

BEFORE THE UNITED STATES DEPARTMENT  
OF AGRICULTURE  
AGRICULTURE MARKETING SERVICE

In the Matter of Milk in California  
Notice of Hearing on a Proposal to  
Establish a Federal Milk Marketing  
Order

7 CFR Part 1051  
Docket No.: AO-15-0071  
AMS-DA-14-0095

Clovis, California, October 2015

Testimony of Mr. Gil de Cardenas and Mr. Mac Moore  
Part 1



October 26, 2015

United States Department of Agriculture  
Clovis, California

Re: Federal Milk Marketing Order in California

Good morning and thank you for taking time to visit with us this morning.

I'm Gil de Cardenas and I run our family business, Cacique Inc. Cacique~~s~~ was founded by my parents, Gilbert and Jennie de Cardenas in 1973. The company was funded with an \$800 loan from my grandmother and aunt and started with just two employees, Gilbert and Jennie. The first few years were very tough with my dad leaving before the sun came up to start the cheese making process while my mother woke us up, made breakfast and took us to school. She then went on to the plant (a tiny bottling plant at the back of a drive up dairy) and took over the cheese making process from my dad and stayed until he returned from selling cheese from Styrofoam coolers in the trunk of is teal green, 1966 four door Pontiac. He would park his car on Vermont St., near downtown Los Angeles and sell product door to door. My dad returned from his route, finish the cheese making process and cleaned the plant while mom came home to cook dinner and care for us. There were days when we barely saw her and didn't see him at all. At the start, times were so tough, my parents could only afford to rent the ~~plant~~ <sup>plant</sup> during daylight hours and the owner used it to bottle his products at night. At the beginning, our capacity was about 80 lbs. of cheese PER DAY! That was all one person could make. This went on for a couple of years. A major leap forward was when my dad removed the back seat to make room for more coolers! In effect, this doubled the distribution capacity and we were able to hire our first employee!!! The company was literally built one pound of cheese at a time

A note about the original plant. The facility was used for bottling drinks for a drive-up dairy and was originally not set up for dairy processing. My dad rented the space and worked tirelessly for weeks to get it up to code. On inspection day, the inspector walked the plant and gave my dad a rather long punch list before he would approve the facility. To say my dad was

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disappointed is an understatement, however, he doubled down and passed inspection several weeks later. There was no money to use professional help so my parents did it all by themselves.

I grew up in the business and did everything from sweeping floors, to cleaning vats to driving trucks. I rose through the ranks, earned an MBA at the University of Chicago and have been running the company for the past several years.

Over the last several years, we have been invited by numerous out of state municipalities and farmers to move our facility out of CA. I must admit, several of those offers were very enticing but we have resisted. I share our history with you to illustrate our commitment to our business and our farmers.

### **Current Operations**

Taking a leap to the here and now, Cacique continued to grow by providing quality products to the Hispanic consumers that live in the U.S. We specialize in products like queso fresco, panela, cotija and cremas. We are now on our 5<sup>th</sup> plant since that tiny location in Lakewood CA. The original plant's milk consumption of 860 pounds per day is dwarfed by the current plant consumption of about 1 million lbs. of milk per day. Over the course of the last 30 years, we have invested \$91MM into the current plant to stay competitive and we are investing a significant amount of capital to expand current capacity.

Cacique currently has about 320 California based employees and 55 non-California employees. More than 70% percent of Cacique's employees are of minorities. It's important to understand that Cacique is not a minimum wage employer. We demand higher skill levels and pay a premium. It's our educated estimate that between employees and vendor/suppliers, we help support more than 1,000 families.

By basing such a large portion of its sales force in other states, we have made a very deliberate and expensive commitment to grow our out of state business. Cacique spends a considerable amount of marketing funds in activities like demos, advertising and retailers ads to grow its out of state volume.

Every pound of cheese we ship out of state is equal to 10 pounds of CA milk being shipped into competing markets.

### **Cacique Distribution Costs.**

Most of our consumers are on the lower end of the income range and as a result, retail price points are crucial. As I mentioned previously, on average, Cacique consumes about 1 million pounds of milk on any given production day, seven days per week. About 47% of that milk is shipped out of California as cheese, cream and yogurt. It is estimated that about 60% of the United States population lives east of the Mississippi River. (See: [en.wikipedia.org/wiki/Eastern\\_United\\_States](http://en.wikipedia.org/wiki/Eastern_United_States).) As our products travel east, transportation and other expenses drive our costs higher. Depending on load size, refrigerated freight cost into the Midwest and east Coast between 30 and 70 cents *per pound of product* for LTL (Less than Truck Load) which is the most common method. As you can see, Cacique's Midwest and East Coast based competitors enjoy a significant competitive product transportation advantage and in order to stay on a level price point with these brands, Cacique is unable to pass the full cost onto the consumer and is often having to subsidize the freight expense just to keep the playing field level.

### **Cacique's Out of State Competitors Lower Operation Costs.**

One of our competitors testified that our products are aggressively competing with their TX based plant as a result of lower CA milk prices. However, I would like to point out that the economics of the situation place Cacique at a disadvantage, not an advantage:

- It takes about 12 cents just in freight costs to get to Texas from our plant. Using industry standards, this represents about \$1.20 per hundred weight in cost.
- Since 2011, the gap between the published Class III~~IV~~ and 4b is \$1.78. In effect, \$1.20 of the gap is consumed by freight alone.
- That leaves only \$0.58 to pay for the higher operating costs in CA or roughly about 6 cents per pound of cheese.

It's no secret that doing business in CA is difficult. In fact, I'm sure every farmer here today and in the state are well aware of the serious challenges of running a CA operation. The state is continuously listed near the bottom of any recent list of business friendly environments.

We compete directly with regional manufacturers that aggressively defend their markets. Most of the competitors are east of the Rockies. While milk prices are higher, the



operating costs are considerably lower. Expenses in states outside of California are considerably lower and these states are much more business friendly than California. Below are a few examples of the high cost of business operation in California compared to national averages.

- Electrical Cost for Industrial Companies: The United States March 2015 average retail price of electricity in the Industrial sector was \$6.79. California's rate in the Industrial Sector is \$10.63 or 56.55% above the national mean and rising. See Exhibit B: U.S. Energy Information Administration.
- Workers Compensation in CA: Workers compensation costs in California is 188% ~~higher than~~ <sup>of</sup> the national ~~mean~~ <sup>median</sup>. California businesses spend \$3.48 for every \$100 of payroll compared to the national ~~mean~~ <sup>median</sup> of \$1.85. Cacique employs about 320 California based employees. See Exhibit A: Oregon Department of Consumer and Business Services, 2014 Oregon Workers' Compensation Premium Rate Ranking summary.
- California Taxes: California ranks 48<sup>th</sup> out of 50 states for least business friendly states. See Exhibit C: Tax Foundation October 2013 publication.
- Cost of Energy in CA is ranked 49<sup>th</sup> out of 50 states. See Exhibit D: California Foundation for Commerce & Education; The Cost of Doing Business in California. August 2014.
- Cost of Labor in CA is ranked 41<sup>st</sup> out of 50 states. See Exhibit D: California Foundation for Commerce & Education; The Cost of Doing Business in California. August 2014.

Cacique, as a result of manufacturing in California must bear these and other costs which far exceed national averages. Using these factors and others from our research, we estimate that raw material not included, it's costlier to make cheese in CA by \$0.18 per pound of cheese. This represents an equivalent of about \$1.80 per hundred weight higher cost to run a CA operation. Cacique's out of state competition has key strategic cost advantages because they are located in more business friendly state.

The sum of the freight and CA operating costs less the historical Class III/4b gap results in product produced in CA is costlier by \$0.1220 per pound when shipped to Texas from So Cal. This represents about \$1.222 per hundred weight of cheese.

$$\text{Freight } (\$0.12) + \text{CA operating cost } (\$0.18) - \text{Milk price gap } (\$0.178) = \$0.1220 \text{ lb./cheese}$$

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However, CA recently changed its 4b formula by raising the whey value. Using current market data, we estimate the gap between Class III and 4b narrows to \$0.54 per hundredweight in 2016. The new formula affects:

$$\text{Freight } (\$0.12) + \text{CA operating costs } (\$0.18) - \text{Milk price gap } (\$0.054) = \$0.246 \text{ lb./cheese}$$

The new CA price in effect raises the cost of making cheese in CA from \$0.1220 to \$0.246 per pound of cheese when delivered to TX!

The results are staggering, CA made product is more expensive to make by about \$0.1260 per pound of cheese or the equivalent of \$1.280 cents per hundredweight of milk before adding shipping costs:

$$\text{CA operating costs } (\$0.18) - \text{Milk price gap } (\$0.054) = \$0.1260 \text{ lb./cheese}$$

As mentioned earlier, freight costs increase to 30 and up to 70 cents the further you go north and east as we are unable to compete with local suppliers and ship smaller and less efficient orders.

The only reason Cacique competes today is not because of lower milk prices but a continued commitment to investing in cutting edge technology! The notion that California made cheese has a price advantage because of milk costs may have been true in the past but it is simply not true today and hasn't been for some time.

### **Current Market Conditions**

As I mentioned earlier, most of our consumers are minorities in lower income brackets. Price point is understandably very important to these families. We are unable to absorb the increases a shift to FMMO brings and will pass along the increase to the market. Our out of state competitors have not experienced the cost increase of a change in the milk formula and have no need to increase their price. Therefore, they are in a position to gain distribution due to more favorable cost structure without lifting a finger. It's no wonder they are hoping CA makes the change.

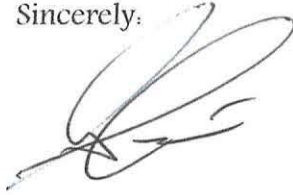
This will create an unorderly shift in economics whereby the 47% of the milk we use for cheese making is substantially at risk to be lost to out of state competitors and milk suppliers. We are shifting milk demand out of CA. How will dairies maintain efficiencies

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when volume leaves the state? Will they be able to operate efficiently? Will this cause a reduction of available Class I? This is especially true if CA moves into the FMMO but maintains provisions such as <sup>mandatory</sup> pooling.

Thank you for your time and consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gil DeCardenas', with a large, stylized flourish at the end.

Gil DeCardenas

Cacique Inc.

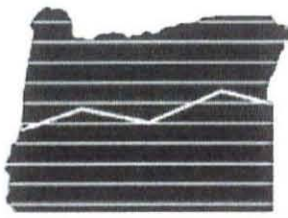
Family member and Owner

Complete versions of the materials referenced and cited in this Letter can be located as follows:

1. [http://www.eia.gov/electricity/monthly/epm\\_table\\_grapher.cfm?t=epmt\\_5\\_6\\_a](http://www.eia.gov/electricity/monthly/epm_table_grapher.cfm?t=epmt_5_6_a)
2. [http://www.cbs.state.or.us/external/dir/wc\\_cost/files/report\\_summary.pdf](http://www.cbs.state.or.us/external/dir/wc_cost/files/report_summary.pdf)
3. <http://taxfoundation.org/article/2014-state-business-tax-climate-index>
4. <http://www.calchamber.com/CFCE/Documents/CFCE-Cost-of-Doing-Business-in-California.pdf>
5. [http://en.wikipedia.org/wiki/Eastern\\_United\\_States](http://en.wikipedia.org/wiki/Eastern_United_States)



# Exhibit A



# 2014 Oregon Workers' Compensation Premium Rate Ranking Summary

Department of Consumer and Business Services

October 2014

By [Jay Dotter](#) and [Mike Manley](#)

Oregon employers in the voluntary market pay, on average, the 43rd highest workers' compensation premium rates in the nation. Oregon's rates are 26 percent below those of the median state in the study.

Premium rate indices are calculated based on data from 51 jurisdictions, for rates in effect as of Jan. 1, 2014. The 2014 median value is \$1.85, which is a drop of 2 percent from the \$1.88 median of the 2012 study. Oregon's premium rate index is \$1.37 per \$100 of payroll, or 74 percent of the national median. National premium rate indices range from a low of \$0.88 in North Dakota, to a high of \$3.48 in California. There were 21 states that had an index rate that was within plus or minus 10 percent of this benchmark value. In the upper part of the rate distribution, 13 states had index rates higher than 110 percent of the median, while 17 states were below 90 percent of the median. For an interactive map of the state rankings, [click here](#).

Figure 1. 2014 Workers' compensation premium index rates

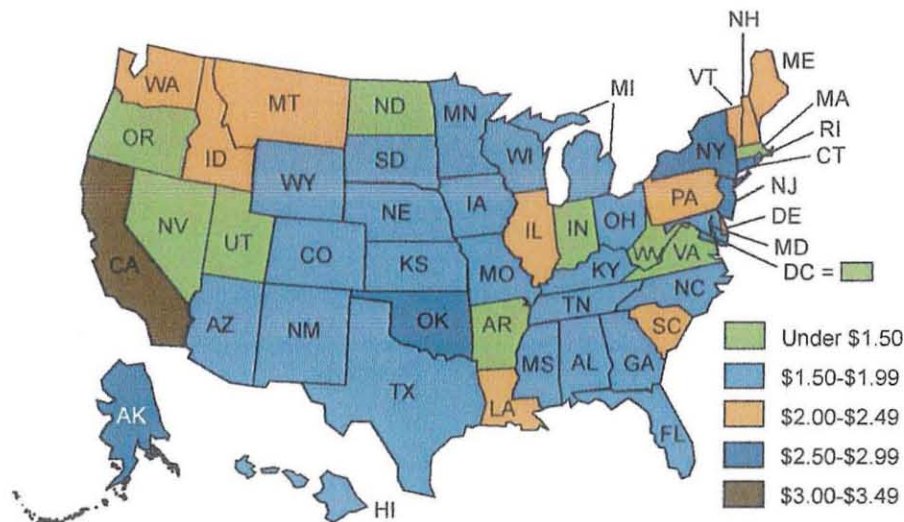


Table 1. Oregon's ranking in the top 10 classifications

Occupation	Ranking
Clerical office employees	44
Salespersons - outside	46
College: professional employees and clerical	42
Physician and clerical	37
Restaurant	43
Hospital: professional employees	38
Store: retail	41
Automobile service/repair center and drivers	32
Trucking: all employees and drivers	37
Retirement living centers: health care employees	32

The study is based on methods that put states' workers' compensation rates on a comparable basis, using a constant set of risk classifications for each state. This study used classification codes from the National Council on Compensation Insurance (NCCI). Of approximately 450 active classes in Oregon, 50 were selected based on relative importance as measured by share of losses in Oregon. To control for differences in industry distributions, each state's rates were weighted by 2008-2010 Oregon payroll to obtain an average manual rate for that state. Listed in Table 1 are Oregon's rankings in the top 10 of the 50 classifications used.

Table 2. Workers' compensation premium rate ranking

2014 Ranking	2012 Ranking	State	Index Rate	Percent of study median	Effective Date
1	3	California	3.48	188%	January 1, 2014
2	2	Connecticut	2.87	155%	January 1, 2014
3	7	New Jersey	2.82	152%	January 1, 2014
4	5	New York	2.75	148%	January 1, 2014
5	1	Alaska	2.68	145%	January 1, 2014
6	6	Oklahoma	2.55	137%	1/1/13 State Fund, 1/1/14 Private
7	4	Illinois	2.35	127%	January 1, 2014
8	14	Vermont	2.33	125%	April 1, 2013
9	30	Delaware	2.31	125%	December 1, 2013
10	15	Louisiana	2.23	120%	January 1, 2014
11	8	Montana	2.21	119%	July 1, 2013
12	9	New Hampshire	2.18	118%	January 1, 2014
13	10	Maine	2.15	116%	April 1, 2013
14	19	Idaho	2.01	109%	January 1, 2014
17	13	Washington	2.00	108%	January 1, 2014
17	16	South Carolina	2.00	108%	September 1, 2013
17	12	Pennsylvania	2.00	108%	April 1, 2013
20	27	New Mexico	1.99	108%	January 1, 2014
20	20	Rhode Island	1.99	107%	July 1, 2013
20	17	Minnesota	1.99	107%	January 1, 2014
21	36	Missouri	1.98	107%	January 1, 2014
22	19	Tennessee	1.95	105%	March 1, 2013
23	12	Wisconsin	1.92	104%	October 1, 2013
24	25	Iowa	1.88	101%	January 1, 2014
25	23	South Dakota	1.86	100%	July 1, 2013
27	35	Hawaii	1.85	100%	January 1, 2014
27	25	North Carolina	1.85	100%	April 1, 2013
28	29	Florida	1.82	98%	January 1, 2014
29	21	Alabama	1.81	97%	March 1, 2013
30	33	Nebraska	1.78	96%	February 1, 2013
31	31	Wyoming	1.76	95%	January 1, 2014
32	27	Georgia	1.75	95%	July 1, 2013
33	28	Ohio	1.74	94%	July 1, 2013
34	32	Michigan	1.68	91%	January 1, 2013
35	34	Maryland	1.64	88%	January 1, 2014
36	38	Texas	1.61	87%	June 1, 2013
37	37	Arizona	1.60	86%	January 1, 2014
38	42	Mississippi	1.59	85%	March 1, 2013
39	41	Kansas	1.55	83%	January 1, 2014
40	22	Kentucky	1.51	82%	October 1, 2013
41	43	Colorado	1.50	81%	January 1, 2014
43	40	West Virginia	1.37	74%	November 1, 2013
43	39	OREGON	1.37	74%	January 1, 2014
45	45	Utah	1.31	71%	December 1, 2013
45	47	District of Columbia	1.31	70%	November 1, 2013
46	46	Nevada	1.26	68%	March 1, 2013
48	44	Massachusetts	1.17	63%	September 1, 2010
48	48	Virginia	1.17	63%	April 1, 2013
49	49	Arkansas	1.08	58%	July 1, 2013
50	50	Indiana	1.06	57%	January 1, 2014
51	51	North Dakota	0.88	47%	July 1, 2013

Notes: Starting with the 2008 study, when two or more states' Index Rate values are the same, they are assigned the same ranking. The index rates reflect adjustments for the characteristics of each individual state's residual market. Rates vary by classification and insurer in each state. Actual cost to an employer can be adjusted by the employer's experience rating, premium discount, retrospective rating, and dividends. [Link to previous reports and summaries.](#)

Employers can reduce their workers' compensation rates through accident prevention, safety training, and by helping injured workers return to work quickly.

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# Exhibit B





U.S. Energy Information  
Administration

## Electric Power Monthly

Data for March 2015 | Release Date: May 26, 2015 | Next Release: June 26, 2015

### Previous Issues

Issue:  Format:

### Table 5.6.A. Average Retail Price of Electricity to Ultimate Customers by End-Use Sector,

by State, March 2015 and 2014 (Cents per Kilowatthour)

Census Division and State	Residential		Commercial		Industrial		Transportation		All Sectors	
	March 2015	March 2014	March 2015	March 2014	March 2015	March 2014	March 2015	March 2014	March 2015	March 2014
<b>New England</b>	<b>20.83</b>	<b>17.67</b>	<b>16.95</b>	<b>15.55</b>	<b>13.00</b>	<b>12.95</b>	<b>12.59</b>	<b>9.01</b>	<b>17.94</b>	<b>16.03</b>
Connecticut	21.94	19.51	17.35	16.43	14.32	13.65	11.06	14.21	19.11	17.56
Maine	15.51	15.22	13.31	13.95	10.13	12.20	--	--	13.02	14.01
Massachusetts	22.12	17.33	17.30	15.44	14.03	13.24	12.82	NM	18.73	15.83
New Hampshire	19.56	17.33	16.42	15.32	13.95	13.18	--	--	17.44	15.85
Rhode Island	20.05	16.86	18.76	15.73	16.26	13.99	17.86	13.46	19.03	15.99
Vermont	16.68	17.36	14.29	14.70	10.15	10.58	--	--	14.34	14.83
<b>Middle Atlantic</b>	<b>15.78</b>	<b>16.40</b>	<b>13.52</b>	<b>14.21</b>	<b>8.11</b>	<b>8.36</b>	<b>11.52</b>	<b>12.27</b>	<b>13.32</b>	<b>13.91</b>
New Jersey	15.56	15.93	13.15	13.79	11.29	12.95	10.46	10.33	13.87	14.48
New York	19.15	20.87	15.79	16.89	7.49	6.75	12.85	13.93	16.01	17.13
Pennsylvania	13.13	13.01	10.01	10.08	7.86	8.18	8.28	7.20	10.59	10.67
<b>East North Central</b>	<b>12.35</b>	<b>11.94</b>	<b>9.94</b>	<b>9.85</b>	<b>7.01</b>	<b>6.99</b>	<b>6.84</b>	<b>6.46</b>	<b>9.76</b>	<b>9.61</b>
Illinois	11.95	10.73	9.19	8.92	6.97	6.65	6.49	6.03	9.35	8.80
Indiana	10.79	10.98	9.67	9.72	6.78	6.76	10.78	10.12	8.81	8.83
Michigan	13.81	14.14	10.36	10.92	7.12	7.94	11.35	13.42	10.59	11.14
Ohio	12.16	11.56	10.07	9.72	6.89	6.67	8.14	7.96	9.83	9.44
Wisconsin	13.97	13.34	10.86	10.54	7.61	7.43	--	--	10.69	10.43
<b>West North Central</b>	<b>10.42</b>	<b>10.54</b>	<b>8.62</b>	<b>8.88</b>	<b>6.57</b>	<b>6.73</b>	<b>7.94</b>	<b>6.94</b>	<b>8.65</b>	<b>8.88</b>
Iowa	10.87	11.00	8.46	8.62	5.58	5.87	--	--	7.93	8.25
Kansas	12.05	11.74	10.04	9.95	7.33	7.30	--	--	9.88	9.79
Minnesota	11.54	11.87	8.90	9.73	6.62	7.30	9.19	10.15	9.04	9.73

Census Division and State	Graph	Residential		Commercial		Industrial		Transportation		All Sectors	
		March 2015	March 2014	March 2015	March 2014	March 2015	March 2014	March 2015	March 2014	March 2015	March 2014
Missouri		9.50	9.79	7.87	8.02	5.42	5.46	6.51	4.81	8.11	8.30
Nebraska		9.76	9.48	8.62	8.54	8.38	8.17	--	--	8.94	8.77
North Dakota		8.78	8.64	8.17	8.41	8.13	7.39	--	--	8.34	8.19
South Dakota		10.17	9.81	8.59	8.57	7.35	7.15	--	--	9.00	8.83
<b>South Atlantic</b>		<b>11.44</b>	<b>11.50</b>	<b>9.66</b>	<b>9.82</b>	<b>6.37</b>	<b>6.65</b>	<b>8.18</b>	<b>8.59</b>	<b>9.92</b>	<b>9.98</b>
Delaware		12.73	12.20	11.63	10.95	8.98	9.32	--	--	11.73	11.23
District of Columbia		12.29	12.63	12.60	12.52	8.80	10.44	10.69	NM	12.39	12.42
Florida		11.63	11.86	9.81	10.12	8.31	8.12	9.05	9.60	10.64	10.81
Georgia		10.58	11.22	9.25	10.36	5.15	6.08	4.89	5.50	8.79	9.64
Maryland		13.16	13.57	11.64	11.84	9.72	10.22	8.34	8.88	12.24	12.54
North Carolina		11.24	10.94	8.86	8.90	6.32	6.45	7.87	8.08	9.56	9.32
South Carolina		12.22	12.21	10.12	10.22	5.75	6.19	--	--	9.38	9.43
Virginia		10.94	10.60	8.48	7.97	7.17	6.79	8.32	7.97	9.47	8.94
West Virginia		9.63	9.24	8.71	8.18	5.98	5.91	9.54	10.01	8.02	7.78
<b>East South Central</b>		<b>10.46</b>	<b>10.80</b>	<b>10.25</b>	<b>10.60</b>	<b>5.68</b>	<b>6.09</b>	<b>8.09</b>	<b>13.80</b>	<b>8.85</b>	<b>9.14</b>
Alabama		11.78	11.63	10.92	10.94	5.65	5.88	--	--	9.11	9.07
Kentucky		9.75	10.01	9.37	9.49	5.20	5.64	--	--	7.87	8.18
Mississippi		11.11	11.28	10.96	11.04	6.45	6.73	--	--	9.55	9.59
Tennessee		9.82	10.58	10.04	10.86	5.82	6.58	8.09	13.80	9.05	9.76
<b>West South Central</b>		<b>10.72</b>	<b>10.82</b>	<b>8.03</b>	<b>8.32</b>	<b>5.61</b>	<b>5.93</b>	<b>5.58</b>	<b>5.40</b>	<b>8.36</b>	<b>8.48</b>
Arkansas		9.02	9.05	7.84	7.77	5.65	5.56	11.33	NM	7.69	7.53
Louisiana		8.81	9.17	8.74	9.16	5.43	5.87	8.77	9.21	7.61	7.96
Oklahoma		9.51	9.66	7.35	7.59	5.06	5.43	--	--	7.51	7.77
Texas		11.64	11.70	8.02	8.33	5.75	6.09	5.35	5.11	8.75	8.85
<b>Mountain</b>		<b>11.45</b>	<b>11.11</b>	<b>9.47</b>	<b>9.26</b>	<b>6.29</b>	<b>6.31</b>	<b>9.91</b>	<b>9.97</b>	<b>9.09</b>	<b>8.93</b>
Arizona		11.55	11.30	9.69	9.32	5.94	6.11	7.39	--	9.57	9.33
Colorado		11.74	11.68	9.73	9.75	6.94	6.95	10.23	10.07	9.58	9.61
Idaho		9.59	9.17	7.77	7.63	5.96	5.73	--	--	7.90	7.67
Montana		10.64	9.91	10.27	9.51	5.02	5.78	--	--	8.93	8.74
Nevada		13.62	13.39	9.94	9.84	6.15	6.22	8.68	8.68	9.21	9.23
New Mexico		12.10	11.56	10.11	9.90	6.26	6.54	--	--	9.40	9.23
Utah		10.49	10.15	8.28	8.28	5.90	5.72	9.99	10.02	8.18	7.95



Census Division and State	Graph	Residential		Commercial		Industrial		Transportation		All Sectors	
		March 2015	March 2014	March 2015	March 2014	March 2015	March 2014	March 2015	March 2014	March 2015	March 2014
Wyoming		10.62	10.07	9.17	8.75	7.04	6.72	--	--	8.21	7.85
<b>Pacific Contiguous</b>		<b>13.73</b>	<b>12.79</b>	<b>12.32</b>	<b>11.84</b>	<b>7.80</b>	<b>7.69</b>	<b>8.17</b>	<b>8.06</b>	<b>11.85</b>	<b>11.33</b>
California		17.04	15.90	13.80	13.28	10.63	10.59	8.13	8.01	14.27	13.66
Oregon		10.50	10.18	8.91	8.92	6.00	6.15	9.25	9.21	8.80	8.79
Washington		8.68	8.71	8.23	8.10	4.30	4.29	9.25	9.61	7.28	7.33
<b>Pacific Noncontiguous</b>		<b>25.58</b>	<b>28.74</b>	<b>22.93</b>	<b>26.54</b>	<b>21.21</b>	<b>26.72</b>	<b>--</b>	<b>--</b>	<b>23.18</b>	<b>27.27</b>
Alaska		19.64	18.66	17.57	16.99	14.62	14.98	--	--	17.66	17.15
Hawaii		31.20	38.51	28.14	35.69	23.79	31.47	--	--	27.23	34.80
<b>U.S. Total</b>		<b>12.35</b>	<b>12.24</b>	<b>10.58</b>	<b>10.66</b>	<b>6.79</b>	<b>6.96</b>	<b>10.26</b>	<b>10.28</b>	<b>10.30</b>	<b>10.30</b>

See Technical notes for additional information on the Commercial, Industrial, and Transportation sectors.

Notes: - See Glossary for definitions. - Values are preliminary estimates based on a cutoff model sample.

See Technical Notes for a discussion of the sample design for the Form EIA-826.

Utilities and energy service providers may classify commercial and industrial customers based on either NAICS codes or demands or usage falling within specified limits by rate schedule.

Changes from year to year in consumer counts, sales and revenues, particularly involving the commercial and industrial consumer sectors, may result from respondent implementation of changes in the definitions of consumers, and reclassifications.

Totals may not equal sum of components because of independent rounding.

Source: U.S. Energy Information Administration, Form EIA-826, Monthly Electric Sales and Revenue Report with State Distributions Report.

# Exhibit C

## 2014 State Business Tax Climate Index

by Scott Drenkard & Joseph Henchman

The Tax Foundation's 2014 edition of the *State Business Tax Climate Index* enables business leaders, government policymakers, and taxpayers to gauge how their states' tax systems compare.

The 10 best states in this year's *Index* are:

1. Wyoming
2. South Dakota
3. Nevada
4. Alaska
5. Florida
6. Washington
7. Montana
8. New Hampshire
9. Utah
10. Indiana

The absence of a major tax is a dominant factor in vaulting many of these ten states to the top of the rankings. Property taxes and unemployment insurance taxes are levied in every state, but there are several states that do without one or more of the major taxes: the corporate tax, the individual income tax, or the sales tax. Wyoming, Nevada, and South Dakota have no corporate or individual income tax; Alaska has no individual income or state-level sales tax; Florida has no individual income tax; and New Hampshire and Montana have no sales tax.

But this does not mean that a state cannot rank in the top ten while still levying all the major taxes. Indiana, which ousted Texas from the top ten this year (see p. 5), and Utah have all the major tax types, but levy them with low rates on broad bases.

The 10 lowest ranked, or worst, states in this year's *Index* are:

41. Maryland
42. Connecticut
43. Wisconsin
44. North Carolina
45. Vermont
46. Rhode Island
47. Minnesota
48. California
49. New Jersey
50. New York

The states in the bottom 10 suffer from the same afflictions: complex, non-neutral taxes with comparatively high rates.

While not reflected in this year's edition, a great testament to the *Index's* value is its use as a success metric for comprehensive reforms passed this year in North Carolina. While the state remains ranked 44th for this edition, it will move to as high as 17th as these reforms take effect in coming years.

Minnesota, by contrast, enacted a package of tax changes that reduce the state's competitiveness, including a retroactive hike in the individual income tax rate. Since last year, they have dropped from 45th to 47th place. New York and New Jersey are in a virtual tie for last place, and any change next year could change their positions. Other major changes are noted in the blue boxes throughout this report.

The 2014 *Index* represents the tax climate of each state as of July 1, 2013, the first day of the standard 2014 state fiscal year.

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*Scott Drenkard is an Economist at the Tax Foundation and Joseph Henchman is Vice President for State Projects at the Tax Foundation.*

*They would like to acknowledge the valuable research assistance of Chris Stephens and Lyman Stone in this edition of the Index, as well as the authors of previous editions: Scott A. Hodge, Scott Moody, Wendy Warcholik, Chris Atkins, Curtis Dubay, Joshua Barro, Kail Padgett, and Mark Robyn.*

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## Introduction

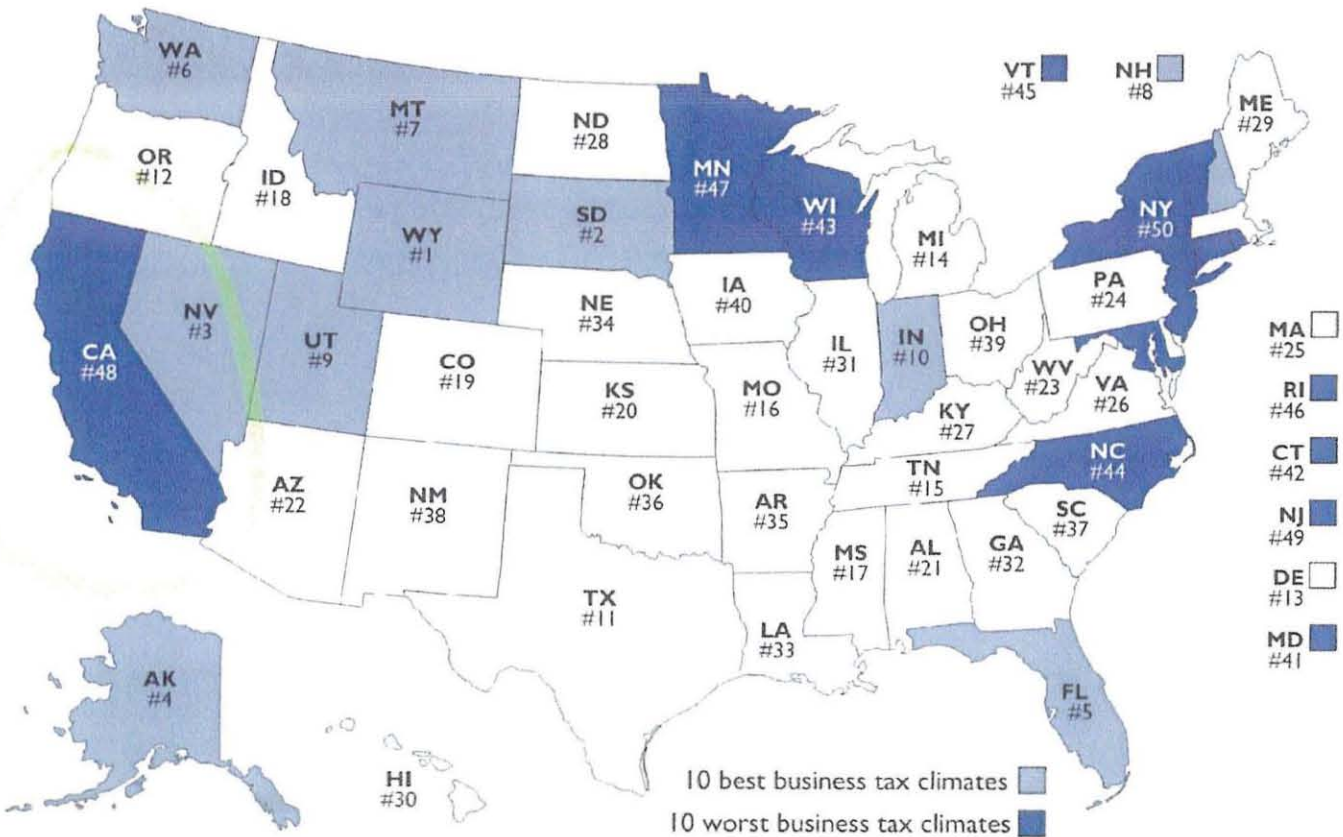
While taxes are a fact of life, not all tax systems are created equal. One measure, total taxes paid, is relevant but other elements of a state tax system can also enhance or harm the competitiveness of a state's business environment. This reduces many complex considerations to an easy-to-use ranking. (Our report looks at tax burdens in states.)

The modern market is characterized by mobile capital and labor, with all types of business, small and large, tending to locate where they have the greatest competitive advantage. The evidence shows that states with the best tax systems will be the most competitive in attracting new businesses and most effective at generating economic and employment growth. It is true that taxes are but one factor in business decision-making. Other concerns, such as raw materials or infrastructure or a skilled labor pool, matter, but a simple, sensible tax system can positively impact business

operations with regard to these very resources. Furthermore, unlike changes to a state's health-care, transportation, or education systems which can take decades to implement changes to the tax code can quickly improve a state's business climate.

It is important to remember that even in our global economy, states' stiffest and most direct competition often comes from other states. The Department of Labor reports that most mass job relocations are from one U.S. state to another, rather than to a foreign location.<sup>1</sup> Certainly job creation is rapid overseas, as previously underdeveloped nations enter the world economy without facing the highest corporate tax rate in the world, as U.S. businesses do. State lawmakers are right to be concerned about how their states rank in the global competition for jobs and capital, but they need to be more concerned with companies

Figure 1. State Business Tax Climate Index, Fiscal Year 2014



<sup>1</sup> U.S. Department of Labor, *Extended Mass Layoffs in the First Quarter of 2007*, Aug. 9, 2007, <http://www.bls.gov/opub/ted/2007/may/wk2/art04.htm> ("In the 61 actions where employers were able to provide more complete separations information, 84 percent of relocations (51 out of 61) occurred among establishments within the same company. In 64 percent of these relocations, the work activities were reassigned to place elsewhere in the U.S. Thirty six percent of the movement-of-work relocations involved out-of-country moves (22 out of 50).").

moving from Detroit, MI, to Dayton, OH, rather than from Detroit to New Delhi. This means that state lawmakers must be aware of how their states' business climates match up to their immediate neighbors and to other states within their regions.

Anecdotes about the impact of state tax systems on business investment are plentiful. In Illinois early last decade, hundreds of millions of dollars of capital investments were delayed when then-Governor Rod Blagojevich proposed a hefty gross receipts tax. Only when the legislature resoundingly defeated the bill did the investment resume. In 2005, California-based Intel decided to build a multi-billion dollar chip-making facility in Arizona due to its favorable corporate income tax system. In 2010, Northrup Grumman chose to move its headquarters to Virginia over Maryland, citing the better business tax climate.<sup>2</sup> Anecdotes such as these reinforce what we know from economic theory: taxes matter to businesses, and those places with the most competitive tax systems will reap the benefits of business-friendly tax climates.

Tax competition is an unpleasant reality for state revenue and budget officials, but it is an effective restraint on state and local taxes. It also helps to more efficiently allocate resources because businesses can locate in the states where they receive the services they need at the lowest cost. When a state imposes higher taxes than a neighboring state, businesses will cross the border to some extent. Therefore, states with more competitive tax systems score well in the *Index* because they are best suited to generate economic growth.

State lawmakers are always mindful of their states' business tax climates but they are often tempted to lure business with lucrative tax incentives and subsidies instead of broad-based tax reform. This can be a dangerous proposition, as the example of Dell Computers and North Carolina illustrates. North Carolina agreed to \$240 million worth of incentives to lure Dell to the state. Many of the incentives came in the form of tax credits from the state and local governments. Unfortunately, Dell announced in 2009 that it would be closing the plant after only four years of operations.<sup>3</sup> A 2007 *USA Today* article chronicled similar problems other states are having with companies that receive generous tax incentives.<sup>4</sup>

Lawmakers create these deals under the banner of job creation and economic development, but the truth is that if a state needs to offer such packages, it is most likely covering for a woeful

**Table 1**

**2014 State Business Tax Climate Index Ranks and Component Tax Ranks**

State	Overall Rank	Individual		Unemployment		
		Corporate Tax Rank	Income Tax Rank	Sales Tax Rank	Insurance Tax Rank	Property Tax Rank
Alabama	21	19	22	37	15	10
Alaska	4	28	1	5	29	25
Arizona	22	26	18	49	1	6
Arkansas	35	39	26	42	11	19
California	48	31	50	41	16	14
Colorado	19	21	15	44	28	22
Connecticut	42	35	33	32	23	49
Delaware	13	50	28	2	2	13
Florida	5	13	1	18	6	16
Georgia	32	8	41	12	24	31
Hawaii	30	4	35	16	38	12
Idaho	18	18	23	23	47	3
Illinois	31	47	11	33	43	44
Indiana	10	24	10	11	13	5
Iowa	40	49	32	24	36	38
Kansas	20	37	17	31	12	29
Kentucky	27	27	29	10	48	17
Louisiana	33	17	25	50	4	24
Maine	29	45	21	9	33	40
Maryland	41	15	46	8	40	41
Massachusetts	25	34	13	17	49	47
Michigan	14	9	14	7	44	28
Minnesota	47	44	47	35	41	33
Mississippi	17	11	20	28	5	32
Missouri	16	7	27	26	9	7
Montana	7	16	19	3	21	8
Nebraska	34	36	30	29	8	39
Nevada	3	1	1	40	42	9
New Hampshire	8	48	9	1	46	42
New Jersey	49	41	48	46	32	50
New Mexico	38	40	34	45	17	1
New York	50	25	49	38	45	45
North Carolina	44	29	42	47	7	30
North Dakota	28	22	38	21	19	2
Ohio	39	23	44	30	10	20
Oklahoma	36	12	39	39	3	11
Oregon	12	32	31	4	34	15
Pennsylvania	24	46	16	19	39	43
Rhode Island	46	43	36	27	50	46
South Carolina	37	10	40	22	30	21
South Dakota	2	1	1	34	37	18
Tennessee	15	14	8	43	27	37
Texas	11	38	7	36	14	35
Utah	9	5	12	20	18	4
Vermont	45	42	45	13	22	48
Virginia	26	6	37	6	35	26
Washington	6	30	1	48	20	23
West Virginia	23	20	24	25	26	27
Wisconsin	43	33	43	15	25	36
Wyoming	1	1	1	14	31	34
Dist. of Columbia	44	35	34	47	26	44

Note: A rank of 1 is more favorable for business than a rank of 50. Rankings do not average to total. States without a tax rank equally as 1. D.C. score and rank do not affect other states. Report shows tax systems as of July 1, 2013 (the beginning of Fiscal Year 2014).

Source: Tax Foundation.

<sup>2</sup> Dana Hedgpeth & Rosalind Helderman, *Northrup Grumman decides to move headquarters to Northern Virginia*, WASHINGTON POST, Apr. 27, 2010.

<sup>3</sup> Austin Mondine, *Dell cuts North Carolina plant despite \$280m sweetener*, THE REGISTER, Oct. 8, 2009.

<sup>4</sup> Dennis Cauchon, *Business Incentives Lose Luster for States*, USA TODAY, Aug. 22, 2007.



business tax climate. A far more effective approach is to systematically improve the business tax climate for the long term so as to improve the state's competitiveness. When assessing which changes to make, lawmakers need to remember two rules:

**Table 2**

*State Business Tax Climate Index, 2012 – 2014*

State	2014		2013		2012		Change from 2013 to 2014	
	Rank	Score	Rank	Score	Rank	Score	Rank	Score
Alabama	21	5.21	20	5.22	20	5.22	-1	-0.01
Alaska	4	7.24	4	7.30	4	7.35	0	-0.06
Arizona	22	5.20	27	5.10	27	5.12	5	0.10
Arkansas	35	4.89	32	4.93	30	4.97	-3	-0.04
California	48	3.76	48	3.68	48	3.77	0	0.08
Colorado	19	5.27	19	5.31	17	5.39	0	-0.04
Connecticut	42	4.47	43	4.44	41	4.49	1	0.03
Delaware	13	5.75	13	5.75	12	5.75	0	-0.01
Florida	5	6.91	5	6.84	5	6.88	0	0.07
Georgia	32	4.92	35	4.91	32	4.95	3	0.01
Hawaii	30	5.02	31	4.94	34	4.91	1	0.09
Idaho	18	5.31	18	5.31	18	5.27	0	0.00
Illinois	31	5.00	30	4.97	28	5.03	-1	0.03
Indiana	10	5.99	11	5.86	11	5.89	1	0.13
Iowa	40	4.55	40	4.54	40	4.52	0	0.00
Kansas	20	5.22	26	5.11	25	5.15	6	0.11
Kentucky	27	5.08	25	5.12	26	5.14	-2	-0.04
Louisiana	33	4.90	33	4.92	33	4.95	0	-0.02
Maine	29	5.04	29	5.02	37	4.78	0	0.01
Maryland	41	4.49	41	4.49	43	4.40	0	0.00
Massachusetts	25	5.09	24	5.12	23	5.16	-1	-0.02
Michigan	14	5.73	14	5.71	19	5.24	0	0.02
Minnesota	47	4.06	45	4.26	45	4.25	-2	-0.19
Mississippi	17	5.36	17	5.36	16	5.40	0	0.01
Missouri	16	5.47	16	5.46	15	5.48	0	0.01
Montana	7	6.24	7	6.26	7	6.28	0	-0.01
Nebraska	34	4.89	34	4.92	35	4.90	0	-0.02
Nevada	3	7.46	3	7.42	3	7.44	0	0.05
New Hampshire	8	6.08	8	6.12	8	6.27	0	-0.04
New Jersey	49	3.45	49	3.51	50	3.46	0	-0.05
New Mexico	38	4.72	38	4.72	38	4.74	0	0.00
New York	50	3.45	50	3.43	49	3.49	0	0.02
North Carolina	44	4.35	44	4.29	44	4.27	0	0.06
North Dakota	28	5.05	28	5.05	29	5.01	0	0.00
Ohio	39	4.58	39	4.55	39	4.53	0	0.03
Oklahoma	36	4.88	36	4.88	31	4.95	0	0.00
Oregon	12	5.75	12	5.79	14	5.64	0	-0.04
Pennsylvania	24	5.11	22	5.15	21	5.18	-2	-0.04
Rhode Island	46	4.14	47	4.16	46	4.21	1	-0.02
South Carolina	37	4.86	37	4.88	36	4.86	0	-0.02
South Dakota	2	7.52	2	7.53	2	7.52	0	-0.01
Tennessee	15	5.59	15	5.60	13	5.65	0	-0.01
Texas	11	5.91	10	5.91	10	6.03	-1	-0.01
Utah	9	6.01	9	5.99	9	6.04	0	0.02
Vermont	45	4.14	46	4.20	47	4.17	1	-0.06
Virginia	26	5.09	23	5.13	24	5.15	-3	-0.04
Washington	6	6.32	6	6.33	6	6.34	0	-0.01
West Virginia	23	5.19	21	5.18	22	5.18	-2	0.01
Wisconsin	43	4.43	42	4.47	42	4.44	-1	-0.03
Wyoming	1	7.58	1	7.64	1	7.66	0	-0.05
Dist. of Columbia	44	4.37	44	4.34	41	4.52	0	0.03

Note: A rank of 1 is more favorable for business than a rank of 50. A score of 10 is more favorable for business than a score of 0. All scores are for fiscal years. D.C. score and rank do not affect other states.

Source: Tax Foundation.

1. Taxes matter to business. Business taxes affect business decisions, job creation and retention, plant location, competitiveness, the transparency of the tax system, and the long-term health of a state's economy. Most importantly, taxes diminish profits. If taxes take a larger portion of profits, that cost is passed along to either consumers (through higher prices), employees (through lower wages or fewer jobs), or shareholders (through lower dividends or share value). Thus, a state with lower tax costs will be more attractive to business investment, and more likely to experience economic growth.
2. States do not enact tax changes (increases or cuts) in a vacuum. Every tax law will in some way change a state's competitive position relative to its immediate neighbors, its geographic region, and even globally. Ultimately, it will affect the state's national standing as a place to live and to do business. Entrepreneurial states can take advantage of the tax increases of their neighbors to lure businesses out of high-tax states.

In reality, tax-induced economic distortions are a fact of life, so a more realistic goal is to maximize the occasions when businesses and individuals are guided by business principles and minimize those cases where economic decisions are influenced, micromanaged, or even dictated by a tax system. The more riddled a tax system is with politically motivated preferences, the less likely it is that business decisions will be made in response to market forces. The *Index* rewards those states that apply these principles.

Ranking the competitiveness of fifty very different tax systems presents many challenges, especially when a state dispenses with a major tax entirely. Should Indiana's tax system, which includes three relatively neutral taxes on sales, individual income and corporate income, be considered more or less competitive than Alaska's tax system, which includes a particularly burdensome corporate income tax but no statewide tax on individual income or sales?

The *Index* deals with such questions by comparing the states on over 100 different variables in the five important areas of taxation (major business taxes, individual income taxes, sales taxes, unemployment insurance taxes, and property taxes) and then adding the results up to a final, overall ranking. This approach rewards states on particularly strong aspects of their tax systems (or penalizing them on particularly weak aspects) while also measuring the general competitiveness of their overall tax systems. The result is a score that can be compared to other states' scores. Ultimately, both Alaska and Indiana score well.



# Exhibit D



California Foundation  
for Commerce & Education

## The Cost of Doing Business in California

Prepared by:

*Andrew Chang & Company, LLC*

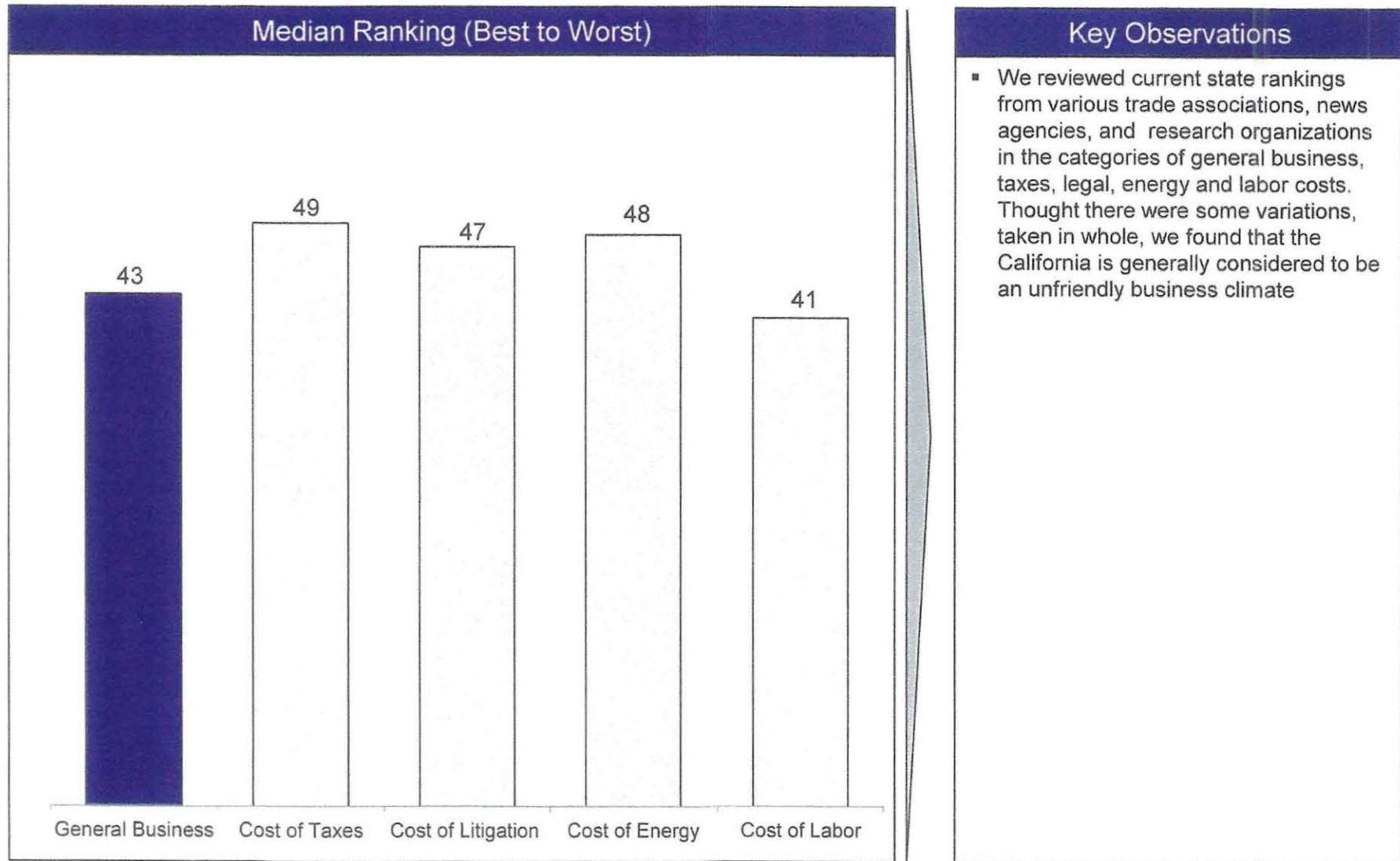
August 12, 2014

## Our current situation

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- There have been numerous studies published in recent years indicating that the cost of doing business in California is already substantially higher than the national average and compared to other competitor states, such as large states or states in the western United States. These studies have for the most part demonstrated higher costs by taking significant business cost factors such as Unemployment Insurance, taxes, workers compensation, energy, healthcare, regulations and litigation costs and comparing them on a state by state basis. There has been little work that has consolidated these studies.
- The California Foundation for Commerce and Education (CFCE) anticipates that key policy makers may pose new policy initiatives in the coming legislative session that may strive to make California more business unfriendly. In order to inform policy decision makers about the relatively high cost of doing business in the state, CFCE is seeking to commission a study that reviews currently available studies and synthesizes them in a clear and credible manner. The study should compare California to other comparable states (either western or large states) and should be comprehensive to the extent possible.
- Andrew Chang & Company was retained to assess how California's cost of doing business compares to other states and examining existing estimates for insight and public data and estimates for specific costs. Specifically, we were charged with incorporating the costs of:
  - Labor costs, including average wages, unemployment insurance, workers compensation insurance;
  - Energy costs, including electricity, natural gas and transportation fuel;
  - Litigation costs; and
  - Taxes

California compares poorly in national rankings to other states in the issues of business friendliness and taxes, legal, energy and labor costs



Source: Literature Review (see appendix)