Nebraska put into law in 2022 and 2023 will result in a more competitive tax code in coming years. And additional reforms enacted in 2024 will improve Nebraska's positioning among states. In the theoretical example that these changes all took effect immediately, Nebraska would be ranked top-10 in the country.

In the meantime, other states will make changes to become more competitive even as Nebraska makes its own advances. Nonetheless, after the hard work of reforming the individual and corporate income taxes in 2022 and 2023, Nebraska has a clear pathway to advance into the top tier of Tax Foundation's rankings.

The two-year tax transformation of 2022-2023 will be remembered as the time when Nebraska finally achieved tax reform goals that had eluded it for a decade. And if lawmakers build upon the momentum created in 2022-2023, those years will also be remembered as the powerful catalyst that began Nebraska's drive for one of the most competitive tax codes in the country.

Endnotes

1. https://omaha.com/news/state-and-regional/govt-and-politics/nebraska-gov-ricketts-leaving-best-job-in-the-world-with-record-of-tax-cuts-spending/
2. https://nebraskaexaminer.com/2023/05/24/pillen-vetoes-more-than-140-million-in-proposed-spending-calls-it-excessive-government-spending/
3. https://omaha.com/news/state-regional/government-politics/nebraska-hires-10m-consultant-to-find-breakthrough-savings-scraps-ricketts-effort/article_71ab1fa2-51b7-11ee-875a-27f246a9a3a5.html
4. https://www.bls.gov/data/inflation_calculator.htm
5. https://www.census.gov/programs-surveys/popest/data/data-sets.html
6. https://www.texaspolicy.com/senate-bill-1336-improving-texass-spending-limit/
7. https://taxfoundation.org/research/all/state/property-tax-limitation-regimes-primer/
8. https://nebraskalegislature.gov/FloorDocs/107/PDF/Final/LB644.pdf
9. https://nebraskalegislature.gov/laws/statutes.php?statute=77-3444
10. https://capitol.texas.gov/tlodocs/87R/billtext/html/HB00002H.htm
11. https://www.legis.state.tx.us/tlodocs/86R/billtext/html/HB00003F.HTM
12. https://nebraskaexaminer.com/2023/09/20/one-state-property-tax-credit-rises-slightly-in-2023-while-another-still-isnt-being-fully-claimed/
13. https://www.wowt.com/2023/05/09/omaha-metro-school-bond-election-results/
14. https://www.legis.iowa.gov/legislation/BillBook?ba=HF718
15. https://www.taxpolicycenter.org/sites/default/files/alfresco/publication-pdfs/412694-Back-from-the-Dead-State-Estate-Taxes-After-the-Fiscal-Cliff.PDF
16. https://platteinstitute.org/poll-78-of-nebraska-voters-favor-ending-county-inheritance-tax/
17. https://taxfoundation.org/research/all/state/state-inheritance-estate-taxes-economic-implications/
18. https://www.ntu.org/library/doclib/2023/01/NTUF-Remote-Obligation-and-Mobile-Workers-Index.pdf
19. https://nebraskalegislature.gov/bills/view_bill.php?DocumentID=50792
20. https://repository.library.georgetown.edu/handle/10822/1062271
21. https://knowledge.wharton.upenn.edu/article/why-capital-investment-in-equipment-doesnt-hurt-employment/
22. https://taxfoundation.org/blog/full-immediate-expensing/
23. https://www.investopedia.com/global-intangible-low-taxed-income-gilti-definition-5097113
24. https://nebraskalegislature.gov/laws/statutes.php?statute=21-303
25. https://imagine.nebraska.gov/tax-credit-usage/
26. https://sites.nppd.com/site-selection-location-services/taxes-incentives/
27. https://imagine.nebraska.gov/tax-credit-usage/
28. https://platteinstitute.org/how-inflation-and-taxes-impact-nebraska-farms-and-factories/
29. https://taxfoundation.org/research/all/state/indiana-tax-reform-structure-competitiveness/
30. https://taxfoundation.org/research/all/state/2024-state-business-tax-climate-index/

6910 Pacific Street, Suite 216 | Omaha, NE 68106
402.452.3737 | platteinstitute.org

OUR MISSION

To advance policies that remove barriers to growth and opportunity in Nebraska.

A non-profit foundation, the Platte Institute relies on the resources and innovative thinking of individuals who share a commitment to liberty and the best possible quality of life for Nebraskans.