STATE OF MICHIGAN
COURT OF CLAIMS

ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN, NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC., SENATOR EDWARD MCBROOM in his official capacity, REPRESENTATIVE DALE ZORN in his official capacity, RODNEY DAVIES, KIMBERLEY DAVIES, OWEN PYLE, WILLIAM LUBAWAY, BARBARA CARTER, and ROSS VANDERKLOCK,

Plaintiffs,

v

TREASURER OF MICHIGAN, RACHAEL EUBANKS, in her official capacity,

Defendant.
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Docket No. 23-000120-MB

Honorable Elizabeth L. Gleicher

DEFENDANT'S MOTION FOR SUMMARY DISPOSITION IN LIEU OF ANSWER TO COMPLAINT

Patrick J. Wright (P54052)
Derk A. Wilcox (P66177)
Stephen A. Delie (P80209)
Mackinac Center Legal Foundation
Attorneys for Plaintiffs
140 West Main Street
Midland, MI 48640
(989) 631-0900

_____/

David W. Thompson (P75356)
Brian K. McLaughlin (P74958)
Wesley M. Margeson (P81232)
Assistant Attorneys General
Michigan Dep't of Attorney General
Revenue and Tax Division
Attorneys for Defendant
P.O. Box 30754
Lansing, MI 48909
(517) 335-7584
ThompsonD18@michigan.gov
McLaughlinB2@michigan.gov
MargesonW@michigan.gov

DEFENDANT'S 10/02/2023 MOTION FOR SUMMARY DISPOSITION IN LIEU OF ANSWER TO COMPLAINT

INTRODUCTION

Plaintiffs style themselves as the arbiters of budget/appropriations discrepancies by asserting that they are entitled to a precise, permanent tax rate. But this Court cannot issue an advisory opinion on MCL 206.51 because of a jurisdictional defect and various justiciability barriers. First, Plaintiffs' challenge to the Treasurer's March 29, 2023 determination that the "income tax will decrease to 4.05% for one year," is untimely because they failed to file suit in this Court by June 28, 2023, as required by MCL 205.22. Thus, this Court lacks jurisdiction.

Even if jurisdiction is proper, standing and ripeness also warrant dismissal. The legislators and advocacy groups lack standing because they do not advance any specialized injury—they simply argue that their own view of the law is not being followed. Neither Const 1963, art 4, § 31 nor MCL 18.1342 guarantee the legislators a precise or permanent tax rate; each provide only for revenue *estimates*. And the advocacy groups fail to articulate any legal right to such information that is special or unique from the general public. Nor are these claims ripe for adjudication. A tax rate, including the rate Plaintiffs purport to challenge, takes effect only after the statutorily required revenue estimating conferences—a future contingent event. Indeed, the Legislature may alter the tax rate before then.

Lastly, mandamus is improper because the identified duty, MCL 206.51, is for the Treasurer to work with the house and senate fiscal agencies for the January revenue conference; not to set the rate itself. Plaintiffs gloss over the fact that the

state budgeting/appropriations process contains any number of statutory mechanisms to account for changes in estimates and revenues, including for shortfalls. These threshold deficiencies prevent this Court from reaching the merits and require this Court to grant the Treasurer's motion for summary disposition.

Concerning the merits, Michigan imposes a default income tax rate of 4.25% for tax years after 2012. The statute also contains a formula that is an exception to that tax rate if a certain contingency is satisfied. That contingency has to do with the relationship between general fund revenue and the inflation rate. If the former is greater than the latter, the Income Tax Act provides for a reduction in the tax rate for that specific tax year. But that reduction is an exception to the default rate that is conditional upon the above-noted economic circumstances. In any case, 4.25% is the default rate in all years in which the exception/contingency is not satisfied.

Plaintiffs' interpretation would turn everything on its head—the exception becomes the rule, the contingency becomes the default. If Plaintiffs are correct, the reduced rate would be permanent, contravening the plain language of the statute and also Michigan's income tax scheme insofar as such reductions would eventually eliminate the income tax through each application of the formula. This would render the very heart of the income tax scheme nugatory.

For these reasons, Plaintiffs' claims must be dismissed under MCR 2.116(C)(4), (C)(8) and (C)(10).

STATEMENT OF FACTS

In 2015, the Legislature amended the Income Tax Act of 1967, MCL 206.1 *et seq*. (Income Tax Act). See 2015 PA 180. Relevant to this case, the amendment added a provision for tax years beginning after January 1, 2023, that lowers the individual income tax rate from 4.25% when "the percentage increase in the total general fund/general purpose revenue from the immediately preceding fiscal year is greater than the inflation rate for the same period and the inflation rate is positive." MCL 206.51(1)(c).[1] In March 2023, State of Michigan Treasurer Rachael Eubanks requested an opinion from Michigan Attorney General Dana Nessel whether the individual income tax rate would remain at the reduced rate in subsequent years when the reduction was not triggered. (Compl, Ex 7 (AG Op Req), p 2.) Attorney General Nessel issued a formal opinion concluding that the rate reduction was not permanent. (Compl, Ex 1 (OAG, 2023, No. 7320 (March 23, 2023)).)

After the release of the 2022 Annual Comprehensive Financial Report, Treasurer Eubanks announced on March 29, 2023 that the 2023 individual income tax rate would "decrease to 4.05% for one year" based on the 2015 law. (Compl, Ex 8 (03/29/2023 Announcement), p 1.) The March 29 announcement referenced

[1] When the MCL 205.51(1)(c) condition is met:

> the current rate shall be reduced by an amount determined by multiplying that rate by a fraction, the numerator of which is the difference between the total general fund/general purpose revenue from the immediately preceding state fiscal year and the capped general fund/general purpose revenue and the denominator of which is the total revenue collected from this part in the immediately preceding state fiscal year. [*Id*.]

Attorney General Nessel's formal opinion. (*Id.* at 2.) The following day, Treasury issued a notice that the conditions required for an individual income tax rate reduction in MCL 206.51(1)(c) had been met, and that the 2023 individual income tax rate would be reduced to 4.05%. (Compl, Ex 9 (Notice), p 1.)

The Senate Fiscal Agency prepared an economic outlook dated May 16, 2023, which referenced a reduction in the individual income tax rate for 2023, and stated that "[b]ased on an opinion from the Attorney General, the rate reduction is a temporary rate reduction for the tax year 2023 . . . ." (Compl, Ex 12 (Michigan's Economic Outlook and Budget Review), p 36.[2]) On May 19, 2023, the Treasurer and heads of the Senate Fiscal Agency and House Fiscal Agency released the Consensus Revenue Agreement Executive Summary, which stated that the calculated 2023 individual income tax rate would be 4.05%. (Ex A, Consensus Revenue Agreement, p 3; Ex B, Economic and Revenue Forecasts (excerpt), p 6.[3]) See also Compl, ¶¶ 32–33 (discussing the May 2023 revenue conference).

Approximately five months after the March announcement from Treasurer Eubanks, and more than three months after the release of the Consensus Revenue Agreement, Plaintiffs filed a two-count complaint. Count I of the complaint

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[2] The full text of this publication is available at House Fiscal Agency, *Consensus Revenue Estimating Conference* <https://www.house.mi.gov/hfa/Consensus.asp> (accessed September 28, 2023).

[3] These public documents are being offered for background purposes only and to the extent this Court reaches the merits under MCR 2.116(C)(10) in the Argument, Section IV. They are not relevant or necessary for reaching the jurisdictional and justiciability issues under MCR 2.116(C)(4) or MCR 2.116(C)(8). They are also available online at the same source as footnote 2.

requests a declaratory ruling that the 4.05% individual income tax rate is "capped" until a subsequent reduction is triggered. (Compl, ¶¶ 69–90.) Count II seeks a writ of mandamus that would require Treasury to apply Plaintiffs' interpretation of MCL 206.51(1)(c). Plaintiffs also filed an *ex parte* motion to show cause under MCR 3.305(C) and requested an expedited schedule, seeking a decision of the Michigan Supreme Court by December 15, 2023. (Compl, ¶ 41.)

STANDARD OF REVIEW

MCR 2.116(C)(4) provides that summary disposition is appropriate when the court lacks subject-matter jurisdiction. When presented with a motion for summary disposition brought pursuant to MCR 2.116(C)(4), it is proper for courts to consider any affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties. MCR 2.116(G)(5); see also *Cork v Applebee's of Mich, Inc,* 239 Mich App 311, 315 (2000).

Summary disposition is appropriate under MCR 2.116(C)(8) when a party has failed to state a claim on which relief can be granted. A motion brought under this subrule "tests the legal sufficiency of the complaint based solely on the pleadings[,]" accepting well-pleaded factual allegations as true and construing them in "the light most favorable to the nonmoving party." *Dalley v Dykema Gossett*, 287 Mich App 296, 304–305 (2010). Summary disposition "should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery." *Id*. at 305 (cleaned up).

Summary disposition is proper under MCR 2.116(C)(10) when "[e]xcept as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." The Court considers "affidavits, depositions, admissions, or other documentary evidence" in the light most favorable to the nonmoving party. MCR 2.116(G)(2); *Veenstra v Washtenaw Country Club*, 466 Mich 155, 164 (2002). If the evidence fails to establish a genuine issue of material fact, the moving party is entitled to judgment in its favor. *Quinto v Cross & Peters Co*, 451 Mich 358, 362 (1996).

LAW AND ARGUMENT

I. This Court lacks subject-matter jurisdiction because Plaintiffs did not timely file this case within 90 days of Treasury's decision.

Plaintiffs failed to timely file a challenge to Treasury's determination, and as a result this Court lacks subject-matter jurisdiction. When a litigant seeks judicial review of a decision of an administrative agency, there are three potential avenues: "(1) the method of review prescribed by the statutes applicable to the particular agency; (2) the method of review prescribed by the Administrative Procedures Act (APA), MCL 24.201 et seq.; or (3) an appeal under MCL 600.631." *Prime Time Int'l Distrib, Inc v Dep't of Treasury*, 322 Mich App 46, 55 (2017) (cleaned up). The statutes applicable to Plaintiffs' challenge of Treasury's decision to make the income tax rate reduction temporary are those contained in the Revenue Act, MCL 205.1 *et seq*. More specifically, the Revenue Act provides that "[u]nless otherwise provided by specific authority in a taxing statute administered by the department, *all taxes shall be subject* to the procedures of administration, audit, assessment, interest,

penalty, and appeal provided in sections 21 to 30." MCL 205.20 (emphasis added). No statute within the Income Tax Act "otherwise provides" a different appeal procedure. In turn, Section 22 of the Revenue Act states that "[a] taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 60 days, or to the court of claims within 90 days after the assessment, decision, or order." MCL 205.22(1).

Plaintiffs' challenges to Treasury's decision are all subject to Section 22's requirements. Although Section 22 references an appeal by a "taxpayer," the Michigan Court of Appeals has reasoned that the term "taxpayer" included, for example, entities acting on behalf of taxpayers. See *Jackson Cmty Coll v Dep't of Treasury*, 241 Mich App 673, 682 n 4 (2000). By the Court's reasoning, any person or entity aggrieved by a Treasury decision may appeal it but must do so within the period of limitations. Further, there is no statutory language in the Revenue Act that provides for a longer limitations period for a non-taxpayer to appeal a Treasury decision.

Despite Plaintiffs' citation to the period of limitations within the Court of Claims Act, MCL 600.6431(1), the Revenue Act must control. MCL 600.6431(1) provides a period of one year to bring suit against the state or one of its agencies. As stated above, the Revenue Act provides, at most, 90 days to bring suit to challenge a Treasury decision. See MCL 205.22(1). These two statutes address the same subject matter, suits against state agencies, but conflict because the Court of

Claims Act would allow a litigant up to a year to sue Treasury to challenge a decision. Where there is a conflict between two statutes that must be read *in pari materia,* the more specific statute controls. See *Comm to Ban Fracking in Mich v Bd of State Canvassers*, 335 Mich App 384, 395 (2021). The Revenue Act is the set of statutes applicable to Treasury's decisions regarding the administration of taxes identified under the Revenue Act. *Prime Time Int'l Distrib*, 322 Mich App at 55. Because the Revenue Act provides the exclusive way to challenge a Treasury decision, it controls and the 90-day period to bring suit in this Court applies.

Plaintiffs did not timely file and this Court lacks subject-matter jurisdiction as a result. The timing requirements contained within MCL 205.22(1) are jurisdictional. See *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440–442 (2006). According to Plaintiffs' own pleading, the decision that Plaintiffs challenge is the March 29, 2023 determination from the Treasurer that the "income tax will decrease to 4.05% for one year." (Compl, Ex 8.) See also Notice of Intent, Case No. 23-200337-O (" This claim arose on March 29, 2023 in Ingham County, Michigan, upon Treasurer Eubanks' announcement that the reduction to Michigan's income tax rate under MCL 206.51(1)(c) only applies for a single year."). Plaintiffs also assert that their claims arguably accrued on that date. (Compl, ¶ 47.) By Plaintiffs' own pleading, the period of limitations set forth in the Revenue Act began to run on either March 29 or March 30, 2023.

Therefore, accepting Plaintiffs' "well-pleaded factual allegations as true," *Dalley*, 287 Mich App at 304–305, in order to appeal that determination, Plaintiffs

were required under the Revenue Act to file suit in the Court of Claims no later than June 28, 2023. See also MCR 2.116(C)(8). Even if the Treasurer and heads of the Senate and House Fiscal Agencies announced the 2024 rate at the May Revenue Estimating Conference on May 19, 2023, Plaintiffs were required, at the latest, to file suit in the Court of Claims no later than August 17, 2023. Instead, Plaintiffs filed this case on August 25, 2023. Plaintiffs' failure to timely file means that this Court lacks jurisdiction and this case must be dismissed under MCR 2.116(C)(4). If a court determines that it lacks subject-matter jurisdiction, it must dismiss the case. *Bowie v Arder*, 441 Mich 23, 56 (1992).

II. The legislators and advocacy groups lack standing.

Although the jurisdictional defects should dispose of this matter, the legislators and the advocacy groups lack standing to challenge the interpretation of MCL 206.51(1)(c). True, the Legislature is entitled to revenue *estimates*. Const 1963, art 4, § 31. That right, however, does not mean that a permanent tax rate is mandated. The legislators lack standing because they have not alleged any specialized injury; the constitutionality is not being questioned nor have their votes been nullified. The appropriation process can, and frequently does, involve changes during the fiscal year as better information becomes available. Const 1963, art 5, § 20 (Governor, with approval of House and Senate Appropriation Committees, must reduce expenditures if actual revenue falls below estimated revenue); MCL 18.1342 (preparing revenue estimates for initial executive budget proposal and "thereafter through final closing of the state's accounts."). This abstract desire

for a permanent, individual income tax rate does not confer standing for the lobbyists either as they have not demonstrated any harm to them; they have not pointed to any source of right to permanent and precise figures to advocate for their interest. The legislators and advocacy groups seek nothing more than a judicial declaration that the Treasurer enforce the law pursuant to their own view of the law; their remedy, however, is the legislative process, not the courts.

A. A generalized complaint that the law is not being followed does not confer standing for the legislators.

Legislators have a heavy burden to demonstrate standing. *House Speaker v State Admin Bd*, 441 Mich 547, 555 (1993). "[S]tanding refers to the right of a party plaintiff *initially* to invoke the power of the court to adjudicate a claimed injury in fact." *Federated Ins Co v Oakland Co Rd Comm*, 475 Mich 286, 290 (2006). Standing is assessed when the complaint is filed—the "outset of the case." *League of Women Voters of Mich v Sec'y of State*, 506 Mich 561, 590 (2020). "[W]hen standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable." *Allstate Ins Co v Hayes*, 442 Mich 56, 68 (1993) (cleaned up).

The proper test for standing was explained in *Lansing Schools Education Association v Lansing Board of Education*:

> [A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605 [i.e., an actual controversy], it is sufficient to establish standing to seek a declaratory judgment. Where a cause of action is not provided at law, then a court should, in its discretion, determine whether a litigant

> has standing. A litigant may have standing in this context if the litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large or if the statutory scheme implies that the Legislature intended to confer standing on the litigant. [*Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372 (2010).]

The legislators appear to rely on MCR 2.605 and their purported constitutional right to "precise revenue estimate for budgeting," despite the word "precise" being wholly absent from Const 1963, art 4, § 31 or MCL 18.1342 for developing revenue estimates. (Pls' Mot Show Cause, p 16.) But Plaintiffs have failed to identify any constitutional or statutory provision that provides them with precise revenue information through implementing a permanent tax rate—there is no right to a crystal ball for tax revenue. Const 1963, art 4, § 31; MCL 18.1391. Hence, the word "estimate" in our constitution, which means "a rough or approximate calculation." Merriam-Webster Online Dictionary, *Definition of "Estimate"* <http://www.merriam-webster.com/dictionary/estimate> (accessed September 29, 2023). Therefore, there is no "actual controversy" consistent with MCR 2.605.

Indeed, the Plaintiff legislators' dispute is more akin to a generalized grievance that their interpretation of MCL 206.51(1)(c) is not being applied. See *House Speaker*, 441 Mich at 556 ("For these reasons, plaintiffs who sue as legislators must assert more than a generalized grievance that the law is not being followed.") (cleaned up). But once the statute is enacted into law, the legislator's "special interest as lawmakers has ceased." *Killeen v Wayne Co Rd Comm*, 137 Mich App 178, 189 (1984). Indeed, Justice Clement opined that "a legislative

declaratory-judgment action against an executive officer is [not] justiciable when the Legislature seeks nothing more than a judicial declaration that the executive must implement a law as the Legislature prefers." *League of Women Voters of Mich*, 506 Mich at 605 (CLEMENT, J., concurring in part and dissenting in part). Granting standing to the legislators to sue members of the executive branch implicates issues of separation of powers because any perceived concern about the interpretation of the statute can be rectified through the legislative process. This is especially true since the Legislature retains constitutional authority to do what it does best: introduce a bill to change MCL 206.51(c), if they so desire. Const 1963, art 4, § 1 (vesting of legislative power); Const 1963, art 9, § 1 ("The legislature shall impose taxes sufficient with other resources to pay the expenses of state government.").

With respect to the legislators' concern for "precise" figures through a permanent tax rate, it is important to note that the budget process typically begins with each chamber of the Legislature's respective appropriation committees and subcommittees. (Compl, Ex 11.) Neither legislator is currently listed on the appropriation committee for the House of Representatives. The Michigan House of Representatives, *Appropriations* <https://www.house.mi.gov/Committee/HAPPR> (accessed September 7, 2023). And any perceived issue that the revenue estimates are not "precise"—and may potentially lead to imperfect budget forecasts—are rectified through the established procedures to correct any shortfalls already mandated. Const 1963, art 4, § 20; MCL 18.1342, 18.1391–1392. Plaintiffs do not articulate how the established process is not sufficient.

Standing requires scrutiny of the actual interests the legislators are advancing. For example, in *House Speaker*, our Supreme Court rejected standing for several legislators because, except for one legislator on the House Appropriation Committee, they were simply complaining that the State Administrative Board was not following the law when it transferred appropriated funds. *House Speaker*, 441 Mich at 560–561. The Court, however, found that one legislator had standing as a member of the House Appropriation Committee because the transfer purportedly deprived him of the ability to vote to approve or disapprove the transfer. *Id.*

Consistent with *House Speaker*, Plaintiff legislators here are advancing a generalized grievance that the Treasurer is not following their interpretation of MCL 206.51(1)(c). That is not sufficient to confer standing because "plaintiffs who sue as legislators must assert more than a generalized grievance that the law is not being followed." *House Speaker*, 441 Mich at 556 (cleaned up).

As a general matter, legislator or legislative standing is limited. They have standing to challenge an executive action that would nullify their vote similar to the facts described above in *House Speaker*. See *Raines v Byrd*, 521 US 811, 823 (1997) ("legislators whose votes would have been sufficient to defeat (or enact) a specific legislative Act have standing to sue if that legislative action goes into effect (or does not go into effect), on the ground that their votes have been completely nullified."). Then there are other limited circumstances where legislator or legislative standing exists because of constitutional challenges to statutes. See *League of Women Voters of Mich*, 506 Mich at 592 (opinion of the court) (Legislative

standing due to executive nondefense of legislation).[4] Neither situation is present here.

The legislators lack standing and have not demonstrated any special interest outside of a generalized complaint that their view of the law is not being followed. Once MCL 206.51(1)(c) was enacted into law, the legislators' "special interest as lawmakers has ceased." *Killeen*, 137 Mich App at 189.

B. The advocacy groups fail to identify any cognizable legal right that has harmed or injured them that would give rise to standing.

The lobbyist fare no better and lack standing to bring this dispute because they have no identifiable, legal right to "precise" revenue information based on a permanent tax rate. "A plaintiff must assert his own legal rights and interests and cannot rest his claim to relief on the legal rights or interests of third parties." *Fieger v Comm'r of Ins*, 174 Mich App 467, 471 (1988). "[A] plaintiff must still allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants." *Id.* at 472.

The advocacy groups concede that "they are not constitutionally entitled to accurate budgetary information." (Pls' Mot Show Cause, p 16.) That should be dispositive. Recall from above that standing requires some articulated right or

[4] To the extent Plaintiffs rely on the Attorney General's opinion to confer standing, our Supreme Court in *League of Women Voters of Michigan* rejected the argument that a formal opinion of the Attorney General could create standing. *League of Women Voters of Mich*, 506 Mich at 597–598. If the Legislature lacked standing based on an Attorney General's opinion in *League of Women Votes of Michigan*, that same logic would equally apply to the lobbyist since the opinion itself does not cause any harm to give rise to standing.

injury. "An 'actual controversy' under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff's future conduct in order to preserve [that plaintiff's] *legal rights*." *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 495 (2012). The advocacy groups never identify what legal right they have to "precise" revenue information based on a permanent tax rate. A party cannot simply announce their position and "leave it up to this Court to discover and rationalize the basis for his claims[.]" *Mitcham v Detroit*, 355 Mich 182, 203 (1959).

In addition to failing to demonstrate an actual controversy, the advocacy groups posture their case as a hypothetical or anticipated controversy that they might not have "precise" enough information to advocate their interests. No facts are alleged as how their current lobbying efforts have been harmed by the Treasurer's interpretation of MCL 206.51(1)(c). Without more, their mere desire for "instruction" going forward is insufficient to establish standing. See *League of Women Voters of Mich*, 506 Mich at 588. Because there is no specialized right for a lobbyist to have "precise" information, they lack standing. To hold otherwise would open the door for any lobbyist group to file suit whenever it did not agree with how a statute was being implemented and administered. The same holds true for the named Legislators.

III. This action is not ripe for adjudication.

This action is not ripe because there is no actual controversy and Plaintiffs have not articulated a particularized or cognizable injury, but instead only a hypothetical, contingent, or anticipated one that may not occur. "As a threshold

matter, the Michigan Constitution permits the judiciary to exercise only 'judicial power,' the 'most critical element' of which is the requirement that a genuine controversy exist between the parties." *Mich Chiropractic Council v Comm'r of Off of Fin & Ins Servs*, 475 Mich 363, 381 (2006), overruled on other grounds *Lansing Sch Educ Ass'n v Lansing Bd of Educ*, 487 Mich 349 (2010).

Ripeness concerns "whether or not there is an actual controversy, as opposed to a merely hypothetical one." *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 554 (2017). "[R]ipeness focuses on the timing of the action." 475 Mich at 379. "A claim lacks ripeness, and there is no justiciable controversy, where 'the harm asserted has [not] matured sufficiently to warrant judicial intervention.' " *Id*. at 381 (citation omitted). Further, "[t]he doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained." *Huntington Woods v Detroit*, 279 Mich App 603, 615–616 (2008) (quotation marks and citation omitted). An issue is not ripe for adjudication if "it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." *Id*.

Here, MCL 206.51(1)(c) contemplates that any determination to reduce the tax rate for 2024 occur no later than the January 2024 revenue estimating conference, which is a future/contingent event. Therefore, any challenge to the 2024 tax rate, as determined under MCL 206.51, is not ripe. Further, as Plaintiffs acknowledge, "future legislatures" (Pls' Br on Mot Show Cause, p 13) may yet act and change the provision at issue. "It is a fundamental principle that one

Legislature cannot bind a future Legislature or limit its power to amend or repeal statutes. Absent the creation of contract rights, the later Legislature is free to amend or repeal existing statutory provisions." *LeRoux v Sec'y of State*, 465 Mich 594, 615 (2002). Neither do taxpayers have a "vested interest in tax laws that exist at any particular moment." *Gillette Com Operations N Am & Subsidiaries v Dep't of Treasury*, 312 Mich App 394 (2015), citing *United States v Carlton*, 512 US 26, 30 (1994).

Therefore, even assuming Plaintiffs' interpretation of MCL 206.51(1)(c) is correct, the possibility of a legislative change before the rate defaults to 4.25% per Subsection (1)(b) negates any justiciability of this matter; it only becomes ripe when Treasury takes action that adversely affects Plaintiffs' interests. The Revenue Act provides that "[a] taxpayer aggrieved by an assessment, decision, or order of the department" may appeal the same. MCL 205.22(1). As to the individual taxpayers, these actions include issuing assessments, denying refund claims, and the like. As to Plaintiff legislators and advocacy groups, while they assert that they "have been, and will continue to be, injured" because "the fiscal 2023-24 budget has been passed and priorities were set with what Plaintiffs believe to be bad information"—i.e., a 4.25% income tax rate (Pls' Br on Mot Show Cause, p 17)—this too is hypothetical and subject to the contingency of intervening legislative enactments. And even if Plaintiffs were correct as to the meaning of MCL 206.51(1)(c), their assertion that they have been cognizably injured ignores the statutory scheme for appropriation adjustments. See e.g., MCL 18.1391–1392. (See Argument, Section V.B *infra*.)

IV. The tax rate reduction provided for in MCL 206.51(1)(c) is not permanent.

Should Plaintiffs' claim proceed to the merits, the Treasurer is entitled summary disposition under MCR 2.116(C)(8) or (C)(10) because 4.25% is the default rate in all years in which the exception/contingency in MCL 206.51(1)(c) is not satisfied.

To begin, MCL 206.51(1)(b) sets forth the default tax rate of 4.25%. Reading MCL 206.51 as a whole, it provides that "there is levied and imposed . . . a tax at the following rates[:] . . . on and after October 1, 2012, 4.25%." The provision begins with "[e]xcept as otherwise provided," which anticipates Subsection (1)(c)—that subsection contains conditional language specifying when the tax rate changes based on certain conditions that may occur. Subsection (1)(c) provides as follows:

> For each tax year beginning on and after January 1, 2023, if the percentage increase in the total general fund/general purpose revenue from the immediately preceding fiscal year is greater than the inflation rate for the same period and the inflation rate is positive, then the current rate shall be reduced by an amount determined by multiplying that rate by a fraction, the numerator of which is the difference between the total general fund/general purpose revenue from the immediately preceding state fiscal year and the capped general fund/general purpose revenue and the denominator of which is the total revenue collected from this part in the immediately preceding state fiscal year.

Plaintiffs essentially advocate that any time it is triggered, Subsection (1)(c) becomes the default individual tax rate, rendering Subsection (1)(b) mere surplusage and utterly pointless. But the plain language, and the Legislature's use of the phrase "[e]xcept as otherwise provided under subdivision (c)" demonstrates that these provisions must be read in harmony such that the triggering conditions

in Subsection (1)(c) must be evaluated "[f]or *each* tax year" to determine *if* the correct conditions exist to warrant adjusting the default tax rate from that specified in Subsection (1)(b). MCL 206.51(1)(c) (emphasis added). In other words, Subsection (1)(c) cannot be read in isolation but must be considered in the context of the entire section, which demonstrates that the default rate in Subsection (1)(b) is evaluated "[f]or each tax year" based on the conditions in Subsection (1)(c).

A. Subsection (1)(b) is a default provision for all tax years after October 1, 2012.

Statutes must be read as a whole. "Words of a statute are to be given their plain and ordinary meaning, which in part requires consideration of the context in which the words are used, as well as the placement of the words in the statutory scheme." *Ketchum Estate v Dep't of Health & Human Servs*, 314 Mich App 485, 500 (2016) (internal citations and quotations omitted).

To begin with, Subsection (1)(a) was effective "on and after October 1, 2007 and before October 1, 2012." This brings us to Subsection (1)(b), which is now effective and must be read as the beginning point of the statute every year. That provision contains exceptional language ("[e]xcept as otherwise provided under subdivision (c)"), and mandatory/default language ("on and after October 1, 2012, 4.25%"). The mandatory language governs unless the exception is triggered. See, e.g., *Michigan Ass'n of Home Builders v City of Troy*, 497 Mich 281, 286 (2015) (the phrase "except as otherwise provided" generally connotes an exception to the statutory text). The Legislature specifically intertwined these two sections

together: if the conditions exist under Subsection (1)(c), then the rate in Subsection (1)(b) is modified.

Accordingly, the tax rate every year—by default—is 4.25% in accordance with the plain text and structure of MCL 206.51. This is true unless, in any given year, certain conditions set forth in Subsection (1)(c) are satisfied.

B. Subsection (1)(c) is a conditional provision that must be examined "[f]or each tax year".

The parties do not dispute that Subsection (1)(c) is a conditional provision that is triggered only if a certain contingency arises. But contrary to Plaintiffs' interpretation, Subsection (1)(b) remains the operative tax rate unless the conditions in Subsection (1)(c) apply for that tax year. This is evident by the phrase "[f]or each tax year beginning on and after January 1, 2023"—a dependent clause—is followed by the conditional term "if." "If" means "in the event that." (Merriam-Webster Online Dictionary, *Definition of "If"* <https://www.merriam-webster.com/dictionary/if> (accessed September 15, 2023.) "If" is a conjunction that joins a conditional (or antecedent) clause and a dependent (consequent) clause, and, thereby, sets forth a contingency that may or may not be triggered in any given tax year.

As explained by the Court of Appeals in *In re Casey Estate*, 306 Mich App 252, 260 (2014), the Legislature's use of the term "if" sets forth a condition that triggers the remainder of the subsection:

> *The Random House Webster's College Dictionary* (2001) offers several definitions of "if," the more pertinent being: "1. In case that; granting or supposing that; on condition that[.]" See *Hottmann v Hottmann*,

> 226 Mich App 171, 178 (1997) (a dictionary definition is appropriately used to construe undefined statutory language according to common and approved usage). Thus, the use of "if" in the first and second clauses of MCL 700.2114(1)(b) sets forth the alternative conditions upon which the rest of that subsection is premised. Absent satisfaction of one of those conditions, the remainder of subsection (1)(b) does not come into play. [*In re Casey Estate*, 306 Mich App at 260.]

Here, the phrase "[f]or each tax year beginning on and after January 1, 2023" is the dependent/consequent clause, while the "if the percentage increase" language is the conditional/antecedent clause. As such, the tax rate in Subsection (1)(b) is examined "[f]or each tax year" to determine if the rate reduction in Subsection (1)(c) applies based on the conditions articulated in Subsection (1)(c). If those conditions are satisfied, Subsection (1)(c) contains a formula to calculate the adjustment from the default rate set forth in Subsection (1)(b), and is not itself a new permanent rate. This is the most natural reading that gives effect to every term in the statute. *S Dearborn Env't Improvement Ass'n Inc v Dep't of Env't Quality*, 502 Mich 349, 361 (2018) (Statutes should be read "together so as to harmonize their meaning, giving effect to the act as a whole.") (cleaned up).

Plaintiffs' interpretation, by contrast, would render Subsection (1)(b) nugatory. The conditional language of Subsection (1)(c)—which is anticipated by the exception language of Subsection (1)(b) ("Except as provided . . . .")—cannot override and, thereby, become the default/mandatory language in Subsection (1)(b), which would be rendered nugatory. *People v Seewald*, 499 Mich 111, 123 (2016) ("When possible, [courts] strive to avoid constructions that would render any part of the Legislature's work nugatory."). In other words, reading the conditional language of Subsection (1)(c) as setting a new permanent default rate would mean

that the exception language in Subsection (1)(b) is now the rule. This is because the exception would supplant the default clause that follows it, contrary to the plain text and contrary to how courts have construed exception language. *Mich Ass'n of Home Builders*, 497 Mich at 286; *In re Casey Estate*, 306 Mich App at 260 ("Absent satisfaction of one of those conditions, the remainder of subsection (1)(b) does not come into play.").)

In short, Plaintiffs' reading contravenes the plain language of the statute, well established rules of statutory construction, and common sense in terms of how the statute—understood as a whole—is designed to operate.

C. Reading the language of the statute as a whole, it is clear that the "current rate" is the default rate in Subsection (1)(b).

This case involves the meaning of a statute, and in such cases courts "seek to discern the ordinary meaning of the language in the context of the statute as a whole." *TOMRA of N Am, Inc v Dep't of Treasury*, 505 Mich 333, 339 (2020). As recently stated by the Court of Appeals, "context is a primary determinant of meaning." *TruGreen Ltd P'ship v Dep't of Treasury*, 338 Mich App 248, 257 (2021) (cleaned up). In this case, the meaning of the word "current" in MCL 206.51(1)(c) must be placed in the context of the whole of the Income Tax Act and MCL 206.51. As explained above, that context is a prescribed rate, see MCL 206.51(1)(b), and a decrease in the individual income tax rate evaluated "[f]or each tax year," which reduces the "current rate." MCL 206.51(1)(c). The "current rate" is a fixed rate, set forth in Subsection (1)(b). This rate is modified as provided in Subsection (1)(c) to reduce the tax burden on individual income taxpayers in any year when the general

fund grows faster than the rate of inflation. But that does not mean that the current rate becomes the new default tax rate. In effect, in the years where the State of Michigan receives a tax windfall, the burden of taxpayers is reduced. The reduction in the rate is premised on a single event, not a continuing one, so the statute's context indicates that the rate reduction should be a single year event. An interpretation of "current" that carries previous reductions forward would transform a single-year windfall into a permanent reduction and even eliminate the tax in its entirety if there were consecutive windfall years.

"Current" must also be read in context of MCL 206.51(1)(a) and (b), which provide for different rates effective at different times. In particular, the rate was 4.35% "[o]n and after October 1, 2007 and before October 1, 2012," and 4.25% "[e]xcept as otherwise provided under subdivision (c), on and after October 1, 2012." MCL 206.51(1)(a) and (b). "Current," then, recognizes that Subsections (1)(a) and (b) provide a different rate for different years, and ensures that the rate reduction applies to the base rate arrived at by reading the statute beginning at Subsection (1)(a) and then (1)(b), i.e., the rate that "exist[s] at the present time." Merriam-Webster Online Dictionary, *Definition of "Current"* <http://www.merriam-webster.com/dictionary/current> (accessed September 29, 2023). In short, on or after October 1, 2012, the "current" rate of 4.25% set in Subsection (1)(b) is reduced for the tax year in which the economic conditions outlined in Subsection (1)(c) are met, as Subsection (1)(c) is expressly limited to the specific tax year based on the phrase "[f]or each tax year."

Further, Plaintiffs' interpretation could render the entire Income Tax Act null and void. The Income Tax Act states that "[f]or receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed under this part upon the taxable income of every person other than a corporation a tax at the following rates in the following circumstances." MCL 206.51(1). If Plaintiffs' interpretation is correct, then MCL 206.51(1)(c) could be triggered multiple times, ultimately compounding reductions until the rate became zero. That interpretation would render the provision imposing the income tax nugatory, which must be avoided. See *Pittsfield Charter Twp v Washtenaw Co*, 468 Mich 702, 714 (2003).

V. Mandamus is not an appropriate remedy.

Even if Plaintiffs are correct on the merits, mandamus is not appropriate in this matter because they do not have a clear legal right to the performance of a duty by the Treasurer. Further, Plaintiffs' claims run afoul of separation of powers principles.

A. Plaintiffs have not shown that they have a clear legal right to performance of a duty by the Treasurer.

"A writ of mandamus is an extraordinary remedy." *Coalition for a Safer Detroit v Detroit City Clerk*, 295 Mich App 362, 366 (2012). Plaintiffs must show that: (1) the plaintiff has a clear legal right to the performance of the duty sought to be compelled; (2) the defendant has a clear legal duty to perform the act; (3) the act is ministerial; and (4) no other remedy exists that might achieve the same result. *Id.* See also *Stand Up For Democracy v Sec'y of State*, 492 Mich 588, 618 (2012).

Here, Plaintiffs have not articulated a specific duty for the Treasurer to perform. Mandamus requires a plaintiff to articulate a specific duty to be performed by a specific state defendant. *Taxpayers for Mich Const Gov't v Dep't of Tech, Mgmt & Budget*, 508 Mich 48, 86 (2021). Plaintiffs have failed to do so because MCL 206.51(1)(c) does not impose any specific duty on the Treasurer with respect to the income tax rate. Nor could it—the Legislature is constitutionally designated as the branch of government that levies taxes. Const 1963, art 9, § 1. Instead, the statute imposes a duty on the Treasurer to work with the house and senate fiscal agency directors to determine "whether the total revenue distributed to general fund/general purpose revenue has increased" based on the comprehensive annual financial report no later than January 2023. And while Plaintiffs assert that the Treasurer "has a clear legal duty to charge the proper tax," this ignores that the *Legislature levies* taxes, the Treasurer does not *charge* taxes. MCL 206.51(1) ("For . . . income from any source . . . *there is levied* . . . upon the taxable income of every person" a tax at certain rates. (Emphasis added).).

In support of their claims, Plaintiffs cite an election law case that is distinct from the issue here. (Pls' Br on Mot Show Cause, p 19.) Specifically, Plaintiffs cite *Berdy v Buffa*, 928 NW2d 204 (2019) for the proposition that:

> [T]he requirement that a duty be clearly defined to warrant issuance of a writ does not rule out mandamus actions in situations where the interpretation of the controlling statute is in doubt. As long as the statute, once interpreted, creates a peremptory obligation for the officer to act, a mandamus action will lie.

In *Berdy*, the plaintiffs brought a mandamus action against the Warren city elections commission to remove challenged contestants from election ballots. The

city charter provided for term limits, which certain candidates exceeded. 928 NW2d at 205. The case involved whether the Warren Charter granted the city commission the authority to determine which candidates were eligible to run for office. *Id.* In the context of this legal question, the Michigan Supreme Court observed that "plaintiff's ability to show a clear legal right or a clear legal duty for purposes of mandamus does not depend upon the difficulty of the legal question presented." *Id.* Relying on the Charter's language that "[t]he council shall be the judge of the election and qualifications *of its members*," the Court ultimately determined that the city elections commission did have that authority and "had a clear legal duty to perform the ministerial act of removing the names of the challenged contestants from the ballots." *Id.* at 207.

Berdy relied on *Berry v Garrett*, 316 Mich App 37 (2016), another election law case that dealt with a highly specific duty to be performed, i.e., removal of ineligible candidates for defective paperwork. *Berry* involved a township supervisor and trustee candidates who filed defective affidavits of identity in a primary election. *Id.* at 40. The plaintiff brought a mandamus action seeking removal of the candidates on account of their defective affidavits. *Id.* The pertinent statute provided that the defendant clerks and commissions "not certify to the board of election commissioners the name of a candidate who [had] fail[ed] to comply" with the affidavit requirements. *Id.* at 45.

Both *Berdy* and *Berry* involved specific duties to be performed in a ministerial way, i.e., removal of ineligible candidates from ballots for patent candidacy defects

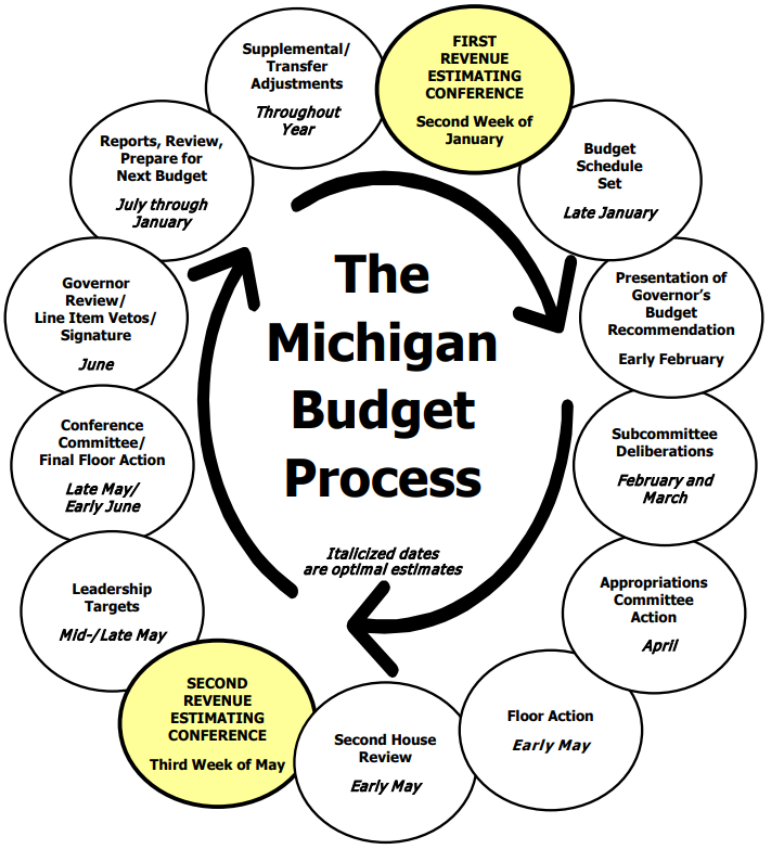
(term limits and affidavit errors). Unlike those cases, this case does not involve a specific statutory duty to be performed by the Treasurer as to the tax rate. Plaintiffs generally assert that the Treasurer has a duty to "charge" the proper tax rate. Even if this were accurate concerning how taxes are levied and what branch of government is responsible—it is not, MCL 206.51(1); Const 1963, art 4, §§ 1, 32; art 9, § 1—the purported "duty" they identify is so nonspecific as to be incognizable.

Similarly, Plaintiffs have not demonstrated a clear legal right to performance of a duty. They assert that they "have a clear legal right to correct information as to the amount the state will garner in tax revenue for the fiscal 2023-24 year." (Pls' Br on Mot Show Cause, pp 18–19.) They also assert that the legislators have a duty under Michigan's Constitution "to vote on general appropriations bills, which must contain an 'itemized statement of estimated revenue by major source.'" (*Id.* at 19.) But the budget and appropriations process contemplate that tax revenues are estimated throughout the year and state accounts are closed at the end of the year. Specifically, MCL 18.1342 provides that:

> The state budget director or state treasurer shall establish and maintain an economic analysis, revenue estimating, and monitoring activity. The activity shall include the preparation of current estimates of all revenue by source for state operating funds for the initial executive budget proposal to the legislature and thereafter through final closing of the state's accounts.

Thus, while Plaintiffs seek "correct information as to the amount the state will garner in tax revenues," (Pls' Br on Mot Show Cause, pp 18–19), actual revenues will not be available until the state's accounts close after the 2023 fiscal year and are estimated until then. MCL 18.1342. Close of the state's books for a

fiscal year may not occur until March, as it did this year. In the meantime, the state budgeting/appropriations process contains any number of statutory mechanisms to account for changes in estimates and revenues, including for shortfalls. For example, MCL 18.1391 provides for a review and recommendation for expenditure reductions for all appropriations in the event of a shortfall. (See also MCL 18.1392 (allowing for line-item reductions in subsequent legislation).)



[Compl, Ex 11, p 8.]

Therefore, even assuming that there would be a shortfall of $714.2 million in a budget of $86.7 billion, (Compl, ¶¶ 40, 89), the statutory process is the mechanism for adjustments, not judicial intervention.

Finally, concerning the final element of mandamus, Plaintiff individual taxpayers would have another remedy that would achieve the same result. Specifically, a taxpayer aggrieved by a Treasury decision may appeal that decision to the Court of Claims or to the Michigan Tax Tribunal in accordance with the Revenue Act. MCL 205.22. Here, assuming Plaintiffs' legal position is correct, if the Plaintiff individual taxpayers are wrongly assessed for tax year 2024 based on an inaccurate tax rate, they will have every ability to challenge those tax determinations under the Revenue Act. Plaintiffs concede as much in their own complaint. (Compl, ¶ 104 n 11.) As for the Plaintiff legislators and lobbyists, if this Court determines they have standing, the power to change a law lies with the Legislative Branch under Michigan's Constitution. Const 1963, art 9, § 1. Given this power, the Plaintiff legislators and lobbyists also have another remedy "that might achieve the same result." *Coalition for a Safer Detroit*, 295 Mich App at 366.

B. Plaintiffs' claims seek to insert the courts in tax and budget decisions, in violation of separation of powers.

Plaintiffs' mandamus claims ignore this statutory mechanism and instead seek to position the courts as the arbiters of budget/appropriations discrepancies, contrary to Michigan's Constitution. Const 1963, art 5, § 20. *These shortfall/adjustment events can happen in any given fiscal year.* If Plaintiffs' claims succeed based on a hypothetical shortfall as alleged in this case, any legislator or lobbyist group in any given year could circumvent the statutory budget/appropriations process via mandamus challenge in court. This would

encroach on the Legislature's constitutional responsibility for taxation, and, therefore, violate separation of powers.

CONCLUSION AND RELIEF REQUESTED

Plaintiffs' claims are untimely, for which reason they have failed to invoke this Court's jurisdiction. Further, these claims are non-justiciable, and their mandamus claim would create separation of powers problems.

As to the merits, the Treasurer's interpretation of the Income Tax Act is faithful to its text and should be affirmed. By contrast, Plaintiffs' interpretation would violate the plain text of the statute, render certain provisions of the Act nugatory, and contravene common sense application of Michigan's income tax scheme. For these reasons, this Court should dismiss this action under MCR 2.116(C)(4), (C)(8) and (C)(10).

Respectfully submitted,

/s/ David W. Thompson
David W. Thompson (P75356)
Brian K. McLaughlin (P74958)
Wesley M. Margeson (P81232)
Assistant Attorneys General
Michigan Dep't of Attorney General
Revenue and Tax Division
Attorneys for Defendant
P.O. Box 30754
Lansing, MI 48909
(517) 335-7584

Dated: October 2, 2023

Exhibit
A

Consensus Revenue Agreement
Executive Summary
May 19, 2023

Economic and Revenue Forecasts
Fiscal Years 2023, 2024 and 2025

Principals

Rachael Eubanks
State Treasurer

Kathryn Summers, Director
Senate Fiscal Agency

Mary Ann Cleary, Director
House Fiscal Agency

Staff

Eric Bussis
Michigan Department of Treasury

David Zin
Senate Fiscal Agency

Jim Stansell
House Fiscal Agency

Table 1
Consensus Economic Forecast

May 2023

	Calendar 2022 Actual	Percent Change from Prior Year	Calendar 2023 Forecast	Percent Change from Prior Year	Calendar 2024 Forecast	Percent Change from Prior Year	Calendar 2025 Forecast	Percent Change from Prior Year
United States								
Real Gross Domestic Product (Billions of Chained 2012 Dollars)	$20,014	2.1%	$20,254	1.2%	$20,396	0.7%	$20,804	2.0%
Implicit Price Deflator GDP (2012 = 100)	127.2	7.0%	132.6	4.2%	136.4	2.9%	139.4	2.2%
Consumer Price Index (1982-84 = 100)	292.655	8.0%	305.689	4.5%	314.825	3.0%	322.834	2.5%
Consumer Price Index - Fiscal Year (1982-84 = 100)	287.723	7.9%	302.949	5.3%	312.737	3.2%	320.778	2.6%
Personal Consumption Deflator (2012 = 100)	122.8	6.2%	127.7	4.0%	131.5	2.9%	134.5	2.3%
3-month Treasury Bills Interest Rate (percent)	2.0		5.00		4.73		4.07	
Unemployment Rate - Civilian (percent)	3.6		3.7		4.2		4.0	
Wage and Salary Employment (millions)	152.575	4.3%	155.779	2.1%	155.779	0.0%	156.714	0.6%
Housing Starts (millions of starts)	1.553	-3.0%	1.314	-15.4%	1.293	-1.6%	1.347	4.2%
Light Vehicle Sales (millions of units)	13.8	-8.0%	15.1	9.8%	15.5	2.6%	16.1	3.9%
Passenger Car Sales (millions of units)	2.9	-14.7%	3.1	8.4%	3.1	0.0%	3.1	0.0%
Light Truck Sales (millions of units)	10.9	-6.0%	12.0	10.1%	12.4	3.3%	13.0	4.8%
Big 3 Share of Light Vehicles (percent)	38.6		37.7		37.4		36.7	
Michigan								
Wage and Salary Employment (thousands)	4,362	3.9%	4,419	1.3%	4,437	0.4%	4,468	0.7%
Unemployment Rate (percent)	4.2		4.3		4.8		4.3	
Personal Income (millions of dollars)	$570,065	0.4%	$593,438	4.1%	$613,021	3.3%	$636,316	3.8%
Real Personal Income (millions of 1982-84 dollars)	$212,615	-7.2%	$211,622	-0.5%	$212,515	0.4%	$215,309	1.3%
Wages and Salaries (millions of dollars)	$285,475	9.0%	$300,890	5.4%	$309,616	2.9%	$320,762	3.6%
Detroit Consumer Price Index (1982-84 = 100)	268.121	8.2%	280.423	4.6%	288.460	2.9%	295.536	2.5%
Detroit CPI - Fiscal Year (1982-84 = 100)	263.397	7.9%	278.061	5.6%	286.760	3.1%	293.836	2.5%

Table 2

May 2023 Consensus Forecast

(millions)

Net Revenue Estimates

	FY 2023			FY 2024			FY 2025		
	Jan 2023 Consensus	May 2023 Consensus	Change From Consensus	Jan 2023 Consensus	May 2023 Consensus	Change From Consensus	Jan 2023 Consensus	May 2023 Consensus	Change From Consensus
Net GF-GP Revenue	$14,777.9	$13,788.0	($989.9)	$15,092.2	$13,238.3	($1,853.9)	$15,545.5	$13,916.4	($1,629.1)
Percent Growth	-2.8%	-9.4%		2.1%	-4.0%		3.0%	5.1%	
Dollar Growth		($1,424.0)			($549.7)			$678.2	
Net SAF Revenue	$17,635.1	$17,741.6	$106.5	$17,846.0	$17,888.1	$42.1	$18,257.6	$18,265.9	$8.3
Percent Growth	-1.1%	-0.8%		1.2%	0.8%		2.3%	2.1%	
Dollar Growth		($139.3)			$146.5			$377.7	
Combined	$32,413.0	$31,529.6	($883.4)	$32,938.2	$31,126.4	($1,811.8)	$33,803.1	$32,182.3	($1,620.8)
Percent Growth	-1.9%	-4.7%		1.6%	-1.3%		2.6%	3.4%	
Dollar Growth		($1,563.4)			($403.2)			$1,055.9	

Revenue Limit Calculation

	FY 2022	FY 2023	FY 2024	FY 2025
Personal Income	$537,493	$567,807	$570,065	$593,438
Ratio	9.49%	9.49%	9.49%	9.49%
Revenue Limit	$51,008.1	$53,884.9	$54,099.2	$56,317.3
Revenue Subject to Limit	$43,334.7	$42,231.3	$42,122.9	$43,433.9
Amount Under (Over) Limit	**$7,673.4**	**$11,653.6**	**$11,976.3**	**$12,883.4**

Note: CY 2020 Personal Income is used for the FY 2022 revenue limit calculation, CY 2021 for FY 2023, CY 2022 for FY 2024, and CY 2023 for FY 2025.

Long Term Revenue Trend

	FY 2026	FY 2027
Net GF-GP Revenue	$14,153.7	$14,519.1
Growth	1.7%	2.6%
Net SAF Revenue	$18,672.0	$19,198.5
Growth	2.2%	2.8%
Combined GF-GP/SAF	$32,825.7	$33,717.6
Growth	2.0%	2.7%

Calculation of Income Tax Rate Under MCL 206.51(1)

	FY 2021	FY 2022
GF/GP (1)	$12,525.5	$14,709.1
Section 51d earmark (transportation)	$600.0	$600.0
Total GF/GP revenue	$13,125.5	$15,309.1
Percentage increase CPI		7.92%
Multiplier		1.425
Adjustment factor from FY 2021		1.112812
Capped GF/GP revenue		$14,606.2
Total GF/GP revenue less Capped GF/GP revenue		$702.9
Total IIT revenue collected (gross)		$15,306.3
Calculated tax rate for tax year 2023		**4.05%**

Budget Stabilization Fund Calculation

FY 2023 Calculations	**NO PAY-IN OR PAY-OUT**
FY 2024 Calculations	**NO PAY-IN OR PAY-OUT**
FY 2025 Calculations	**NO PAY-IN OR PAY-OUT**

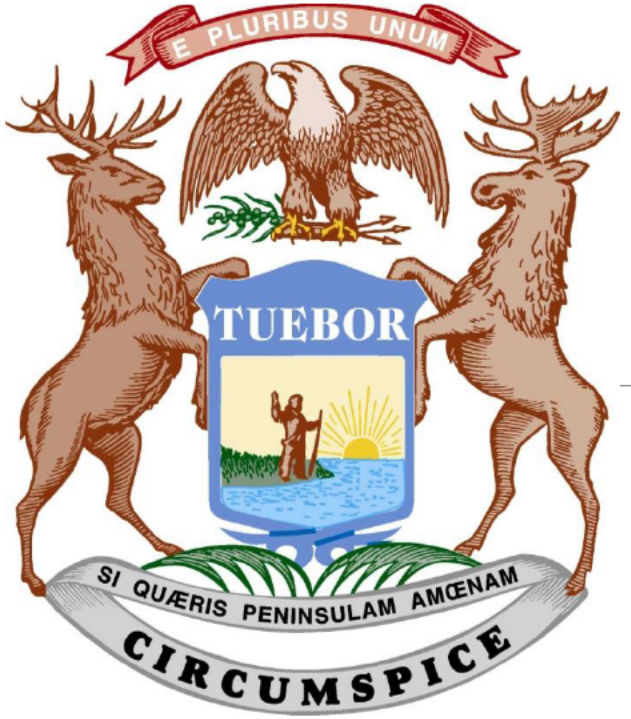
School Aid Index

	FY 2024	FY 2025
Revenue Adjustment Factor	**1.0071**	**1.0201**
Pupil Membership Factor	**1.0039**	**1.0037**
School Aid Index	**1.0110**	**1.0239**

Exhibit
B

Economic and Revenue Forecasts

FY 2023 * FY 2024 * FY 2025



Consensus Revenue Estimating Conference (CREC)

May 19, 2023

INCOME TAX RATE UNDER MCL 206.51(1)

Beginning with tax year 2023, the income tax rate is reduced if General Fund-General Purpose revenue growth exceeds defined levels

The reduction calculation uses General Fund-General Purpose revenue as published in the Annual Comprehensive Financial Report (ACFR)

- With the publication of the FY 2022 ACFR, this calculation and rate can now be determined
- Under the calculation, the Individual Income Tax Rate for tax year 2023 is 4.05%, down from the 4.25% rate for 2022

Statute states that the rate will be set at the consensus conference