

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

**Associated Builders and Contractors of
Michigan, National Federation of
Independent Businesses, 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 VanderKlok**

MSC No. 166595

COA No.: 369314

Court of Claims Case No.: 23-000120-MB

Plaintiffs/Appellants,

v.

**Treasurer of Michigan, Rachael Eubanks, in
her official capacity**

Defendant/Appellee

Patrick J. Wright (P54052)
Derk A. Wilcox (P66177)
Stephen A. Delie (P80209)
Mackinac Center for Public Policy
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APPELLANTS' APPENDIX

<u>Appendix</u>	<u>Description</u>	<u>Bates No.</u>
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Appendix 1: Register of Actions

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 23-000120-MB C/COC/MI	Public 2/6/2024 8:31:17 AM Page: 1 of 5
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CASE

Judicial Officer	Date Filed	Adjudication	Status
GLEICHER, ELIZABETH	8/25/23	ORDER ENTERED 12/21/23	CLOSED 12/21/23

PARTICIPANTS

PLAINTIFF 1	ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 2	NATIONAL FEDERATION OF INDEPENDENT BUSINESS, INC.	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 3	SENATOR EDWARD MCBROOM IN HIS OFFICIAL CAPACITY	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 4	REPRESENTATIVE DALE ZORN IN HIS OFFICIAL CAPACITY	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 5	DAVIES, RODNEY	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 6	DAVIES, KIMBERLEY	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 7	PYLE, OWEN	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 8	LUBAWAY, WILLIAM	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 9	CARTER, BARBARA	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
PLAINTIFF 10	VANDERKLOK, ROSS	FILED: 8/25/23
	ATTY: PATRICK J. WRIGHT # 54052 PRIMARY RETAINED	
DEFENDANT 1	TREASURER OF MICHIGAN, RACHAEL EUBANKS, IN HER OFFICIAL CAPACITY	FILED: 8/25/23
	ATTY: DAVID WENTLAND THOMPSON # 75356 PRIMARY RETAINED	

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 ASSOCIATED BUILDERS AND CONTRACTORS OF MICHIGAN	\$220.00	\$220.00	\$0.00
	Assessed	Paid/Adjusted	Balance
DEF 1 TREASURER OF MICHIGAN, RACHAEL EUBANKS, IN HER OFF	\$20.00	\$0.00	\$20.00

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity	User	Entry Date
8/25/23	WRIT	amd	8/29/23
	PTF 1	kj	8/30/23

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 23-000120-MB C/COC/MI	Public 2/6/2024 8:31:17 AM Page: 2 of 5
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Activity Date	Activity	User	Entry Date
	PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7 PTF 8 PTF 9 PTF 10 DEF 1		
8/25/23	JUDICIAL OFFICER ASSIGNED TO GLEICHER, ELIZABETH L. 30369	amd	8/29/23
8/25/23	RECEIVABLE ELECTRONIC FILING SYSTEM FEE	\$25.00 amd	8/29/23
8/25/23	RECEIVABLE FILING FEE	\$150.00 amd	8/29/23
8/25/23	EX PARTE MOTION WITH BRIEF	amd amd	8/29/23 8/29/23
	PTF 1 PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7 PTF 8 PTF 9 PTF 10		
8/29/23	CERTIFICATE OF SERVICE DEF 1	amd	8/29/23
8/30/23	PAYMENT RECEIPT NUMBER: COC-LAN.0007169 METHOD: ELECTRONIC FUND TRANSFER \$175.00 Bundle: TEMP-ZXKLMKHW-35742644	\$175.00 kj	8/30/23
8/31/23	APPEARANCE APPEARANCE AND NOTICE OF APPEARANCE WITH PROOF OF SERVICE DEF 1	kj	9/1/23
9/14/23	STATUS CONFERENCE VIA ZOOM	SET 9/18/23 3:00 P kj	9/14/23
9/14/23	ORDER FOR ZOOM STATUS CONFERENCE	kj	9/14/23
9/19/23	PROPOSED STIPULATED ORDER PTF 1 PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7	kj	9/20/23

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 23-000120-MB C/COC/MI	Public 2/6/2024 8:31:17 AM Page: 3 of 5
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Activity Date	Activity		User	Entry Date
	PTF 8 PTF 9 PTF 10 DEF 1			
9/21/23	ORDER		kj kj	9/21/23 9/25/23
9/25/23	ORDER DENYING PLAINTIFF'S EX PARTE MOTION TO SHOW CAUSE		kj	9/25/23
10/2/23	MOTION FOR SUMMARY DISPOSITION IN LIEU OF ANSWER TO COMPLAIUINT DEF 1	\$20.00	amd	10/3/23
10/2/23	RECEIVABLE MOTION FEE	\$20.00	amd	10/3/23
10/17/23	MOTION - CROSS-MOTION FOR SUMMARY DISPOSITION PTF 1 PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7 PTF 8 PTF 9 PTF 10	\$20.00	kj kj	10/17/23 10/17/23
10/17/23	RECEIVABLE MOTION FEE	\$20.00	kj	10/17/23
10/17/23	PAYMENT RECEIPT NUMBER: COC-LAN.0007296 METHOD: ELECTRONIC FUND TRANSFER \$20.00 Bundle: 23-000120-MB-37037239	\$20.00	kj	10/17/23
10/18/23	PROPOSED STIPULATED ORDER PTF 1 PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7 PTF 8 PTF 9 PTF 10 DEF 1		kj	10/18/23
10/19/23	ORDER		kj	10/19/23
11/6/23	RESPONSE TO PLAINTIFFS' 10/17/2023 CROSS-MOTION FOR SUMMARY DISPOSITION AND IN SUPPORT OF 10/02/2023 MOTION FOR SUMMARY DISPOSITION DEF 1		kj	11/7/23

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 23-000120-MB C/COC/MI	Public 2/6/2024 8:31:17 AM Page: 4 of 5
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Activity Date	Activity	User	Entry Date
11/16/23	REPLY BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION IN SUPPORT OF ITS CROSS-MOTION FOR SUMMARY DISPOSITION PTF 1 PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7 PTF 8 PTF 9 PTF 10	kj	11/17/23
12/21/23	OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFFS' COUNTERMOTION FOR SUMMARY DISPOSITION AND MOTION FOR A SHOW-CAUSE ORDER DEF 1	kj	12/21/23
12/21/23	CLOSE CASE STATUS	kj	12/27/23
1/11/24	CLAIM OF APPEAL - NOTICE OF APPEAL PTF 1 PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7 PTF 8 PTF 9 PTF 10	\$25.00 kj kj	1/11/24 1/11/24
1/11/24	RECEIVABLE APPEALS FEE	\$25.00	kj 1/11/24
1/11/24	PAYMENT RECEIPT NUMBER: COC-LAN.0007451 METHOD: ELECTRONIC FUND TRANSFER \$25.00 Bundle: 23-000120-MB-39491014	\$25.00	kj 1/11/24
1/16/24	APPEARANCE AND NOTICE OF APPEARANCE DEF 1	kj	1/17/24
1/23/24	NOTICE OF BYPASS APPLICATION PTF 1 PTF 2 PTF 3 PTF 4 PTF 5 PTF 6 PTF 7	kj	1/23/24

<p align="center">STATE OF MICHIGAN COURT OF CLAIMS</p>	<p align="center">REGISTER OF ACTIONS</p>	<p align="center">CASE ID 23-000120-MB C/COC/MI</p>	<p align="right">Public 2/6/2024 8:31:17 AM Page: 5 of 5</p>
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Activity Date	Activity	User	Entry Date
	PTF 8		
	PTF 9		
	PTF 10		

Appendix 2: Complaint with accompanying exhibits

**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 VanderKlok,

Plaintiffs,

v.

Treasurer of Michigan, Rachael Eubanks, in her official capacity

Defendant.

Case No.: 23-_____ -MB

Hon. _____

Complaint and *Ex Parte* Motion

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**PLAINTIFFS' COMPLAINT AND *EX PARTE* MOTION TO SHOW CAUSE UNDER
MCR 3.305(C) AND FOR EXPEDITED DECLARATORY RELIEF UNDER MCR
2.605(D)**

*****DECISION REQUESTED BY DECEMBER 15, 2023*****

There is no other pending or resolved civil action arising out of the same transaction or occurrence alleged in the complaint.

NOW COMES Plaintiffs, 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, and Rodney Davies, Kimberly Davies, Owen Pyle, William Lubaway, Barbara Carter, and Ross VanderKlok, who file this *ex parte* Motion for Show Cause under MCR 3.305(C) as contained in this Complaint, filed simultaneously with this motion. Because of the time constraints posed by this matter in light of its impact on the State’s approximately 5 million taxpayers, Plaintiffs request that this Court issue a ruling on September 22, 2023. In support, Plaintiffs state as follows:

INTRODUCTION

Plaintiffs ask this Court to declare that the State of Michigan income tax rate for the 2024 tax year is capped at 4.05%, and to issue a writ of mandamus requiring Defendant to apply that rate. This declaration would be contrary to Attorney General Opinion No. 7320 (March 23, 2023), Exhibit 1, wherein the Attorney General opined the 2024 income tax rate would be 4.25%, after a one-year reduction to 4.05%.

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff, Associated Builders and Contractors of Michigan (“ABC”), is a Michigan nonprofit incorporated trade association headquartered in Ingham County, Michigan.
2. ABC is a trade association representing more than 900 construction and construction-related firms throughout the State of Michigan and in bordering states. ABC’s members include both taxpaying corporate entities and individual taxpayers. ABC employer members employ a combined workforce of more than 30,000 individuals. ABC regularly engages in the lobbying of legislatures in an effort to promote its members’ priorities.
3. Plaintiff, National Federation of Independent Business, Inc. (NFIB) is the nation’s leading small business association. NFIB’s mission is to promote and protect the right of its

members to own, operate, and grow their business. NFIB represents the interests of its members in Washington D.C. and all 50 state capitals.

4. NFIB's membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. NFIB represents over 287,000 businesses nationwide and nearly 10,000 Michigan businesses. NFIB's members account for approximately 2,000,000 of the nation's jobs and the average NFIB member employs just over 7 employees.
5. Plaintiff, Edward McBroom, is an elected Senator of the State of Michigan.
6. Plaintiff, Dale Zorn, is an elected Representative of the State of Michigan.
7. Plaintiff, Rodney Davies, is a natural person and resident and citizen of the State of Michigan, County of Oakland.
8. Plaintiff, Kimberley Davies, is a natural person and resident and citizen of the State of Michigan, County of Oakland.
9. Plaintiff, Owen Pyle, is a natural person and resident and citizen of the State of Michigan, County of Kent.
10. Plaintiff, William Lubaway, is a natural person and resident and citizen of the State of Michigan, County of Oakland.
11. Plaintiff, Barbara Carter, is a natural person and resident and citizen of the State of Michigan, County of Oakland.
12. Plaintiff, Ross VanderKlok, is a natural person and resident and citizen of the State of Michigan, County of Kent.

13. Defendant, State of Michigan Treasurer Rachael Eubanks, heads Michigan's Department of Treasury, one of the 20 principal executive departments in Michigan. Const 1963, art 5, § 2; MCL 16.175.

14. Venue and subject-matter jurisdiction are proper in the Court of Claims pursuant to MCL 600.6419.

BACKGROUND ON MCL 206.51(1)(c)

15. The Plaintiffs hereby incorporate the preceding paragraphs as if fully restated herein.

16. 2015 PA 180 was passed and became effective in 2015.

17. Regarding the income tax rate, 2015 PA 180 stated and codified at MCL 206.51(1)(a)-(c):

(1) For 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:

(a) On and after October 1, 2007 and before October 1, 2012, 4.35%.

(b) Except as otherwise provided under subdivision (c), on and after October 1, 2012, 4.25%.

(c) 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. For purposes of this subdivision only, the state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall determine whether the total revenue distributed to general fund/general purpose revenue has increased as required under this subdivision based on the comprehensive annual financial report prepared and published by the department of technology, management, and budget in accordance with section 23 of article IX of the state constitution of 1963. The state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall make the determination under this subdivision no later than the date of the January 2023 revenue estimating conference conducted pursuant to sections 367a through 367f of the management and budget act, 1984 PA 431, MCL 18.1367a to

18.1367f, and the date of each January revenue estimating conference conducted each year thereafter. . . .

Exhibit 2 (emphasis added).

18. Subsequent amendments to MCL 206.51 did not change the above language. See 2016 PA 266; 2018 PA 588; and 2020 PA 75.
19. 2023 PA 4 also will not change that language when it becomes effective.
20. At the time 2015 PA 180 was adopted, it was clear that the income tax reduction was intended to apply on an ongoing basis. House Fiscal Agency’s analysis of 2015 PA 180 stated:

Senate Bill 414

The income tax rate reduction trigger created by this bill would reduce state GF/GP revenues in years in which prior-year GF/GP revenue growth exceeds the rate of inflation beginning with FY 2022-23, assuming GF/GP revenues were above the adjusted FY 2020- 21 level. **Those revenue reductions would continue in subsequent years.**

The frequency and magnitude of such revenue reductions would depend on future levels of inflation and economic growth, as well as potential non-economic factors affecting state revenues. (An example of such a non-economic factor is the increase in capital gain and dividend income tax revenue associated with the fiscal cliff in tax year 2011. While this one-time revenue increase was largely offset the following year, the trigger mechanism would have resulted in a **permanent reduction in the income tax rate.**)

Exhibit 3, House Fiscal Analysis, Legislative Analysis: “Road-Funding Package – Preliminary Analysis” at 4 (November 3, 2015) (emphasis added). House Fiscal’s November 16, 2015 “Road Funding Package – Enacted Analysis” said the same thing word for word. Exhibit 4 at p. 5. Plaintiff Zorn was serving as a state Senator at the time, and Plaintiff McBroom was serving as a State Representative at the time.

21. That interpretation is consistent with how MCL 206.51(1)(c) was being interpreted prior to the Attorney General issuing her opinion on this matter.

22. In its preparatory document for the January 11, 2023 Consensus Revenue Estimating Conference (“CREC”), the Senate Fiscal Agency indicated that it was likely that the MCL 206.51(1)(c) formula would lead to a permanent income-tax-rate reduction from 4.25% to around 4.05%: “Because preliminary GF/GP revenue is forecasted to increase in FY 2021-22 by an amount greater than 1.425 times the rate of inflation, Public Act 180 of 2015 is predicted to require a **permanent reduction** in the IIT rate.” Exhibit 5 at p. 29 (emphasis added).
23. In its preparatory document for the January 11, 2023 Consensus Revenue Estimating Conference (“CREC”), the House Fiscal Agency indicated that it was likely that the MCL 206.51(1)(c) formula would lead to an income-tax-rate reduction from 4.25% to around 4.05%. Exhibit 6 at p. 14.
24. As there was some debate whether such a rate cut would be permanent, on March 22, 2023, Defendant Eubanks sought an opinion from the Attorney General. Exhibit 7.
25. The next day, March 23, 2023, Attorney General Nessel issued Attorney General Opinion No. 7320. Exhibit 1.
26. On March 29, 2023, after the closing of the 2021-22 fiscal year via the issuance of the State of Michigan Annual Comprehensive Financial Reports (sometimes known as SOMACFR or ACFR), Defendant Eubanks announced the reduction of the 2023 income tax rate from 4.25% to 4.05% “for one year.” Exhibit 8.
27. On March 30, 2023, Defendant Eubanks issued a Taxpayer Notice again indicating that the 2023 income tax rate would be 4.05%, and indicating that new tax tables would not be issued:

Treasury’s withholding rate tables for the 2023 tax year will not be updated to accommodate the revised rate. Individuals and fiduciaries with questions

about the effect of the rate change on the amount of tax being withheld from their income should contact their employer or administrator directly.

Exhibit 9.

DECLARATORY RELIEF IS NECESSARY TO ENSURE THE LEGISLATURE CAN PREPARE AND MAINTAIN AN ACCURATE BUDGET

28. Const 1963, art 4, § 31 states:

The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed.

29. The Notice to the Address of the People related to Const 1963, art 4, § 31 stated:

This is a new section designed to accomplish two major purposes:

1. To focus legislative attention on the general appropriation bills or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation.
2. To require the legislature (as well as the governor by subsequent provision) to set forth by major items its own best estimates of revenue.

The legislature frequently differs from the executive estimates of revenue. It is proper to require that such differences as exist be specifically set forth for public understanding and future judgement as to the validity of each.

Exhibit 10, 2 Official Record, Constitutional Convention 1961, p. 3375.

30. Michigan's fiscal year runs from October 1 to September 30. MCL 18.1491.

31. Const 1963 art 5, § 20 provides a mechanism by which the Governor and Legislature shall reduce expenditures in the event they do not reflect the actual revenue assumptions that existed during the appropriations process:

No appropriation shall be a mandate to spend. The governor, with the approval of the appropriating committees of the house and senate, shall reduce expenditures authorized by appropriations whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based. Reductions in expenditures shall be made in accordance with procedures prescribed by law. The governor may not reduce expenditures of the legislative and judicial branches or from funds constitutionally dedicated for specific purposes.

32. According to the House Fiscal Agency’s January 2019 “A Legislator’s Guide to Michigan’s Budget Process,” Exhibit 11 at p. 8 Figure 1,¹ the major steps in the budget process are:

- a. First revenue estimating conference in the second week of January. See also MCL 18.1367b.
- b. Governor presents budget recommendation (“Early February”). See also 1963 Const, art 5, § 18.
- c. Budget legislation introduced and debated (February to May).
- d. Second revenue estimating conference in third week of May. See also MCL 18.1367b.
- e. Passage of budget. See also MCL 18.1365 (“the legislature shall pass and present general appropriation bills for the upcoming fiscal year to the governor on or before July 1.”)

33. On May 16, 2023, the Senate Fiscal Agency published its “Michigan Economic Outlook and Budget Review FY 2022-23, FY 2023-24, and FY 2024-25.” Exhibit 12.² It stated:

Based on the FY 2021-22 Annual Comprehensive Financial Report, the [individual income tax] rate for tax year 2023 is 4.05%, which will reduce General Fund revenue by \$527.6 million in FY 2022-23 and \$186.6 million in FY 2023-24. Based on an opinion from the Attorney General, the rate reduction is a temporary rate reduction for tax year 2023, although the reduction will affect both FY 2022-23 and 2023-24.

¹ Available at: https://www.house.mi.gov/hfa/PDF/Alpha/approps_process_report.pdf

² Available At:

<https://www.senate.michigan.gov/sfa/Publications/BudUpdates/EconomicOutlookMay23.pdf>

Id. at p. 36. This permanence question was directly contrary to the Senate Fiscal Agency’s earlier opinion in preparation for the January 11, 2023 Consensus Revenue Estimating Conference (“CREC”).

34. On May 19, 2023, the Senate Fiscal Agency indicated to Senate members that the income tax rate cut was for tax year 2023 only due to Attorney General Opinion No. 7320 (March 23, 2023): “Income tax reduction (ie, trigger) - 4/10/23: AG opinion 1-year impact.” [sic] Exhibit 13.³

35. The income tax year runs on a calendar basis. MCL 206.24.

36. In 2020, \$9,424,548,300 in income taxes were levied. Exhibit 14, Michigan Department of Treasury, *Michigan’s Individual Income Tax*, November, 2022.⁴

37. In tax year 2020, there were 4,952,798 Michigan 1040s filed. *Id.*

38. According to the Senate Fiscal Agency’s Spring 2015 “State Notes Topics of Legislative Interest – A History of the Michigan Individual Income Tax Rate,” income taxes usually provide over 30% of the revenue for the combined general fund/general purpose and school aid funds. Exhibit 15 at 2, table 1.⁵

39. The Senate Fiscal Agency’s Michigan Economic Outlook and Budget Review FY 2022-23, FY 2023-24, and FY 2024-25 document estimates that the income tax reduction within

³ Available at:

<https://www.senate.michigan.gov/sfa/Publications/BudUpdates/ConsensusYearEndBalanceMay23.pdf>

⁴ Available at: https://www.michigan.gov/treasury/-/media/Project/Websites/treasury/Uncategorized/2022/ORTA-Tax-Reports/IIT-report_TY2020-data.pdf.

⁵ Available at:

<https://www.senate.michigan.gov/SFA/Publications/Notes/2015Notes/NotesSpr15lpdz.pdf>

MCL 251.61(c) would result in a state revenue reduction of \$527.6 million in FY 2022-23 and \$186.6 million in FY 2023-24. Exhibit 12.

40. A holding that the tax rate is capped at 4.05% for tax year 2024 and subsequent tax years, would mean that around \$714.2 million is not available for the fiscal 2023-24 budget cycle. *Id.*
41. An appropriate schedule which would allow this matter to be finally resolved by December 15, 2023, while still allowing the parties and courts adequate time to address the issues would be:

Event	Date
Defendant's Response Brief	Sept. 6, 2023 (2 days after Labor Day)
Plaintiff's Reply	Sept. 13, 2023
Court of Claims Decision	Sept. 22, 2023
Appellant's/s' Brief to Court of Appeals	Oct. 2, 2023
Appellee's/s' Response/Amicus Briefs	Oct. 12, 2023
Appellant's/s' Reply	Oct. 17, 2023
Court of Appeals Decision	Oct. 27, 2023
Appellant's/s' Brief to Supreme Court	Nov. 3, 2023
Appellee's/s' Brief to Supreme Court/Amicus Briefs	Nov. 10, 2023
Appellant's/s' Reply	Nov. 15, 2023
Oral Argument	To be decided by Michigan Supreme Court if necessary
Decision of the Michigan Supreme Court	December 15, 2023

**EXPEDITED DECLARATORY RELIEF IS NECESSARY TO AVOID
OVERWHELMING THE DEPARTMENT OF TREASURY, MICHIGAN TAX**

**TRIBUNAL, AND THIS COURT WITH INDIVIDUAL INCOME TAX RATE
CHALLENGES**

42. The Plaintiffs hereby incorporate the preceding paragraphs as if fully restated herein.
43. MCR 2.605(D) permits this Court to “order a speedy hearing of an action for declaratory relief and may advance it on the calendar.”
44. This Court should grant a speedy hearing consistent with the schedule set forth above in order to avoid the significant consequences that would occur should this matter go unresolved.
45. The closer this matter gets to calendar year 2024 without resolution, the greater the likelihood that some of Michigan’s approximately 5 million individual taxpayers will be filing suit to seek guidance.
46. Citizens may challenge an income tax assessment using the following procedures: (1) informal dispute resolution with the Department of Treasury; (2) filing a claim in the Tax Tribunal; and (3) filing a suit with the Court of Claims. MCL 205.21; MCL 205.22.
47. Although it is unclear precisely when Plaintiff’s claims accrued, it is at least arguable that they accrued as of March 29, 2023, upon Treasurer Eubank’s announcement of the income tax reduction for fiscal years 2023-2024. Exhibit 9. As a result, anyone wishing to challenge the Treasurer’s application of MCL 206.51(1)(c) would arguably need to file such a challenge no later than March 29, 2024, pursuant to MCL 600.6431(1).
48. If even a small minority of taxpayers challenge their income taxes on the basis that MCL 206.51(1)(c) requires an income tax rate of 4.05%, rather than 4.25%, there exists a real possibility that any or all of the above entities find themselves overwhelmed with an unprecedented volume of cases.

49. Annually, there are generally less than 100,000 new actions filed in all Michigan circuit courts.⁶
50. Therefore, if even as few as 3% of taxpayers file a challenge on the basis that MCL 206.51(1)(c) caps the income tax rate at 4.05% for tax years 2024 and beyond, more tax claims will have been filed than number of actions typically filed in all of the circuit courts combined annually.
51. A taxpayer wishing to challenge an assessment under MCL 205.21 must do so within 60 days of receiving the Department's notice of intent to assess tax. MCL 205.21(2)(c).
52. A taxpayer wishing to appeal an assessment, decision, or order of the Department by elevating it to the Tax Tribunal must file that appeal within 60 days of that determination. MCL 205.22(1).
53. A taxpayer wishing to appeal an assessment, decision, or order of the Department by filing a claim with the Court of Claims must file that appeal within 90 days of that determination. MCL 205.752(1).
54. If the Department's assessment or decision is not appealed within the aforementioned time limits, it is "final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack." MCL 205.22(4).
55. Taken together, these legal requirements create the potential for judicial overload. In the 60-90 days following the assessment of 2024 taxes, the Court of Claims, Department of Treasury, and Michigan Tax Tribunal may reasonably see what is essentially a year's

⁶ The Court may take judicial notice of the Statewide Circuit Court Summary Caseload Reports. In 2021, there were 89,024 new filings, including all civil, criminal, and appellate actions, in the Michigan circuit courts. In 2020, that number was 76,823. In 2019, 94,458 actions were filed.

worth of filings in a roughly three-month period if even a tiny fraction of taxpayers challenge the Attorney General's interpretation of MCL 206.51(1)(c).

56. Although the most significant impacts of the meaning of MCL 206.51(1)(c) would probably arise when 2024 taxes are assessed, this Court should not wait until that point to rule on this issue. The meaning of MCL 206.51(1)(c) has substantial consequences beginning as soon as January 1, 2024.
57. Many taxpayers may wait until they file their 2024 taxes to seek a rebate, but the legal ramifications of an improper application of MCL 206.51(1)(c) begin as early as January 1, 2024.
58. Beginning on January 1, 2024, an employer who overwithholds income tax from an employee's wages becomes exposed to liability for a demand for repayment of the overwithholding. Mich Admin Code, R 206.22.
59. As a result, Michigan employers may face demands for repayment of overwithholdings beginning on January 15, 2024. Mich Admin Code, R 206.23.
60. If an employer refuses to repay a disputed overwithholding, an employee can claim credit for the amount withheld on their individual tax return. Mich Admin Code, R 206.22.
61. Therefore, as of January 15, 2024, Michigan employers may find themselves facing as many as 5 million demands for repayment of overwithholdings.
62. Should those employers refuse to repay the disputed overwithholdings, the Department of Treasury could face an equal number of claimed credits on individual tax returns.

63. This is further complicated when non-W2 employees are considered. For employees earning income reported on IRS Form 990, individual estimated taxes are due on April 15, 2024. MCL 206.301.⁷
64. Individual estimated taxes are based on quarterly installments of an individual's annual estimated taxes. *Id.*
65. Thus, as of January 1, 2024, taxpayers required to pay individual estimated taxes will need to accurately calculate their annual individual estimated tax for tax year 2024.
66. Should MCL 206.51(1)(c) not be clarified, those taxpayers paying individual estimated taxes will face a dilemma: pay taxes assuming a 4.25% tax rate, and risk overpayment, or pay taxes at 4.05% and risk enforcement action.
67. It is therefore in the interest of judicial economy to resolve this question prior to January 1, 2024.
68. A final judgement issued by December 15, 2023, would clarify the interpretation of MCL 206.51(1)(c) with sufficient notice to the parties to enable an efficient administration of the 2024 tax year.

COUNT I: REQUEST FOR DECLARATORY RELIEF

69. The Plaintiffs hereby incorporate the preceding paragraphs as if fully restated herein.
70. This case turns on the proper statutory analysis of MCL 206.51(1)(c). If the Attorney General's interpretation of that section is correct, then Michigan's income tax will be capped at 4.25% rate after being reduced to 4.05% for a single year. If Plaintiffs are

⁷ Please note this is after the potential accrual date of March 29, 2024.

correct, then Michigan’s income tax will be capped at a 4.05% rate unless later reduced by future application of MCL 206.51(1)(c).⁸

71. In Attorney General Opinion 7320, Attorney General Nessel concluded that “it is apparent that the Legislature intended any income tax reduction under subsection (1)(c) to be for that tax year only, where the conditions described in subsection (1)(c) apply.”

72. The Attorney General based her conclusion on the statutory interpretation of the word “current” as a description of “rate” in MCL 206.51(1)(c). She concluded:

“According to subsection 1(c), the rate that is subject to reduction is the ‘current’ rate. The statute does not offer a definition, but the common meaning of the word ‘current’ is ‘existing at the present time.’ At the present time, the income tax rate is specifically set out in subsection (1)(b)—4.25%.”

73. Attorney General Opinion 7320 reaches a conclusion that is not consistent with the plain text of MCL 206.51(1)(c), or with the Legislature’s intent.

74. The online version of Merriam Webster’s Dictionary lists three definitions for “current” as an adjective: (1) “occurring in or existing at the present time”; (2) “presently elapsing”; and (3) “most recent.”⁹

75. The relevant Dictionary.com definitions for “current” are: (1) “passing in time; belonging to the time actually passing”; (2) “prevalent; customary”; (3) “popular; in vogue”; and (4) “new; present; most recent.”¹⁰

⁸ Individual Taxpayer Plaintiffs and NFIB and ABC as membership organizations would be limited to declaratory relief.

⁹ Available at: <https://www.merriam-webster.com/dictionary/current> (accessed August 21, 2023). The Michigan Supreme Court cited Merriam Webster’s online dictionary in *Detroit New v Independent Citizens Redistricting Commission*, 508 Mich 399, 421 (2021). This is also the dictionary the Attorney General cited in Opinion 7320.

¹⁰ Available at: <https://www.dictionary.com/browse/current> (accessed August 21, 2023). The Michigan Supreme Court referred to this dictionary in *Drouillard v American Alternative Insurance Corp*, 504 Mich 919 (2019).

76. Plaintiffs argue that the use of “current” in MCL 206.51(1)(c) means “most recent.” The Attorney General’s opinion, on the other hand, concluded that “current” means “existing at the present time.”
77. Courts may look at past legislative practice to guide analysis of a disputed term. *Honigman Miller Schwartz and Cohn LLP v Detroit*, 505 Mich 284, 310-11 (2020).
78. The Legislature has previously identified a numeric income tax rate in 1983 PA 53. Exhibit 16.
79. Under 1983 PA 53, the income tax was set based on a formula for “January 1, 1983, and thereafter.” *Id.* at Section 51(1)(d). The formula in 1983 PA 53 was based on a specific rate, namely, 3.9%.
80. This indicates that, as of 2015, there was legislative experience in setting a particular numerically identified rate (1983’s 3.9%) as a starting point for a year-by-year formulaic determination of the applicable income tax.
81. Thus, the 2015 Legislature’s choice to not follow its past-proven method from 1983 indicates the Legislature meant “current” to mean “most recent” for purposes for MCL 206.51(1)(c).
82. If the Legislature had intended “current” to mean “existing at the present time,” it could have achieved that goal by doing precisely what it did in 1983: using a fixed numerical value. Its decision to not do so demonstrates that the Legislature did not intend for MCL 206.51(1)(c) to refer to the income tax rate “existing at the present time,” but rather the “most recent” rate.
83. Even if the phrase “current” causes MCL 206.51(1)(c) to be ambiguous, Plaintiffs should still prevail on the merits.

84. Under *Honigman*, 505 Mich at 291 n 3, the Michigan Supreme Court noted that “ambiguities in the language of the tax statute are to be resolved in favor of the taxpayer.”
85. Plaintiffs’ interpretation of MCL 206.51(1)(c) is to the benefit of the taxpayer, as it would provide a .2% lower cap to Michigan’s income tax rate, with a potential for additional future reductions to the cap if MCL 206.51(1)(c) were to be triggered in the future. The State’s position, meanwhile, would limit the reduction to the income cap tax to a single year, resulting in Michigan taxpayers paying an additional \$714.2 million per year. Exhibit 12.
86. Thus, if Plaintiffs should prevail on the meaning of “current” in MCL 206.51(1)(c), the Court need not consult staff reports to determine legislative intent.
87. Those reports, however, support Plaintiffs’ position. See, e.g., Exhibits 5, 6.
88. The plain language of the use of the word “current” in MCL 206.51(1)(c), when taken in context and considered in light of the relevant legislative experience, is clear and favors Plaintiffs’ position. Even if ambiguous, contemporaneous committee reports and the requirement that ambiguities in taxing statutes are to read in the taxpayers’ favor result in Plaintiffs’ interpretation of that statute being the superior interpretation.
89. In 2023, the Legislature passed almost \$2 billion in targeted tax relief, and the Governor signed an \$81.7 billion budget, the largest budget in state history. See 2023 PA 119, 2023 PA 103, and House Fiscal Agency, Legislative Analysis of House Bill 4001 (Feb. 8, 2023) (Exhibit 17). Taken together, that spending could have sustained a 4-year reduction in the income tax rate at \$714.2 million per year.

90. Plaintiffs therefore request that this court issue an order declaring that MCL 206.51(1)(c)'s definition of current means "most recent," thereby requiring the income tax rate be capped at 4.05% until such time as MCL 206.51(1)(c) is subsequently triggered.

COUNT II: MANDAMUS

91. Plaintiffs hereby incorporate the preceding paragraphs as if fully restated herein.

92. "Mandamus is the appropriate remedy for a party seeking to compel action by 'state officers.'" *Taxpayers for Mich Const Gov v Dep't of Tech*, ___ Mich App ___; 2022 WL 17865554 (Dec 22, 2022) at *7.

93. To obtain a writ of mandamus, a plaintiff must meet four elements: "(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 such act, (3) the act is ministerial in nature such that it involves no discretion or judgement, and (4) the plaintiff has no other adequate legal or equitable remedy." *Wilcoxon v City of Detroit Election Comm'n*, 301 Mich App 619, 632-33 (2013); *Deleeuw v State Bd of Canvassers*, 263 Mich App 496, 500 (2004).

94. "A clear legal right is a right 'clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal questions to be decided.'" *Att'y Gen Bd of State Canvassers*, 318 Mich App 242, 249 (2016) (citation omitted).

95. Plaintiffs McBroom and Zorn are legislators and, like every member of the Legislature, have the clear legal right to accurate information during the budgeting and appropriations process.

96. Similarly, Plaintiffs ABC Michigan and NFIB are organizations which regularly engage in the budget process through advocating on behalf of their members.

97. Const 1963, art 4, § 31 tasks legislators with the duty to vote on general appropriations bills, which must in turn contain an “itemized statement of estimated revenue by major source.” In voting on these bills, Plaintiff legislators necessarily need accurate information in order to fulfil their constitutional duties.

98. Doubt about a statute’s meaning does not preclude a mandamus action:

“[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 a controlling statute is in doubt. As long as the statute, once interpreted, creates a preemptory obligation for the officer to act, a mandamus action will lie.”

Berdy v Buffa, 504 Mich 876 (2019).

99. This Court has the authority to issue declaratory relief in the form of an order establishing the correct legal interpretation of MCL 206.51(1)(c). MCL 600.6419(a). That same section provides the Court with the authority to issue a writ of mandamus. *Id.*

100. The proper application of MCL 206.51(1)(c) is a ministerial act.

101. “A ministerial act is one in which the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment.” *Berry v Garrett*, 316 Mich App 37 (2016) (citation omitted).

102. Defendant has no discretion to apply an income tax rate other than the one specified by law, namely, MCL 206.51.

103. Plaintiffs McBroom and Zorn have no adequate remedy other than a writ of mandamus. Without accurate information regarding the proper tax rate, Plaintiff legislators (and all legislators) would be required to vote on appropriations bills without knowing whether the revenue available accurately reflects proper taxation.

104. Plaintiffs ABC Michigan and NFIB as advocacy organizations have no adequate remedy other than a writ of mandamus, as the improper application of MCL 206.51(1)(c) impacts

their ability to properly petition the Legislature on budgetary issues through lobbying undertaken on behalf of their members.¹¹

105. If the Court determines Plaintiffs' interpretation of MCL 206.51(1)(c) is correct, it should issue a writ of mandamus requiring Defendant to apply that interpretation for the current and subsequent tax years. As State Treasurer, Defendant has a clear legal duty to apply the tax laws as written.

RELIEF REQUESTED

The individual Plaintiffs respectfully request that this Court enter a declaratory judgement holding that MCL 206.51(1)(c) requires an individual income tax rate for tax years 2022-2023 and all subsequent tax years that is capped at 4.05%, unless or until modified by the Legislature. A final declaratory judgment by December 15, 2023, allows the parties the opportunity to respond to the Court's ruling in time to avoid potentially overwhelming the Court, the Department of Treasury, and the Michigan Tax Tribunal with individualized challenges. Plaintiffs request that, pursuant to MCR 2.605(D) the Court schedule an expediated hearing on that question. Plaintiffs legislators and Plaintiffs ABC Michigan and NFIB, in their advocacy capacities, further request this court enter an Order to Show Cause as to why a writ of mandamus should not be issued requiring Defendant to apply MCL 206.51(1)(c) in the manner specified above under MCR 3.305(C), along with an appropriate briefing schedule.

Respectfully Submitted,

/s/ Patrick J. Wright

Patrick J. Wright (P54052)

Mackinac Center Legal Foundation

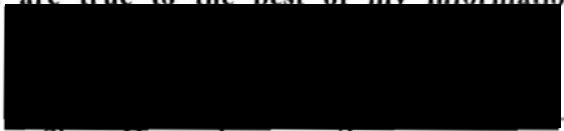
Attorneys for Plaintiffs

Dated: August 25, 2023

¹¹ In light of the various appellate options described above, the individual taxpayer members of ABC Michigan and NFIB have another remedy at law, albeit one that is inefficient and likely to overwhelm the systems for challenging tax determinations. As such, neither organization is seeking a writ of mandamus on behalf of their individual members.


I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: 8/24/23



Shane Hernandez
On behalf of ABC Michigan

Subscribed and sworn to by Shane Hernandez before me on the 24 day of August, 2023.

Signature 

Notary Public, State of Michigan

County of St. Clair

My Commission Expires Oct. 29, 2025

Acting in the County of St. Clair


HEATHER WORDEN
Notary Public, State of Michigan
County of St. Clair
My Commission Expires Oct. 29, 2025
Acting in the County of St. Clair

I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: 8-23-23



Amanda Fisher
State Director, Michigan
On behalf of the National Federation of
Independent Business, Inc.

Subscriber  Fisher before me on the 23 day of August, 2023.

Signature 

Notary Public, State of Michigan

County of Ingham

My Commission Expires 02/20/2028

Acting in the County of Ingham

I declare that the statements above are true to the best of my information, knowledge, and belief.

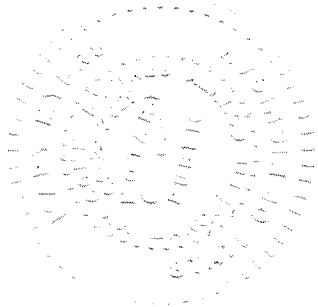
Dated: August 23, 2023

[Redacted Signature]
Senator Edward McBroom

Subscribed and sworn to by Edward McBroom before me on the 23 day of August, 2023.

Signature [Redacted]
Notary Public, State of Michigan
County of Marquette
My Commission Expires 9/29/2029
Acting in the County of Marquette

MARY MYERS
Notary Public, State of Michigan
County of Marquette
My Commission Expires 09-29-2029
Acting in the County of Marquette



I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: 8-23-23

[Redacted Signature]

Representative Dale Zorn

Subscribed and sworn to by Dale Zorn before me on the 23rd day of August, 2023.

Signature [Redacted]

Notary Public, State of Michigan

County of Monroe

My Commission Expires March 21, 2027

Acting in the County of Monroe

NICOLE GALLOWAY

Notary Public, State of Michigan

County of Monroe

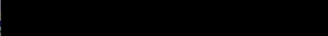
My Commission Expires March 21, 2027

I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: August 23, 2023


Rodney Davies

Subscribed to _____ Davies before me on the 23 day of August, 2023.

Signature: 

Notary Public, State of Michigan

County of Ingham

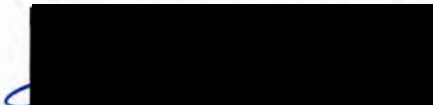
My Commission Expires 07-29-2025

Acting in the County of midland

STEPHEN DELIE
Notary Public, State of Michigan
County of Ingham
My Commission Expires 07-29-2025
Acting in the County of midland

I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: August 23, 2023



Kimberley Davies

Subscribed and sworn to by Kimberley Davies before me on the 23 day of August, 2023.

Signature 

Notary Public, State of Michigan

County of Ingham

My Commission Expires 07-29-2025

Acting in the County of Midland

STEPHEN DELIE
Notary Public, State of Michigan
County of Ingham
My Commission Expires 07-29-2025
Acting in the County of Midland

I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated:

8/23/2023

Owen Pyle

Subscribed and sworn to by Owen Pyle before me on the 23 day of August, 2023.

Signature

Notary Public, State of

County of

My Commission Expires

Acting in the County of

Michigan
Kent
06/02/24
Kent



FELICIA SWIFT
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF KENT
My Commission Expires June 2, 2024
Acting in the County of Kent

I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: 08/23/2023

[Redacted Signature]

Ross VanderKlok

Subscribed and sworn to by Ross VanderKlok before me on the 23 day of August, 2023.

Signature [Redacted]

Notary Public, State of Michigan

County of Kent

My Commission Expires 6/2/24

Acting in the County of Kent

FELICIA SWIFT
NOTARY PUBLIC - STATE OF MICHIGAN
COUNTY OF KENT
My Commission Expires June 2, 2024
Acting in the County of Kent



I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: 8/23/2023

[Redacted Signature]

William Lubaway

Subscribed and sworn to by William Lubaway before me on the 23 day of August, 2023.

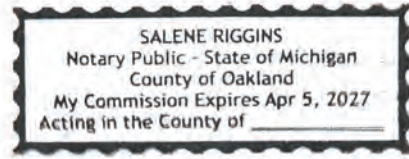
Signature [Redacted]

Notary Public, State of Michigan

County of Oakland

My Commission Expires 4-5-2027

Acting in the County of _____



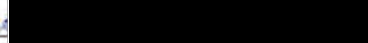
I declare that the statements above are true to the best of my information, knowledge, and belief.

Dated: 8-23-2023



Barbara Carter

Subscribed and sworn to by Barbara Carter before me on the 23 day of August, 2023.

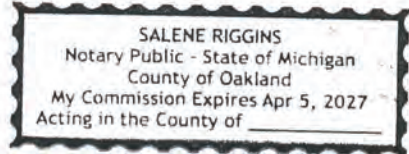
Signature 

Notary Public, State of Michigan

County of Oakland

My Commission Expires 4-5-2027

Acting in the County of _____



**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, Kimberly Davies, Owen Pyle, William Lubaway, Barbara Carter, and Ross VanderKlok.

Case No.: 23-_____ -MB

Hon. _____

Index of Exhibits

Plaintiffs,

v.

Treasurer of Michigan, Rachael Eubanks, in her official capacity

Defendant.

**Patrick J. Wright (P54052)
Derk A. Wilcox (P66177)
Stephen A. Delie (P80209)**
Mackinac Center for Public Policy
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Midland, MI 48640
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(989) 631-0964 – fax

INDEX OF EXHIBITS

INDEX OF EXHIBITS

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1	Attorney General Opinion No. 7320 (March 23, 2023)

2	2015 Public Act 180
3	November 3, 2015 HFA Legislative Analysis—Road Funding Package
4	November 16, 2015 HFA Enacted Analysis—Road Funding Package
5	January 11, 2023 SFA Consensus Revenue Estimating Conference Document
6	January 11, 2023 HFA Consensus Revenue Estimating Conference Document
7	March 22, 2023 Eubanks Request
8	March 29, 2023 Annual Comprehensive Financial Report Release
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10	Official Record, Constitutional Convention 1961
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12	May 16, 2023 SFA Michigan Economic Outlook and Budget Review
13	May 19, 2023 SFA Income Tax Reduction Trigger Notice
14	2020 Tax Year Summary
15	SFA 2015 A History of the Michigan Individual Income Tax Rate
16	Public Act 15 of 1983
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Exhibit 1

The following opinion is presented on-line for informational use only and does not replace the official version. (Mich. Dept. of Attorney General Web Site - <http://www.ag.state.mi.us>)

STATE OF MICHIGAN
DANA NESSEL, ATTORNEY GENERAL

INCOME TAX ACT:

Reduction in the income tax rate where a percentage increase in the general fund/general purpose revenue for the preceding fiscal year exceeded the inflation rate for that same period and the inflation rate is positive.

An individual income tax rate reduction under MCL 206.51(1)(c) is temporary (i.e., for one year only) and if the income tax rate for a particular year is reduced under MCL 206.51(1)(c), it returns to 4.25% in the subsequent year, as described in MCL 206.51(1)(b).

Opinion No. 7320

March 23, 2023

The Honorable Rachel Eubanks
State Treasurer
Michigan Department of Treasury
Lansing, MI 48922

You have requested my opinion on whether the individual income tax rate reduction under MCL 206.51(1)(c) is temporary (i.e., for one year only) or permanent (i.e., for all subsequent years). Specifically, you ask if the income tax rate for a particular year is reduced under MCL 206.51(1)(c), does the income tax rate return to 4.25% in the subsequent year, as described in MCL 206.51(1)(b), or does the rate remain at the reduced rate calculated under MCL 206.51(1)(c)? You indicate that for purposes of your question, it should be presumed that the rate reduction in MCL 206.51(1)(c) is not triggered in consecutive years.

In 2015, the Income Tax Act was amended to provide a mechanism by which the income tax rate would be reduced in circumstances where a percentage increase in the general fund/general purpose revenue for the preceding fiscal year exceeded the inflation rate for that same period and the inflation rate was positive. In particular, MCL 206.51(1) provides, in relevant part:

(1) For 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:

(a) On and after October 1, 2007 and before October 1, 2012, 4.35%.

(b) Except as otherwise provided under subdivision (c), on and after October 1, 2012, 4.25%.

(c) 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.

Resolving your question turns on an interpretation of this language. The goal of statutory interpretation is to give effect to the Legislature's intent, focusing first on the statute's plain language. *Ally Financial Inc v State Treasurer*, 502 Mich 484, 493 (2018). The statute must be examined as a whole, reading individual words and phrases in the context of the entire legislative scheme, including the physical and logical relation of its many parts. *Id.* When a statute's language is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. *Ronnisch Construction Group Inc v Lofts on the Nine LLC*, 499 Mich 544, 552 (2016).

Here, examining MCL 206.51(1) as a whole, it is apparent that the Legislature intended any income tax reduction under subsection (1)(c) to be for that tax year only, where the conditions described in subsection (1)(c) apply.

According to subsection (1)(c), the rate that is subject to reduction is the "current" rate. The statute does not offer a definition, but the common meaning of the word "current" is "existing at the present time."^[1] At the present time, the income tax rate is specifically set out in subsection (1)(b) – 4.25%. Significantly, subsection (1)(b) states that the 4.25% rate applies, "[e]xcept as otherwise provided under subdivision (c)," and as mentioned, "subdivision (c)" creates a triggering event that leads to the reduction in

the current rate. Importantly, whether that triggering event occurs is determined “[f]or each tax year.” MCL 206.51(c). Otherwise, subsection (1)(b) provides the tax rate for years “on and after October 1, 2012.” MCL 206.51(b).

Giving effect to this language, particularly considering the physical and logical relation of the subsections and subdivisions in MCL 206.51, subsection (1)(b) establishes a default tax rate for each tax year that applies *unless* the triggering event in subsection (1)(c) that leads to the reduction of the current rate occurs. In other words, the “current” rate referred to in subsection (1)(c) is that rate specifically set out in subsection (1)(b), and whether a reduction in the subsection (1)(b) rate is warranted must be determined “each tax year” as stated in subsection (1)(c). Accordingly, whether the triggering event – and an attendant reduction in the income tax rate – occurred in a prior year is of no consequence to the annual determination made under subsection (1)(c). The “current” rate is the baseline rate specifically set out in subsection (1)(b), 4.25%, and any reduction in that rate that occurred by operation of the triggering event is for a single tax year only, as provided in subsection (1)(c).

It is noteworthy that MCL 206.51(10) is a subsection that specifically defines terms as used in MCL 206.51. Had the Legislature intended the phrase “current rate” in subsection (1)(c) to require a permanent change to the rate specifically set out in subsection (1)(b), it could have easily, and clearly, done so in subsection (10) (or in subsection (1)(c)). But it did not, and where the Legislature’s intent is otherwise apparent, nothing should be read into the statute that the Legislature did not see fit to include. See generally, *In re Estate of Lewis*, 329 Mich App 85, 103 (2019).

The conclusion that any reduction is temporary is supported not only by the plain language of the statute, but also by the nature of the triggering event itself. In particular, the triggering event is based on temporary, impermanent, circumstances that change, and are reviewed, every year. Essentially, the Legislature has determined that if a situation exists where a percentage increase in state revenue in the immediately preceding fiscal year is greater than the rate of inflation for that same year and the inflation rate is positive, then the State can afford to provide relief to taxpayers. But because that situation is only temporary, it makes sense that, rather than provide a permanent tax reduction based on the (perhaps unusual) economic circumstances of a single fiscal year, the Legislature intended the relief to taxpayers to be only temporary as well. Simply put, the statute provides temporary relief based on temporary circumstances.

It is my opinion, therefore, that any individual income tax rate reduction under MCL 206.51(1)(c) is temporary (i.e., for one year only) and if the income tax rate for a particular year is reduced under MCL 206.51(1)(c), it returns to 4.25% in the subsequent year, as described in MCL 206.51(1)(b).

Sincerely,



DANA NESSEL
Attorney General

[1] www.merriam-webster.com/dictionary/current <accessed March 23, 2023>. A dictionary may be consulted to ascertain the plain meaning of a word. *Wardell v Hincka*, 297 Mich App 127, 132 (2012).

[http://opinion/datafiles/2020s/op10399.htm](http://opinion.datafiles/2020s/op10399.htm)
State of Michigan, Department of Attorney General
Last Updated 03/24/2023 16:40:26

Exhibit 2

Act No. 180
Public Acts of 2015
Approved by the Governor
November 10, 2015
Filed with the Secretary of State
November 10, 2015
EFFECTIVE DATE: November 10, 2015

**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2015**

Introduced by Senator Schmidt

ENROLLED SENATE BILL No. 414

AN ACT to amend 1967 PA 281, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, reporting, payment, and enforcement by lien and otherwise of taxes on or measured by net income and on certain commercial, business, and financial activities; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal acts and parts of acts," by amending section 51 (MCL 206.51), as amended by 2012 PA 223.

The People of the State of Michigan enact:

Sec. 51. (1) For 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:

(a) On and after October 1, 2007 and before October 1, 2012, 4.85%.

(b) Except as otherwise provided under subdivision (c), on and after October 1, 2012, 4.25%.

(c) 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. For purposes of this subdivision only, the state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall determine whether the total revenue distributed to general fund/general purpose revenue has

(59)

increased as required under this subdivision based on the comprehensive annual financial report prepared and published by the department of technology, management, and budget in accordance with section 23 of article IX of the state constitution of 1963. The state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall make the determination under this subdivision no later than the date of the January 2023 revenue estimating conference conducted pursuant to sections 367a through 367f of the management and budget act, 1984 PA 431, MCL 18.1367a to 18.1367f, and the date of each January revenue estimating conference conducted each year thereafter. As used in this subdivision:

(i) "Capped general fund/general purpose revenue" means the total general fund/general purpose revenue from the 2020-2021 state fiscal year multiplied by the sum of 1 plus the product of 1.425 times the difference between a fraction, the numerator of which is the consumer price index for the state fiscal year ending in the tax year prior to the tax year for which the adjustment is being made and the denominator of which is the consumer price index for the 2020-2021 state fiscal year, and 1.

(ii) "Total general fund/general purpose revenue" means the total general fund/general purpose revenue and other financing sources as published in the comprehensive annual financial report schedule of revenue and other financing sources - general fund for that fiscal year plus any distribution made pursuant to section 51d.

(2) Beginning January 1, 2000, that percentage of the gross collections before refunds from the tax levied under this section that is equal to 1.012% divided by the income tax rate levied under this section shall be deposited in the state school aid fund created in section 11 of article IX of the state constitution of 1963.

(3) The department shall annualize rates provided in subsection (1) as necessary. The applicable annualized rate shall be imposed upon the taxable income of every person other than a corporation for those tax years.

(4) The taxable income of a nonresident shall be computed in the same manner that the taxable income of a resident is computed, subject to the allocation and apportionment provisions of this part.

(5) A resident beneficiary of a trust whose taxable income includes all or part of an accumulation distribution by a trust, as defined in section 665 of the internal revenue code, shall be allowed a credit against the tax otherwise due under this part. The credit shall be all or a proportionate part of any tax paid by the trust under this part for any preceding taxable year that would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in section 666 of the internal revenue code. The credit shall not reduce the tax otherwise due from the beneficiary to an amount less than would have been due if the accumulation distribution were excluded from taxable income.

(6) The taxable income of a resident who is required to include income from a trust in his or her federal income tax return under the provisions of 26 USC 671 to 679, shall include items of income and deductions from the trust in taxable income to the extent required by this part with respect to property owned outright.

(7) It is the intention of this section that the income subject to tax of every person other than corporations shall be computed in like manner and be the same as provided in the internal revenue code subject to adjustments specifically provided for in this part.

(8) As used in this section:

(a) "Consumer price index" means the United States consumer price index for all urban consumers as defined and reported by the United States Department of Labor, Bureau of Labor Statistics.

(b) "Inflation rate" means the annual percentage change in the consumer price index, as determined by the department, comparing the 2 most recent completed state fiscal years.

(c) "Person other than a corporation" means a resident or nonresident individual or any of the following:

(i) A partner in a partnership as defined in the internal revenue code.

(ii) A beneficiary of an estate or a trust as defined in the internal revenue code.

(iii) An estate or trust as defined in the internal revenue code.

(d) "Taxable income" means taxable income as defined in this part subject to the applicable source and attribution rules contained in this part.

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 98th Legislature are enacted into law:

(a) House Bill No. 4370.

(b) House Bill No. 4614.

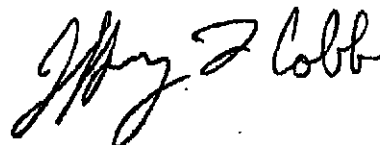
(c) House Bill No. 4616.

(d) House Bill No. 4736.

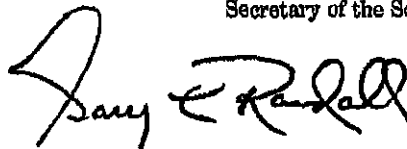
(e) House Bill No. 4737.

(f) House Bill No. 4738.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor

Exhibit 3

Legislative Analysis



ROAD FUNDING PACKAGE – *PRELIMINARY ANALYSIS*

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

Note: All bills are as passed by the Senate.

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4370 (S-3)
Sponsor: Rep. Hughes

House Bill 4614 (S-5)
Sponsor: Rep. LaFontaine

House Bill 4616 (S-6)
House Bill 4736 (S-4)
House Bill 4737 (S-4)
House Bill 4738 (S-5)
Sponsor: Rep. McCready

Senate Bill 414 (S-4)
Sponsor: Sen. Schmidt

Complete to 11-3-15

SUMMARY:

Note: This document describes major changes contained in these bills related to transportation financing and other state revenues. It is not a comprehensive description of the changes made by each bill.

House Bill 4738 would amend the Motor Fuel Tax Act to increase motor fuel taxes as follows:

- Increase the tax on diesel motor fuel from 15 cents per gallon and the tax on gasoline motor fuel from 19 cents per gallon to a single rate of 26.3 cent per gallon on all motor fuel effective January 1, 2017
- Annually adjust the tax rates for motor fuels based on consumer inflation (using the U.S. Consumer Price Index), with increases capped at 5% per year, effective January 1, 2022.

The bill would also add provisions to the act related to alternative fuels.

House Bill 4736 would amend the Michigan Vehicle Code to increase vehicle registration tax rates. Rates for passenger cars, vans, light trucks, and large commercial trucks would all be increased by approximately 20% across the board, effective January 1, 2017. The current average registration tax for a passenger vehicle is approximately \$100; this bill would increase that average by approximately \$20. The bill would also create a new registration tax surcharge for electric-powered motor vehicles.

House Bill 4370 would amend the Income Tax Act of 1967 to earmark a portion of income tax revenue currently allocated as General Fund/General Purpose (GF/GP) revenue to the Michigan Transportation Fund for distribution to state and local road agencies (bypassing the Comprehensive Transportation Fund). The earmarks would be as follows:

- \$150 million for FY 2018-19.
- \$325 million for FY 2019-20.
- \$600 million for FY 2020-21 and subsequent fiscal years.

The bill would also expand the Homestead Property Tax Credit by changing the following parameters:

- Increase the percentage of gross rent paid that can be utilized to calculate the credit from 20% to 23% for tax year 2018 and subsequent tax years.
- Increase the household income phase-out range for claiming the credit by \$10,000 for tax year 2018 and subsequent tax years. The current phase-out range is \$41,000-\$50,000 (the credit is reduced by 10% for each \$1,000 of income above \$40,000).
- Increase the maximum credit that can be claimed from \$1,200 to \$1,500 for tax year 2018 and subsequent tax years.
- Lower the percentage of household resources utilized as the threshold for calculating the credit amount from 3.5% to 3.2% for tax year 2018 and subsequent tax years.
- Adjust dollar amounts utilized in calculating the credit amount based on the U.S. Consumer Price Index beginning with tax year 2021.

Senate Bill 414 would amend the Income Tax Act of 1967 to create a mechanism that would automatically reduce the individual income tax rate if the increase from one year to the next in total General Fund/General Purpose (GF/GP) revenues exceeded inflation (as calculated using the U.S. Consumer Price Index). This determination would begin with tax year 2023 (based on final FY 2021-22 GF/GP revenue growth) and continue indefinitely on an annual basis. The income tax rate (currently 4.25%) would be reduced proportionally based on the amount by which GF/GP revenue exceeded FY 2020-21 GF/GP revenue adjusted for inflation times 1.425, divided by total income tax revenue. (Note that in some years, GF/GP revenue growth may exceed inflation but the amount of GF/GP revenue will not be above the adjusted FY 2020-21 base level due to prior revenue declines. Presumably no rate reduction would occur in such a year.)

House Bill 4614 would amend the Streamlined Sales and Use Tax Revenue Equalization Act and House Bill 4616 would amend the Motor Carrier Fuel Tax Act to make complementary amendments to those in House Bill 4738.

House Bill 4737 would amend Public Act 51 of 1951 to require the Department of Transportation to form a Roads Innovation Task Force that would issue a report to the Legislature by March 1, 2016 that would include, among other things, an evaluation of road materials and construction methods that could allow the department to build high-quality roads that last longer than those typically constructed by the department, with a goal of roads last at least 50 years, higher quality roads, and reduced maintenance costs.

The bill would also create a Roads Innovation Fund. Money could be expended from this fund only after each house of the Legislature approved a one-time concurrent resolution on a record roll call vote. For FY 2016-17 and subsequent years, the first \$100 million of motor fuel tax revenue would be deposited into the fund (rather than into the Michigan Transportation Fund); this annual deposit is also provided for in House Bill 4738. Once the Legislature approved the concurrent resolution releasing money in the fund, the deposits would no longer be made into the fund.

The bill would also add a number of provisions related to road construction warranties.

Finally, the bill would effectively allow, with the approval of the director of the Department of Transportation, the City of Detroit to use up to 20% of its Michigan Transportation Fund distribution for public transit purposes.

The seven bills are all tie-barred to one another; that is, no bill would become law unless all seven bills became law.

FISCAL IMPACT:

House Bills 4370, 4736, and 4738

The attached table presents preliminary estimates for the state fiscal impacts of this package over the period of FY 2016-17 to FY 2020-21. For FY 2017-18, when both sets of tax increases would be effective on a full-year basis, the bills would increase total state revenues by an estimated \$608 million. When the expansion of the Homestead Property Tax Credit became effective in FY 2018-19, the estimated net increase in state revenues would be \$407 million.

More specifically, when fully phased in the bills would increase funds dedicated for transportation purpose via the Michigan Transportation Fund by an estimated \$1.2 billion per year while reducing available state GF/GP funds by an estimated \$806 million per year.

The \$1.2 billion in new transportation funds would be distributed from the Michigan Transportation Fund as follows:

- \$62 million to the Comprehensive Transportation Fund (CTF) for public transportation purposes (10.0% of new revenue but not diverted GF/GP funds).
- \$454 million to the State Trunkline Fund for state highway construction and maintenance (39.1% of the remaining funds after the CTF earmark).
- \$454 million to county road agencies (39.1% of the remaining funds).
- \$253 million to cities and villages (21.8% of the remaining funds).

Those amounts include the \$100 million per year that would be held in the Road Innovation Fund pending legislative approval of a concurrent resolution.

Based on estimates from the May 2015 consensus revenue estimating conference and trend analysis assuming continued moderate economic growth over the next six years, total GF/GP revenues for FY 2020-21 are estimated to be roughly \$11.6 billion. The estimated

\$806 million reduction in GF/GP funds under this package would represent approximately 7% of that total.

Senate Bill 414

The income tax rate reduction trigger created by this bill would reduce state GF/GP revenues in years in which prior-year GF/GP revenue growth exceeds the rate of inflation beginning with FY 2022-23, assuming GF/GP revenues were above the adjusted FY 2020-21 level. Those revenue reductions would continue in subsequent years.

The frequency and magnitude of such revenue reductions would depend on future levels of inflation and economic growth, as well as potential non-economic factors affecting state revenues. (An example of such a non-economic factor is the increase in capital gain and dividend income tax revenue associated with the fiscal cliff in tax year 2011. While this one-time revenue increase was largely offset the following year, the trigger mechanism would have resulted in a permanent reduction in the income tax rate.)

Based on FY 2013-14 and FY 2014-15 GF/GP revenue estimates from the May 2015 consensus revenue estimating conference, if these provisions were currently in effect (with FY 2013-14 as the base year), the income tax rate for tax year 2016 would drop from the current level of 4.25% to approximately 3.96%, resulting in a revenue reduction of \$593 million.

The bill would effectively create a GF/GP revenue limit equal to FY 2020-21 revenues adjusted for inflation since FY 2020-21 times 1.425.

In contrast to the House-passed version of this bill, which would utilize a year-over-year measure of revenue growth to trigger income tax rate cuts, this version of the bill effectively uses a cumulative measure of inflation to trigger rate cuts. This would allow future revenue growth to offset a decline in revenues occurring for economic or other reasons prior to the trigger taking effect. It would not, however, preclude a revenue decline occurring in a year immediately following a triggered rate reduction.

Fiscal Analysts: Jim Stansell
William E. Hamilton
Kyle I. Jen

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Summary: Road Funding Package Fiscal Impacts (As Passed by the Senate)

PRELIMINARY ESTIMATES

Millions of Dollars

	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	
Revenue Changes						
Increase gasoline fuel tax (HB 4738)	236	313	311	310	308	A
Increase diesel fuel tax (HB 4738)	69	93	94	95	96	B
Increase vehicle registrations taxes (HB 4736)	147	202	208	214	221	C
Expand Homestead Property Tax Credit (HB 4370)	0	0	(206)	(206)	(206)	D
Total Net Increase/(Decrease) in State Revenues	452	608	407	413	419	E=A+B+C+D
Revenue Diversion						
Divert income tax revenue from GF/GP to transportation (HB 4370)	0	0	150	325	600	F
Total Increase in Transportation Funds*	452	608	763	944	1,225	G=A+B+C+F
<u>Distribution to:</u>						
Comprehensive Transportation Fund	45	61	61	62	62	
State Trunkline Fund	159	214	274	345	454	
County Road Commissions	159	214	274	345	454	
City and Villages	89	119	153	192	253	
Total Reduction in GF/GP Funds	0	0	(356)	(531)	(806)	H = D - F

*Includes \$100 million per year to be held in the Road Innovation Fund pending legislative approval of a concurrent resolution.

Note: Does not reflect potential fiscal impacts from automatic income tax rate cut trigger (SB 414) beginning in FY 2022-23 and inflationary adjustments to the motor fuel tax rate (HB 4738) and Homestead Property Tax Credit parameters (HB 4370) beginning in FY 2021-22.

Exhibit 4

Legislative Analysis



ROAD FUNDING PACKAGE – ENACTED ANALYSIS

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4370 – Public Act 179 of 2015
Sponsor: Rep. Hughes

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4614 – Public Act 177 of 2015
Sponsor: Rep. LaFontaine

House Bill 4616 – Public Act 178 of 2015
House Bill 4736 – Public Act 174 of 2015
House Bill 4737 – Public Act 175 of 2015
House Bill 4738 – Public Act 176 of 2015
Sponsor: Rep. McCready

Senate Bill 414 – Public Act 180 of 2015
Sponsor: Sen. Schmidt

Complete to 11-16-15

SUMMARY:

Note: This document describes major changes contained in these bills related to transportation financing and other state revenues. It is not a comprehensive description of the changes made by each bill.

House Bill 4738 would amend the Motor Fuel Tax Act to increase motor fuel taxes as follows:

- Increase the tax on diesel motor fuel from 15 cents per gallon and the tax on gasoline motor fuel from 19 cents per gallon to a single rate of 26.3 cent per gallon on all motor fuel effective January 1, 2017
- Annually adjust the tax rates for motor fuels based on consumer inflation (using the U.S. Consumer Price Index), with increases capped at 5% per year, effective January 1, 2022.

The bill would also add provisions to the act related to alternative fuels.

House Bill 4736 would amend the Michigan Vehicle Code to increase certain vehicle registration tax rates. Rates for most passenger cars, vans, light trucks, and large commercial trucks would increase by 20%, beginning January 1, 2017. The current average registration tax for a passenger vehicle is approximately \$100; this bill would increase that average by approximately \$20. The bill would also create a new registration tax surcharge for electric-powered motor vehicles.¹

¹ For a more complete description of the changes in House Bill 4736, see this HFA analysis:
<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4736-400E3D1D.pdf>.

House Bill 4370 would amend the Income Tax Act of 1967 to earmark a portion of income tax revenue currently allocated as General Fund/General Purpose (GF/GP) revenue to the Michigan Transportation Fund (MTF) for distribution to the State Trunkline Fund (STF) and to local road agencies according Section 10(1)(k) of Public Act 51 of 1951 (bypassing the Comprehensive Transportation Fund). The earmarks would be as follows:

- \$150 million for FY 2018-19.
- \$325 million for FY 2019-20.
- \$600 million for FY 2020-21 and subsequent fiscal years.

The bill would also expand the Homestead Property Tax Credit by changing the following parameters:

- Increase the percentage of gross rent paid that can be utilized to calculate the credit from 20% to 23% for tax year 2018 and subsequent tax years.
- Increase the household income phase-out range for claiming the credit by \$10,000 for tax year 2018 and subsequent tax years. The current phase-out range is \$41,000-\$50,000 (the credit is reduced by 10% for each \$1,000 of income above \$40,000).
- Increase the maximum credit that can be claimed from \$1,200 to \$1,500 for tax year 2018 and subsequent tax years.
- Lower the percentage of household resources utilized as the threshold for calculating the credit amount from 3.5% to 3.2% for tax year 2018 and subsequent tax years.
- Adjust dollar amounts utilized in calculating the credit amount based on the U.S. Consumer Price Index beginning with tax year 2021.

Senate Bill 414 would amend the Income Tax Act of 1967 to create a mechanism that would automatically reduce the individual income tax rate if the increase from one year to the next in total GF/GP revenues exceeded inflation (as calculated using the U.S. Consumer Price Index). This determination would begin with tax year 2023 (based on final FY 2021-22 GF/GP revenue growth) and continue indefinitely on an annual basis.

The income tax rate (currently 4.25%) would be reduced proportionally based on the amount by which GF/GP revenue exceeded FY 2020-21 GF/GP revenue adjusted for inflation times 1.425, divided by total income tax revenue. (Note that in some years, GF/GP revenue growth may exceed inflation but the amount of GF/GP revenue will not be above the adjusted FY 2020-21 base level due to prior revenue declines. Presumably no rate reduction would occur in such a year.)

House Bill 4614 and House Bill 4616 would amend the Streamlined Sales and Use Tax Revenue Equalization Act, and the Motor Carrier Fuel Tax Act, respectively, to make those acts consistent with the amendments to the Motor Fuel Tax Act made in House Bill 4738.

House Bill 4737 would amend Public Act 51 of 1951 (Act 51) to require the Michigan Department of Transportation (MDOT) to form a Roads Innovation Task Force that would issue a report to the Legislature by March 1, 2016. The report would include, among other things, an evaluation of road materials and construction methods that could allow the department to build high-quality roads that last longer than those typically constructed by

the department, with a goal of roads that last at least 50 years, higher quality roads, and reduced maintenance costs.

The bill would also create a *Roads Innovation Fund*. For FY 2016-17 and each subsequent fiscal year, the first \$100.0 million of motor fuel tax revenue would be deposited into the fund (rather than into the MTF); this annual deposit is also provided for in House Bill 4738. Money could be expended from this fund only after each house of the Legislature approved a one-time concurrent resolution on a record roll call vote. Approval of the concurrent resolution would release money from the fund for credit to the MTF and distribution according to Section 10 of Act 51. Once money was released from the fund by the concurrent resolution, the fund would no longer receive the annual \$100.0 million deposit of motor fuel tax revenue.

The bill would also earmark up to \$3.0 million from the MTF each year for a new railroad grade crossing surface account, and would increase a current \$43.0 million MTF earmark for STF debt service to \$50.0 million.

The bill would also add a number of provisions related to road construction warranties and would lower the current limit on MDOT administrative expenses from 10% to 8% of all funds received by the department.

Finally, the bill would effectively allow, with the approval of the MDOT director, the City of Detroit to use up to 20% of its MTF distribution for public transit purposes.²

The seven bills were all tie-barred to one another; all seven bills have been enacted.

FISCAL IMPACTS:

Overall Impact on State Revenues

The attached table presents estimates for the state fiscal impacts of this package over the period of FY 2016-17 to FY 2020-21. For FY 2017-18, when both the motor fuel and vehicle registration tax increases would be effective on a full-year basis, the bills would increase total state revenues by an estimated \$617 million. When the expansion of the Homestead Property Tax Credit became effective in FY 2018-19, the estimated net increase in state revenues would be \$416 million.

Impacts on Transportation Programs

When fully phased in for FY 2020-21, the bills would increase funds dedicated for transportation purpose via the MTF by an estimated \$1.2 billion per year. The \$1.2 billion in new transportation funds would be distributed from the MTF as follows:

- Up to \$3 million for a new Rail grade crossing surface account.
- \$62 million to the Comprehensive Transportation Fund (CTF) for public transportation purposes (10.0% of increased motor fuel and vehicle registration tax revenue but not GF/GP revenue redirected in House Bill 4370).

² For a more complete description of the changes in House Bill 4737, see this HFA analysis: <http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4737-E9495306.pdf>.

- \$459 million to the State Trunkline Fund (STF) for state highway construction and maintenance (39.1% of the net MTF balance after CTF and other earmarks, plus \$7.0 million increase in the current earmark for STF debt service).
- \$452 million for distribution to county road commissions (39.1% of the net MTF balance after CTF and other earmarks).
- \$252 million for distribution to cities and villages (21.8% of the net MTF balance after CTF and other earmarks).

The above figures, and the “Total Increase in Transportation Funds” figures in the attached table are based on the following assumptions:

- That the Legislature approves a concurrent resolution to release \$100.0 million from the Roads Innovation Fund for inclusion in FY 2016-17 MTF distributions.
- That 2% of revenue from the increase in gasoline motor fuel tax revenue made by House Bill 4738 would be credited to the Recreation Improvement Account.³
- That the statutory maximum of \$3.0 million for the Rail Crossing Surface Account would be appropriated from the MTF each year.

Note – Net Impact on Transportation Revenue: Over the last three fiscal years, FYs 2013-14 through 2015-16, state transportation appropriations have included over \$1.1 billion in state GF/GP revenue – an average of \$378.7 million. Specifically, FY 2015-16 transportation appropriations include \$400.0 million in GF/GP revenue, of which \$214.8 million is for credit to the STF. Of the \$400.0 million total, \$258.0 million is designated as being one-time only.

The Road Funding Package would increase certain dedicated transportation motor fuel and vehicle registration taxes beginning in FY 2016-17, and would permanently redirect state income tax revenue from GF/GP to transportation programs starting in FY 2018-19. These increases are shown in the attached table as increases in transportation revenue – starting at \$455 million in in FY 2016-17 and growing to \$1.2 billion by FY 2020-21. However, the actual increases in net revenue available for transportation programs will depend on the whether or not the transportation budget continues to use GF/GP revenue in baseline appropriations. If GF/GP revenue is not retained in the FY 2016-17 budget, STF revenue could be less in FY 2016-17 as compared with FY 2015-16.

Impacts on General Fund/General Purpose Revenues

When fully phased in for FY 2020-21, the bills would reduce annual state GF/GP revenues by an estimated \$806 million. Based on estimates from the May 2015 consensus revenue estimating conference and trend analysis assuming continued moderate economic growth over the next six years, total GF/GP revenues for FY 2020-21 are estimated to be roughly

³ There is a presumption in current law that 2% of revenue from the motor fuel tax on gasoline is used for watercraft, snowmobiles, and off-road vehicles. As a result, Article IX, Section 40 of the Michigan Constitution dedicates 2% of all tax revenue derived from the sale of gasoline for consumption in internal combustion engines to the Recreation Improvement Account within the Michigan Conservation and Recreation Legacy Fund. This constitutional dedication is reflected in Part 711 of the Michigan Natural Resources and Environmental Protection Act (1994 PA 451).

\$11.6 billion. The estimated reduction in GF/GP funds under this package would represent approximately 7% of that total.

The income tax rate reduction trigger created by Senate Bill 414 would reduce state GF/GP revenues in years in which prior-year GF/GP revenue growth exceeds the rate of inflation beginning with FY 2022-23, assuming GF/GP revenues were above the adjusted FY 2020-21 level. Those revenue reductions would continue in subsequent years.

The frequency and magnitude of such revenue reductions would depend on future levels of inflation and economic growth, as well as potential non-economic factors affecting state revenues. (An example of such a non-economic factor is the increase in capital gain and dividend income tax revenue associated with the fiscal cliff in tax year 2011. While this one-time revenue increase was largely offset the following year, the trigger mechanism would have resulted in a permanent reduction in the income tax rate.)

Based on FY 2013-14 and FY 2014-15 GF/GP revenue estimates from the May 2015 consensus revenue estimating conference, if these provisions were currently in effect (with FY 2013-14 as the base year), the income tax rate for tax year 2016 would drop from the current level of 4.25% to approximately 3.96%, resulting in a revenue reduction of \$593 million.

The bill would effectively create an ongoing GF/GP revenue limit equal to FY 2020-21 revenues adjusted for cumulative inflation times 1.425. This would allow future revenue growth to offset a decline in revenues occurring for economic or other reasons prior to the trigger taking effect. It would not, however, preclude a revenue decline occurring in a year immediately following a triggered rate reduction.

Fiscal Analysts: William E. Hamilton
Jim Stansell
Kyle I. Jen

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

Summary: Road Funding Package Fiscal Impacts (As Enacted)

FINAL ESTIMATES

Millions of Dollars

	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	
Revenue Changes						
Increase gasoline fuel tax (HB 4738)	236	313	311	310	308	A
Increase diesel fuel tax (HB 4738)	69	93	94	95	96	B
Increase vehicle registrations taxes (HB 4736)	155	211	217	224	230	C
Expand Homestead Property Tax Credit (HB 4370)	0	0	(206)	(206)	(206)	D
Total Net Increase/(Decrease) in State Revenues	\$ 460	\$ 617	\$ 416	\$ 423	\$ 428	E=A+B+C+D
Revenue Diversion						
Divert income tax revenue from GF/GP to transportation (HB 4370)	0	0	150	325	600	F
Other Revenue Earmark						
Increase in Recreation Improvement Account ⁽¹⁾	5	6	6	6	6	G
Total Increase in Transportation Funds ⁽²⁾	\$ 455	\$ 611	\$ 766	\$ 948	\$ 1,228	H=A+B+C+F-G
Distribution (HB 4737) to:						
Rail Grade Surface Account ⁽³⁾	3	3	3	3	3	
Comprehensive Transportation Fund	45	60	61	61	62	
State Trunkline Fund ⁽⁴⁾	163	219	279	350	459	
County Road Commissions	157	211	272	343	452	
City and Villages	87	118	151	191	252	
Total Reduction in GF/GP Funds ⁽⁵⁾	\$ 0	\$ 0	\$ (356)	\$ (531)	\$ (806)	H = D - F

Notes:

- (1) 2% of the motor fuel tax on gasoline is dedicated to the Recreation Improvement Account within the Michigan Conservation and Recreation Legacy Fund.
- (2) Assumes that \$100 million held in the Road Innovation Fund would be released by the Legislature for inclusion in FY 2016-17 MTF distribution.
- (3) Assumes full \$3.0 million appropriation for the rail grade surface account each year.
- (4) STF includes \$7.0 million increase in the MTF earmark for STF debt service.
- (5) Does not reflect potential fiscal impacts from automatic income tax rate cut trigger (SB 414) beginning in FY 2022-23 and inflationary adjustments to the motor fuel tax rate (HB 4738) and Homestead Property Tax Credit parameters (HB 4370) beginning in FY 2021-22.

Exhibit 5



**MICHIGAN'S
ECONOMIC OUTLOOK
AND BUDGET REVIEW**

**FY 2021-22, FY 2022-23,
FY 2023-24, and FY 2024-25**

January 11, 2023



**Kathryn R. Summers, Director – Lansing, Michigan – (517) 373-2768
www.senate.michigan.gov/sfa**

FY 2021-22 PRELIMINARY REVENUE

- General Fund/General Purpose and SAF revenue increased an estimated 13.7% in FY 2021-22 compared with FY 2020-21.
- The revenue increase in FY 2021-22 reflected in part increases in personal income tax, corporate income tax, and sales tax. These increases were slightly offset by a drop in the use tax and lower lottery revenue.
- The books have not yet been closed for FY 2021-22; final revenue will be determined at bookclosing.

Michigan's economy grew during FY 2021-22. Personal income grew 0.1%, wage and salary employment grew 3.0%, and wage and salary income grew 8.1%; however, inflation-adjusted personal income fell 7.5%. Based on preliminary year-end revenue data, GF/GP and SAF revenue from ongoing revenue sources totaled \$33.0 billion in FY 2021-22, which is 13.7% above the FY 2020-21 revenue level (as presented in Table 4). These figures are preliminary in that they remain under review by the Office of Financial Management, which prepares the Michigan ACFR. Actions taken or determinations made between the date of this publication and bookclosing may, and likely will, change the amounts of final year-end revenues for FY 2021-22.

The preliminary GF/GP and SAF revenue level for FY 2021-22 is \$1,510.7 million above the May 2022 consensus revenue estimate. The largest share of the revenue increase from the May 2022 estimates reflects net income tax collections, which were \$459.0 million above the May consensus estimate due to high quarterly payments related to timing issues associated with the adoption of the Flow-Through Entity Tax in December 2021. Sales and use tax revenue was \$69.2 million above the May estimate. Refunds paid under the MBT were \$94.0 million lower than expected, although this may reflect timing issues, and companies could claim these refunds in a subsequent year. Corporate income tax collections rose 19.2% and finished \$206.7 million above the May 2022 estimates. Lottery revenue was \$48.7 million below the May 2022 estimates. Baseline GF/GP and SAF revenue increased 11.5% in FY 2021-22.

Tax Policy Changes

Individual Income Taxes. The indexing of the personal exemption for the IIT reduced revenue by \$112.5 million (\$85.7 million GF/GP and \$26.8 million SAF). Because preliminary GF/GP revenue is forecasted to increase in FY 2021-22 by an amount greater than 1.425 times the rate of inflation, Public Act 180 of 2015 is predicted to require a permanent reduction in the IIT rate. Any reduction that ultimately occurs (based on final year-end revenues determined at book-closing) would reduce revenue beginning in FY 2022-23 and is discussed in the balance sheet section at the end of this report.

Personal Property Tax Reform. Use tax collections of \$521.9 million in FY 2021-22 will be levied by the Local Community Stabilization Authority (LCSA). These collections finance reimbursements of local revenue losses associated with exempting eligible manufacturing personal property from property taxation and the continuing impact of the small taxpayer exemption. Use tax collections for the LCSA reduce GF/GP revenue.

Michigan Business Tax. The MBT will lower GF/GP revenue by \$500.3 million in FY 2021-22. All the impact of MBT credits reduces GF/GP revenue.

Federal Tax Reform and the COVID-19 Relief Measures. COVID-19 Federal stimulus from 2020 reduced IIT revenue by \$12.4 million (\$8.7 million GF/GP and \$3.7 million SAF). This also reduced CIT by \$103.1 million to the GF/GP. The CARES Act reduced IIT revenue by \$18.0 million (\$13.7 million GF/GP and \$4.3 million SAF). The American Rescue Plan reduced IIT revenue \$258.2 million (\$229.2 million GF/GP and \$29.0 million SAF).

Exhibit 6

ECONOMIC OUTLOOK AND REVENUE ESTIMATES FOR MICHIGAN

**FY 2022-23
THROUGH
FY 2024-25**



Mary Ann Cleary, Director

January 2023

Income Tax Trigger

Public Act 180 of 2015 amended the income tax act so that beginning with tax year 2023, in the event general fund revenue growth exceeds certain levels the income tax rate will be automatically reduced. The base of the trigger is FY 2020-21 general fund revenue, and that amount is multiplied by cumulative inflation and an adjustment factor of 1.425 to determine the level of capped revenue in subsequent years. For tax year 2023, the level of capped revenue is based on the inflation-adjusted growth (including the adjustment factor) between FY 2020-21 and FY 2021-22. For tax year 2024, the span would be FY 2020-21 through FY 2022-23.

If the actual amount of general fund revenue in a given year, as published in the Annual Comprehensive Financial Report (ACFR), exceeds the capped revenue for that year, the excess amount will be offset by a reduction in the income tax rate, and thus income tax revenues. Note that because the ACFR for FY 2021-22 has not yet been published, it's not possible to calculate the impact of the trigger on the income tax rate for TY 2023 under the requirements set forth in the statute. However, based on preliminary FY 2021-22 general fund revenue, the trigger would take effect and lower the income tax rate for TY 2023 to 4.05%.

BSF Year-End Balance

The Counter-Cyclical Budget and Economic Stabilization Fund (BSF), the state's rainy day fund, is a reserve of cash to contribute to or withdraw from throughout economic and budget cycles. Table 5 details deposits, withdrawals, interest earnings, and the year-end balance from FY 1990-91 through FY 2024-25. Estimates include the impact of 2014 PA 186, which amended the Michigan Trust Fund Act to require annual \$17.5 million deposits of tobacco settlement revenue to the BSF from FY 2014-15 through FY 2034-35.

The statutory BSF trigger calculation, based on Michigan personal income less transfer payments adjusted for inflation and actual or net GF/GP revenue, indicates whether deposits (pay-ins) or withdrawals (pay-outs) are recommended for a fiscal year. Regardless of the calculated amounts, however, all deposits and withdrawals must be appropriated. After an appropriated pay-in of \$180.0 million in FY 2021-22, the BSF ending fund balance was \$1,588.9 million. Based on the formula, no pay-ins or pay-outs would be indicated for FY 2022-23, FY 2023-24, or FY 2024-25.

After adjusting for the required \$17.5 million deposits and estimating interest earnings, the estimated year-end balances are \$1,688.1 million for FY 2022-23, \$1,795.5 million for FY 2023-24, and \$1,888.9 million for FY 2024-25.

Exhibit 7



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

GRETCHEN WHITMER
GOVERNOR

RACHAEL EUBANKS
STATE TREASURER

March 22, 2023

The Honorable Dana Nessel
Department of the Attorney General
G. Mennen Williams Building
525 West Ottawa Street
Lansing, MI 48933

Re: Request for an Attorney General Opinion

Dear Attorney General Nessel:

As we have previously discussed, I am writing to formally request an opinion from your office regarding whether the individual income tax rate reduction under MCL 206.51(1)(c) is temporary (i.e., for one year only) or permanent (i.e., for all subsequent years).

2015 PA 180 amended the Income Tax Act of 1967 to reduce the income tax rate from 4.25% "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" Specifically, MCL 206.51 provides, in relevant part:

(1) For 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:

* * *

(b) Except as otherwise provided under subdivision (c), on and after October 1, 2012, 4.25%.

(c) 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.

¹ MCL 206.51(1)(c).

Page 2

Question: If the income tax rate for a particular year is reduced under MCL 206.51(1)(c), does the income tax rate return to 4.25% as described in MCL 206.51(1)(b) in the subsequent year, or does the rate remain at the reduced rate calculated under MCL 206.51(1)(c)? For purposes of this question, presume that the rate reduction in MCL 206.51(1)(c) is not triggered in consecutive years.

I respectfully request your formal opinion on this question. If you or your staff would like any additional information regarding this question, please contact this office.

Sincerely,



Rachael Eubanks
State Treasurer

Exhibit 8



TREASURY

Treasurer Eubanks Announces Income Tax Cut for Michiganders

March 29, 2023

Ron Leix, Treasury, 517-335-2167

LANSING, Mich. -- Today, following the release of the State's fiscal year 2022 Annual Comprehensive Financial Report, Treasurer Rachael Eubanks announced that Michigan's state income tax will decrease to 4.05% for one year. Driven by low unemployment, strong business growth, and an overall strong economy, families will pay lower taxes when they file next year for tax year 2023.

"Michigan's strong economic position has led to a reduction in the state income tax from 4.25% to 4.05% for 2023," said **Treasurer Rachael Eubanks**. "When Michiganders file their 2023 state income taxes in 2024, they will see the rate adjustment in the form of less tax owed or a larger refund."

"As a result of our growing economy and strong fiscal management, Michigan's state income tax will decrease to its lowest in 15 years," said **Governor Whitmer**. "Our state is headed in the right direction, bolstered by low unemployment, projects bringing jobs and supply chains home, and fiscally responsible, bipartisan leadership that took us from a projected \$3.5 billion deficit in 2020 to a \$9.2 billion surplus this year, paid down \$14 billion in debt, and brought the rainy-day fund to an all-time high. This year, we permanently rolled back the retirement tax on our seniors, quintupled the Working Families Tax Credit for 700,000 families, and now, everyone's income tax will decrease for a year. In total, we have put \$1.6 billion in tax relief back in people's pockets without cutting any critical services or programs."

State Income Tax Reduction

In 2015, Michigan enacted a law requiring a temporary reduction of the state income tax if the general fund grew faster than the rate of inflation in any year starting in 2023. Now, because of strong economic growth and robust state revenues, the state income tax will decrease to 4.05% for one year. This will equate to a savings of approximately \$50 for the average Michigan taxpayer.

Attorney General Dana Nessel issued a legal opinion finding that the tax reduction will apply to tax year 2023. It requires consensus by and annual reevaluation by the Treasurer, Senate Fiscal Agency, and House Fiscal Agency. It is anticipated the formal step of adopting a consensus with updated revenue estimates will occur as a procedural matter at the May Consensus Revenue Estimating Conference. The tax change will be effective Jan. 1, 2023 for tax year 2023.

Governor Whitmer's Fiscally Responsible Leadership

Since taking office, Governor Whitmer has signed four balanced, bipartisan budgets paying down \$14 billion in debt, and brought the rainy-day fund to an all-time high of nearly \$2 billion without raising taxes on working families by a dime. She signed legislation cutting taxes for small business owners, permanently rolling back the retirement tax on seniors, permanently quintupling the Working Families Tax Credit, and established bipartisan economic development tools to help the state land over \$16 billion of projects creating 16,000 domestic manufacturing jobs. Thanks to this governor's strong, fiscally responsible leadership, Michigan received its first credit rating upgrade in a decade from Fitch, a national financial firm.

MI Newswire

Department of Treasury

Related News

Time Running Out to Complete the FAFSA

Treasury Offers Help to Taxpayers Who Missed Tax Filing Deadline

Treasury Provides Last-Minute Tips Before Individual Income Tax Deadline

Last Weekend Before State Individual Income Tax Deadline

Treasury: State Individual Income Tax Deadline in a Week

Local School Districts to Save Approximately \$8 Million in Interest Fees School Loan Revolving Fund Interest Rate Dropped to 1.19%

Treasury: Adult-Use Marijuana Payments to be Distributed to Michigan Municipalities, Counties

Treasury: State Individual Income Tax Returns Due in Less Than a Month

Investing Tax Refund in MESP can Pay Big Dividends for Child's Future



Treasurer Eubanks Announces Income Tax Cut for Michiganders

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Exhibit 9



TREASURY

Notice: Income Tax Rate of Individuals and Fiduciaries Reduced to 4.05% For The 2023 Tax Year

Date: March 30, 2023

Individuals and fiduciaries subject to tax under Part 1 of the Income Tax Act, MCL 206.1 *et seq.*, are generally subject to tax at a 4.25% tax rate under Section 51 of the Income Tax Act, MCL 206.51. However, for each tax year beginning on and after January 1, 2023, that rate may be subject to a formulary reduction as provided by Section 51(1)(c) if there is a determination that the percentage increase in general fund revenue from the immediately preceding state fiscal year exceeded the inflation rate for the same period. That determination is required to be made jointly by the State Treasurer, the Director of the Senate Fiscal Agency, and the Director of the House Fiscal Agency based on financial data from the Annual Comprehensive Financial Report (ACFR).

Based on recently finalized data from the ACFR for the fiscal year that ended September 30, 2022, it has been determined the conditions requiring a reduction to the current tax rate have been met. Based on the formula prescribed by Section 51(1)(c), the reduction to the current tax rate is equal to 0.20 percentage points (0.20%). **Thus, the tax rate applicable to all individuals and fiduciaries for the 2023 tax year is 4.05%.** This revised rate is an annual tax rate that is effective as of January 1, 2023.

Treasury's withholding rate tables for the 2023 tax year will not be updated to accommodate the revised rate. Individuals and fiduciaries with questions about the effect of the rate change on the amount of tax being withheld from their income should contact their employer or administrator directly.

Treasury will update forms, instructions, and guidance as necessary to reflect the change to the annual income tax rate for the 2023 tax year. These changes, as well as any other future guidance related to the 2023 tax year, will be available on Treasury's website at www.michigan.gov/taxes.

5/30/23, 8:58 PM

Notice: Income Tax Rate of Individuals and Fiduciaries Reduced to 4.05% For The 2023 Tax Year

**Notice: Income Tax Rate of Individuals and Fiduciaries Reduced to 4.05% For The
2023 Tax Year**

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Exhibit 10

[ADDRESS TO THE PEOPLE]

***What the Proposed
New State Constitution
Means to You***

- A report to the people of Michigan by their elected delegates to the Constitutional Convention of 1961-62.

Lansing, Michigan

August 1, 1962

No change from Sec 34, Article V, of the present constitution except for the insertion of the words "and serving" to clarify the method of computing a majority provided in Sec. 14 of this Article.

General appropriations; priority.

Sec. 32. The general appropriation bill for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill regarding an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills so passed by the legislature shall contain an itemized statement of estimated revenues for the year, and in each operating fund for the succeeding fiscal period, the total of which shall not be less than the total of all appropriations made from such funds in the general appropriation bills so passed.

This is a new section designed to accomplish two major purposes:

1. To focus legislative attention on the general appropriation bill or bills by the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation.

2. To require the legislature (as well as the Governor by a subsequent provision) to set forth by midday their own best estimates of revenues. The legislature frequently differs from executive estimates of revenues. It is proper to require that such differences be specifically set forth for public understanding and sound judgment as to the wisdom of such.

Lower imposing taxes.

Sec. 33. Every law which imposes, continues or renews a tax shall distinctly state the tax.

This is a revision of Sec. 9, Article X, of the present constitution. It requires a distinct and clear statement of any tax imposed upon the citizens of the state.

The section eliminates the requirement that tax laws specify "the objects to which (this tax) is to be applied". This has been particularly construed to mean the purpose for which the money is to be spent. In a complex system of taxation, when the proceeds of any general tax may be devoted to many different purposes, this seems desirable.

Also deleted is the present statement that "it shall not be sufficient to refer to any other law to the same end". This eliminates the possible question of the Legislature's right to order its income determined for federal tax purposes. It is not the intention of this section, however, to permit any delegation of the power to fix a tax or the base to another legislative authority.

Bills passed approval and veto by governor.

Sec. 38. Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days

measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall certify that time then and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally determined the session at which the bill was passed, it shall not become law. If he disapproves and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, in the form in which it originated. That house shall enter into objection, in full in its journal and reconsider the bill. If two-thirds of the members elected to and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. The veto of such house shall be entered by the journal with the votes and names of the members voting thereon. If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become law as if he had signed it.

This is a revision of Sec. 39, Article V, of the present constitution to clarify and change existing language regarding the executive veto. It provides as follows: (1) The governor shall have 14 days in which to consider a bill and the 14-day period for consideration and approval will not be affected by whether or not the legislature adjourns its session. (2) If during that period he signs the bill, it becomes law. (3) If during that period he does not sign the bill, and the legislature has adjourned its session, the bill does not become law. (4) If during that period he does not sign the bill, but he does not become law. (5) If during that period the number approves or returns the bill with a veto message, the legislature, notwithstanding its adjournment, it becomes a law as if he had signed it.

The same law consideration by the governor has been extended from 10 to 14 days in accordance with testimony by former governors that some additional time is desirable.

The two-thirds vote of the legislature to override the governor's veto is retained.

Referendum on certain bills.

Sec. 34. Any bill passed by the legislature and approved by the governor, except a bill appropriating money, may be provided that it shall not become law unless approved by a majority of the electors voting thereon.

No change from Sec. 38, Article V, of the present constitution except for improvement in phraseology.

Publication of laws.

Sec. 35. All laws enacted at any session of the legislature shall be published in book form within 60 days after final adjournment of the session, and shall be distributed to the printer as provided by law. The prompt publication of judicial decisions shall be provided by law. All laws and judicial decisions shall be free for publication by any person.

Exhibit 11

A Legislator's Guide to

**Michigan's
Budget
Process**



Mary Anni Cleary, Director

January 2019

Figure 1

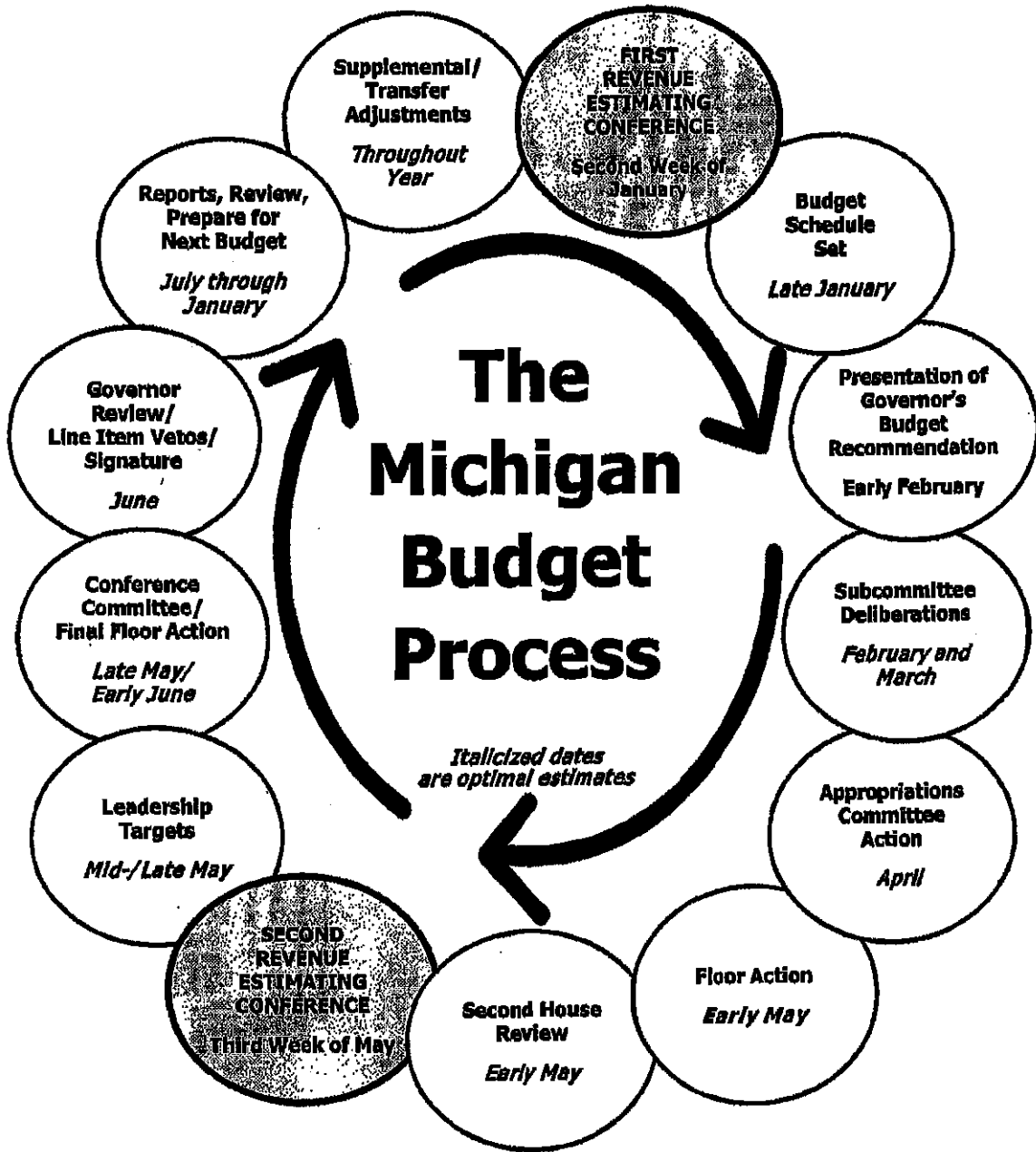


Exhibit 12

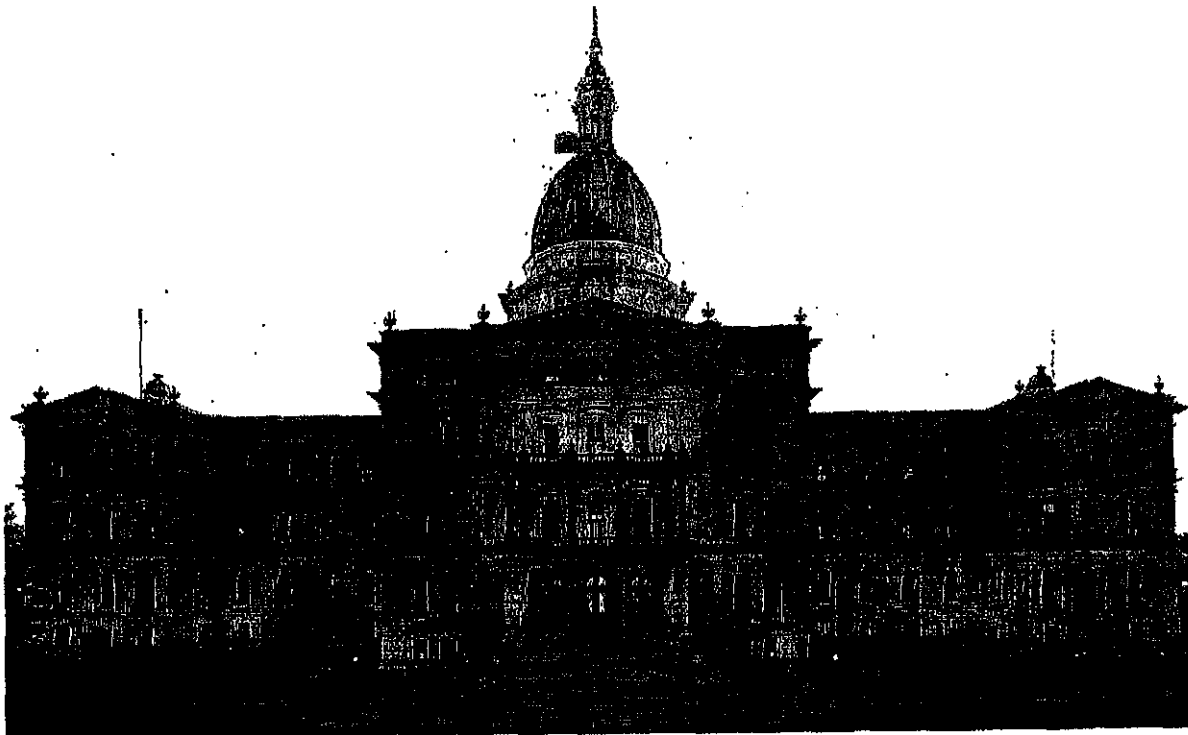


Senate Fiscal Agency

**MICHIGAN'S
ECONOMIC OUTLOOK
AND BUDGET REVIEW**

**FY 2022-23, FY 2023-24,
and FY 2024-25**

May 16, 2023



**Kathryn R. Summers, Director – Lansing, Michigan – (517) 373-2768
www.senate.michigan.gov/sfa**

MAJOR GENERAL FUND & SCHOOL AID FUND TAXES IN FY 2022-23 THROUGH FY 2024-25

Federal Tax Reform Interactions with Corporate and Individual Income Tax Revenue. In December 2017, the Federal government adopted tax reform legislation that made numerous changes to both the Federal IIT and the Federal corporate income tax. Many of the Federal changes were expected to affect Michigan tax revenue. For example, the personal exemption was set to zero and Michigan personal exemptions were based on the allowed Federal exemptions, suggesting that Federal tax reform might have eliminated the Michigan personal exemption and substantially increased taxpayers' Michigan tax liabilities. Other Federal changes eliminated certain deductions or exemptions, thereby increasing the income taxpayers would use in computing their Michigan liabilities. The forecast includes estimates of these impacts, as well as the impact of Public Acts 38 and 39 of 2018, which were enacted in response to the effect Federal tax reform was estimated to have on Michigan revenue.

Individual Income Tax. Individual income tax net collection will decrease an estimated 8.5% in FY 2022-23, to \$12.7 billion. Fiscal year 2022-23 withholding, which represents the majority of gross IIT revenue, will increase 1.1%. Quarterly estimates and annual payments will fall 22.5% and 27.3%, respectively, as the timing issues associated with the adoption of the Flow-Through Entity tax are resolved. As economic growth resumes, withholding will continue to grow 2.2% in FY 2023-24 and 3.5% in FY 2024-25. Compared with the January 2023 consensus revenue estimates, the revised estimate for FY 2022-23 IIT revenue is \$745.4 million lower, and the revised estimate for FY 2023-24 is \$1,566.8 million lower, reflecting slower employment and wage growth forecasts and tax law changes.

Because GF/GP revenue increased in FY 2021-22 by an amount greater than 1.425 times the rate of inflation, Public Act 180 of 2015 requires a reduction in the IIT rate, which will reduce GF/GP revenue beginning in FY 2022-23. Based on the FY 2021-22 Annual Comprehensive Financial Report, the IIT rate for tax year 2023 is 4.05%, which will reduce General Fund revenue by \$527.6 million in FY 2022-23 and \$186.6 million in FY 2023-24. Based on an opinion from the Attorney General, the rate reduction is a temporary rate reduction for tax year 2023, although the reduction will affect both FY 2022-23 and 2023-24. School Aid Fund revenue will not be affected because the income tax earmark to the School Aid Fund automatically adjusts to hold the SAF harmless for changes in the tax rate. Since the tax rate cut came after the beginning of the year, a portion of the payments received this year will be at the old rate (4.25%) and a portion will be at the new rate (4.05%). The Treasury is not requiring employers to adopt new withholding tables and because the SAF earmark is based on gross collections rather than net collections, taxpayers who over-withheld will receive refunds, which reduce only GF revenue. Public Act 4 of 2023 adopted an increase in the Earned Income Tax Credit (EITC) and changes to taxation on certain retirement income. The increase in the EITC will reduce GF/GP by \$768.0 million in FY 2023-24 and \$384.0 million in FY 2024-25. The changes affecting retirement income will reduce IIT revenue in FY 2023-24 by \$281.0 million (\$224.1 million GF/GP and \$56.9 million SAF) and will reduce IIT revenue in FY 2024-25 by \$350.0 million (\$275.9 million GF/GP and \$74.1 million SAF).

Sales Tax. The forecast predicts Michigan sales tax revenue will rise 0.3% in FY 2022-23, 0.1% in FY 2023-24, and 2.1% in FY 2024-25. Compared with the January 2023 consensus revenue estimates, the FY 2022-23 sales tax estimate is unchanged while the revised sales tax estimate for FY 2023-24 is down \$6.4 million and the revised estimate for FY 2024-25 is up \$63.3 million. The changes primarily reflect revised estimates of consumer spending due to changes in personal income, declining savings balances, and a shift from the current goods-heavy consumption (largely subject to sales and use taxes) to a more normal split between goods and services (which are largely exempt from sales and use taxes), as well as new tax exemptions. Most sales tax revenue is earmarked to the SAF (73.3%) and the remainder goes to local government revenue sharing payments, the Comprehensive Transportation Fund, and the General Fund. To reflect the significant portion of sales tax revenue earmarked in statute for revenue sharing that has been diverted to the General Fund, this report allocates all of the statutory revenue sharing earmark to the General Fund and shows the appropriation

Exhibit 13

MEMORANDUM

DATE: May 19, 2023
TO: Members of the Michigan Senate
FROM: Kathryn R. Summers, Director
RE: May Consensus Revenue Year-End Balance Estimates Based on Senate Budgets

Based on the revised consensus revenue estimates agreed to on May 19, 2023, the enacted fiscal year (FY) 2022-23 appropriations, pending supplementals, and projected State appropriations based on Senate-passed FY 2023-24 budgets, the Senate Fiscal Agency (SFA) has revised its estimates of the year-end balances in the FY 2022-23, FY 2023-24, and FY 2024-25 General Fund/General Purpose (GF/GP) and School Aid Fund (SAF) budgets. This memorandum provides a brief summary of these revised estimates, and Table 1 below compiles the balances into a summary table.

Table 1

SFA ESTIMATES OF YEAR-END BALANCES USING CREC REVENUE ESTIMATES			
(Fiscal Year, millions of dollars)			
	FY 2022-23	FY 2023-24	FY 2024-25
General Fund/General Purpose.....	\$2,592.7	\$923.1	\$1,289.4
School Aid Fund	\$3,903.5	\$2,101.3	\$2,646.7

FY 2022-23 Year-End Balance Estimates

The initial FY 2022-23 budget approved by the Legislature was based on the May 2022 consensus revenue estimate. The revisions to the consensus revenue estimates agreed to in January 2023 reflected an increase from the May 2022 estimate for both GF/GP and SAF revenue, allowing continued surpluses in both the GF/GP and SAF budgets. The May 2023 consensus estimate of FY 2022-23 GF/GP revenue was decreased by \$989.9 million from the January 2023 consensus revenue estimate due to changes in tax policy and earmarks of Corporate Income Tax (CIT) revenue, while consensus SAF revenue was increased by \$106.5 million. The consensus estimates coupled with enacted appropriations and SFA projected expenditures for May 2023 result in a projected year-end balance of \$2.6 billion GF/GP and \$3.9 billion SAF.

The FY 2022-23 GF/GP revenue is decreased by \$989.9 million from the January consensus revenue estimate. In addition to the estimated decrease in ongoing revenue, the SFA's FY 2022-23 estimated GF/GP revenue total of \$20.2 billion includes \$7.5 billion of surplus revenue carried forward from FY 2021-22; a negative adjustment totaling \$525.6 million to reflect statutory State revenue sharing payments; and a \$2.6 million reduction from redirection of restricted revenue.

The projected level of FY 2022-23 GF/GP expenditures includes initial ongoing appropriations of \$12.0 billion; initial one-time appropriations of \$3.3 billion; enacted supplemental appropriations of \$2.5 billion; caseload and cost reductions from the May 2023 consensus of \$439.8 million in the Department of Health and Human Services (DHHS); and numerous other one-time and ongoing spending items. Comparing estimated GF/GP revenue to year-to-date GF/GP appropriations, adjusted for SFA assumptions, results in a projected year-end GF/GP balance of \$2.6 billion.



Table 1
GENERAL FUND/GENERAL PURPOSE (GF/GP)
REVENUE, EXPENDITURES, AND YEAR-END BALANCE ESTIMATES
 (millions of dollars)

	SFA Estimates		
	FY 2022-23 Year-To-Date	FY 2023-24 SFA Estimate	FY 2024-25 SFA Estimate
Revenue:			
Beginning Balance.....	\$7,463.5	\$2,592.7	\$923.1
Ongoing Revenue:			
CREC Forecast Revenue Estimate (January 2023)	\$14,777.9	\$15,092.2	\$15,545.5
CREC Forecast Revenue Change (May 2023).....	(989.9)	(1,853.9)	(1,629.1)
Subtotal: Unadjusted CREC Forecast (May 2023)	\$13,788.0	\$13,238.3	\$13,916.4
SFA Adjustments: Restore temporary revenue losses to baseline (May 2023)	1,080.8	1,162.4	550.0
Adjusted CREC Forecast Ongoing Revenue Estimate (May 2023)	\$14,868.8	\$14,400.7	\$14,466.4
Other Ongoing Revenue Adjustments:			
Adjustments (PPT hold harmless)	(\$75.0)	(\$75.0)	(\$75.0)
CIT Housing Earmark - built into ongoing revenues	0.0	0.0	0.0
Sales tax removal for delivery and installation - built into ongoing revenues....	0.0	0.0	0.0
Senate Bill 127 Community Foundation Endowment Fund.....	0.0	(3.3)	(3.3)
Senate Bill 128 food bank donations	0.0	(18.7)	(18.7)
Retirement income tax changes (HB 4001) - built into ongoing revenues	0.0	0.0	0.0
EITC (HB 4001) - built into ongoing revenues	0.0	0.0	0.0
Liquor Purchase Revolving Fund - authorized distribution agent adjustment	(18.5)	(19.1)	(19.7)
Revenue Sharing Payments	(525.6)	(551.8)	(551.8)
Subtotal Ongoing Revenue.....	\$14,249.7	\$13,732.8	\$13,797.9
Non-ongoing Revenue:			
Legal Settlements/Redirection of Restricted Revenue.....	(\$2.6)	(\$2.6)	(\$2.6)
Moving forward one-year impact of EITC (SB 144)	(384.0)	0.0	0.0
Three-year CIT SOAR earmark	(50.0)	(50.0)	(50.0)
Three-year CIT RAP earmark.....	(500.0)	(500.0)	(500.0)
Income tax reduction (ie, trigger) - 4/10/23; AG opinion 1-year impact	(530.8)	(228.4)	0.0
Revenue Sharing One-Time Payments	(4.9)	(26.7)	0.0
Subtotal Non-Ongoing Revenue	(\$1,472.3)	(\$807.7)	(\$552.6)
Total Estimated GF/GP Revenue Including Beginning Balance.....	\$20,240.9	\$15,517.9	\$14,168.4
Total Estimated GF/GP Revenue Excluding Beginning Balance	\$12,777.4	\$12,925.2	\$13,245.3
Expenditures:			
Ongoing Appropriations:			
Initial Senate Appropriations.....	\$11,963.6	\$12,859.0	\$12,857.4
Ongoing reserve for audit, legal, statutory, and other costs	0.0	100.0	100.0
Ongoing Community District Trust Fund GF payment	0.0	28.2	32.8
Subtotal Ongoing Appropriations	\$11,963.6	\$12,987.2	\$12,990.2
One-Time and Other Appropriations:			
Estimated One-Time Appropriations	\$3,292.3	\$2,148.8	\$0.0
BSF Deposit.....	0.0	200.0	0.0
Fund shift Corrections payroll with revenue loss SFRF	0.0	(700.0)	0.0
Enacted Supplementals	2,530.4	0.0	0.0
Exec Rec Supplementals (2023-2 and 2023-3)	818.7	0.0	0.0
Remove Exec Rec supplementals to show baseline	(816.7)	0.0	0.0
Restore FMAP and caseload savings from exec rec Supplementals.....	(517.5)	0.0	0.0
CREC forecast of adjustments in FMAP, caseloads, child care	77.7	(61.3)	(111.2)
Senate supplemental items	29.3	0.0	0.0
Reserve for audit, legal, statutory, other costs.....	200.0	20.0	0.0
Treasury boilerplate appropriation	50.0	0.0	0.0
Additional K-12 GF for Community District Trust Fund (moved to ongoing)....	22.4	0.0	0.0
Subtotal One-Time and Other Appropriations.....	\$5,684.5	\$1,607.6	(\$111.2)
Total Estimated GF/GP Expenditures	\$17,648.2	\$14,594.8	\$12,879.0
PROJECTED YEAR-END GF/GP BALANCE (Total).....	\$2,592.7	\$923.1	\$1,289.4
PROJECTED YEAR-END GF/GP BALANCE (Ongoing)	\$2,286.1	\$745.6	\$807.7
PROJECTED YEAR-END GF/GP BALANCE (One-Time).....	\$306.6	\$177.5	\$481.7

MICHIGAN'S MAJOR TAXES: REVENUE ESTIMATES, TAX RATES, AND YIELDS FOR FY 2021-22 & FY 2022-23
(dollars in millions)

Tax	Revenue Estimates (a)		Current Tax Rate	Examples of Revenue Impact Due To Change In Rate (i)			History of Tax Rate Changes:
	FY 2021-22 Net Revenue	FY 2022-23 Net Revenue		Rate Change	FY '22 Rev Change Eff. 1/1/22	FY '23 Rev Change Eff. 1/1/22	
Individual Income Tax: Gross Collections Refunds Net Income Tax	\$16,727.2 (3,244.2) \$13,483.0	\$15,699.4 (2,479.2) \$13,220.2	4.25%	0.1%	\$224.1	\$336.4	1967: 2.6% 1971: 3.9% 2004: 3.9% 7/1 1975: 4.6% 1982: 5.6% 4/1 1982: 4.6% 10/1 1983: 6.36% 2007: 4.35% 10/1 1984: 5.35% 9/1 1986: 4.6% 2012: 4.25% 10/1 1994: 4.4% 5/1 2000: 4.2% 2002: 4.1% 2003: 4.0%
Sales Tax (b)	\$10,299.6	\$10,232.5	6.0%	1% of: (b) first 4% of 6% last 2% of 6%	\$1,312.0 1,238.4	\$1,737.3 1,641.8	1933: 3.0% 1980: 4.0% 1994: 6.0% 5/1
Use Tax (c)	\$2,604.3	\$2,590.7	6.0%	1.0%	\$325.6	\$431.8	1937: 3.0% 1960: 4.0% 1994: 6.0% 5/1
Corporate Income Tax	\$1,822.6	\$1,582.1	6.0%	1.0%	\$227.8	\$263.7	Rate has not changed.
Tobacco Tax Cigarettes Other Tobacco Products	\$830.7 \$724.0 \$106.7	\$819.4 \$711.7 \$107.7	\$2.00/pack \$2% whole-sale price	\$0.10/pack 2.0%	\$28.9 \$5.0	\$35.2 \$6.7	1947: 3 cents/pk 1969: 4 cents/pk 1981: 5 cents/pk 1982: 7 cents/pk 1970: 11 cents/pk 1982: 21 cents/pk 1987: 25 cents/pk 1993: 75 cents/pk 2002: \$1.25/pk 8/1 2004: \$2/pk 7/1
Liquor Tax (d)	\$79.0	\$80.0	4.0%	1.0%	\$14.7	\$19.9	1959: Liquor excise tax established - 4.0% 1962: Liquor specific tax established - 4.0% 1972: Liquor specific tax established - 1.85%, repealed 10/1/2012 1985: Liquor specific tax established - 4.0%
Beer Tax (e)	\$41.6	\$42.4	\$6.30/barrel (e)	\$1/barrel (e)	\$4.9	\$6.7	1933: \$1.25/barrel 1959: \$2.50/barrel 1962: \$6.61/barrel 1966: \$6.30/barrel
Wine Tax (f)	\$10.4	\$10.6	(f)	\$0.01/liter	\$0.6	\$0.8	1937: \$0.50/gallon 1981: w/ 16% alcohol 13.5 cents/liter 1981: w/ >16% alcohol 20 cents/liter 1989: mixed-spirit drinks 48 cents/liter 1999: 8.1% of adj. gross receipts 2004: 12.1% of adj. gross receipts 9/1 FY07: 8.1%-12.1% FY09: 8.1% 2/09
Casino Gaming Tax (g)	\$110.0	\$113.4	8.1%	1.0%	\$10.2	\$14.0	Rate has not changed.
Real Estate Transfer Tax	\$527.0	\$496.9	0.75%	0.25%	\$131.8	\$165.6	Rate has not changed.
State Education Property Tax	\$2,396.0	\$2,563.2	6 mills	1 mill	\$399.3	\$427.2	1994: 6 mills 2003: 5 mills (one-year reduction only) 2004: 6 mills
Gasoline Tax (h)	\$1,196.0	\$1,226.5	\$0.272/gal.	\$0.01/gal.	\$33.0	\$45.1	1983: 13 cents/gal. 2017: 26.3 cents/gal. 1984: 15 cents/gal. 2022: 27.2 cents/gal. 1997: 19 cents/gal.

(a) Consensus Revenue Estimates, May 20, 2022.

(b) The first 4 percentage points of the 6% sales tax rate are assessed on the entire sales tax base (including residential utilities), whereas the last 2 percentage points of the 6% sales tax rate are not assessed on residential utilities.

(c) Combined State and local revenue, and thus includes portion of the Use Tax directed to the Local Community Stabilization Authority. The LCSA portion is set in statute and would not be affected by a rate change. Thus the estimated impact of a rate change only reflects the impact on State revenue.

(d) There are three taxes on liquor, each with a rate of 4.0% and they are earmarked to the General Fund, School Aid Fund, and the Convention Facility Fund. One tax, assessed at 1.85% on sales for off-site consumption and earmarked to the Liquor Purchase Revolving Fund, was repealed effective October 1, 2012.

(e) The beer tax of \$6.30/barrel is equivalent to 1.9 cents per 12 ounce can of beer. Increasing the rate by \$1/barrel would increase the tax/can to 2.2 cents.

(f) Tax on wine is as follows: Wine containing 16% or less of alcohol: 13.5 cents/liter; and wine containing more than 16% alcohol: 20 cents/liter.

(g) Includes only the regular casino gaming tax and excludes the taxes on internet wagering, sports betting and fantasy games.

(h) Tax rate is adjusted each year for inflation. Estimates assume no inflation adjustment to current tax rate.

(i) Senate Fiscal Agency estimate.

OTHER TAX ITEMS: FY 2020-21 FY 2021-22

Income Tax Personal Ex. Level (Tax Year)	\$4,900	\$5,000
Cost per \$100 change	\$30.0	\$30.0
Property Tax Credit Maximum Credit	\$1,500	\$1,500
Cost per \$100 change	\$9.4	\$9.4

Exhibit 14

**MICHIGAN'S
INDIVIDUAL INCOME TAX
2020**



**Michigan Department of Treasury
Office of Revenue and Tax Analysis
Tax Analysis Division
November 2022**

IV. INCIDENCE OF THE INDIVIDUAL INCOME TAX

For tax year 2020, about 5.0 million MI-1040 returns were filed, 77,300 more than for 2019 (see Exhibit 5 below). An additional 33,200 “credit-only” returns were filed for 2020. These “credit-only” returns refer to returns from taxpayers who did not file an MI-1040 form, but who did claim a refundable tax credit, such as a property tax credit or a home heating credit by filing the appropriate forms. Of those “credit-only” returns, 9,200 claimed only a home heating credit, 9,500 claimed only a property tax credit, and 7,200 claimed both refundable credits.

The personal income tax generated \$9.4 billion in net revenue for tax year 2020, which is total revenue after all credits and refunds are paid. Income tax revenues increased \$378.2 million (4.2%) from 2019, reflecting increased AGI, and decreased refundable credits from the prior year.

Exhibit 5
Fifteen-Year History of Income Tax Rates and Revenue

Year	Number of 1040s Filed	Adjusted Gross Income	Average AGI	Nominal Rate	Average Effective Rate	Revenue
2006	4,487,257	272,454,940,745	60,717	3.90%	2.03%	5,521,426,800
2007	4,560,672	292,321,301,678	64,096	4.01%	1.99%	5,803,415,000
2008	4,481,511	257,476,490,543	57,453	4.35%	2.24%	5,757,103,800
2009	4,395,979	240,741,775,266	54,268	4.35%	2.03%	4,883,682,400
2010	4,459,933	254,568,181,316	57,079	4.35%	2.07%	5,264,953,200
2011	4,491,741	264,777,026,191	58,948	4.35%	2.11%	5,594,565,100
2012	4,514,771	288,509,600,808	63,903	4.33%	2.42%	6,994,868,100
2013	4,560,975	289,850,295,303	63,550	4.25%	2.36%	6,840,270,600
2014	4,609,070	322,151,626,296	69,895	4.25%	2.30%	7,419,330,100
2015	4,662,493	335,592,845,275	71,977	4.25%	2.39%	8,009,012,200
2016	4,737,731	340,468,742,136	71,863	4.25%	2.39%	8,133,885,300
2017	4,775,673	369,384,403,541	77,347	4.25%	2.37%	8,738,816,000
2018	4,817,752	390,810,568,520	81,119	4.25%	2.32%	9,062,404,900
2019	4,875,471	385,283,987,497	79,025	4.25%	2.35%	9,046,522,000
2020	4,952,798	402,044,569,726	81,175	4.25%	2.34%	9,424,548,300

Source: Office of Revenue and Tax Analysis, Michigan Department of Treasury.

⁷The AGI above is reduced by returns reporting a negative AGI totaling a negative \$8.3 billion. The data for negative AGI returns are included throughout this report unless otherwise noted.

Exhibit 15

State Notes

TOPICS OF LEGISLATIVE INTEREST

Spring 2015



A History of the Michigan Individual Income Tax Rate
 By Elizabeth Pratt, Fiscal Analyst, and David Zin, Chief Economist

The Michigan individual income tax is now the largest source of State tax revenue, with net revenue of approximately \$8.0 billion in fiscal year (FY) 2013-14, representing 39% of combined State General Fund and School Aid Fund revenue. In FY 2013-14, the individual income tax provided 62.7% of General Fund/General Purpose revenue and 20.5% of School Aid Fund revenue.

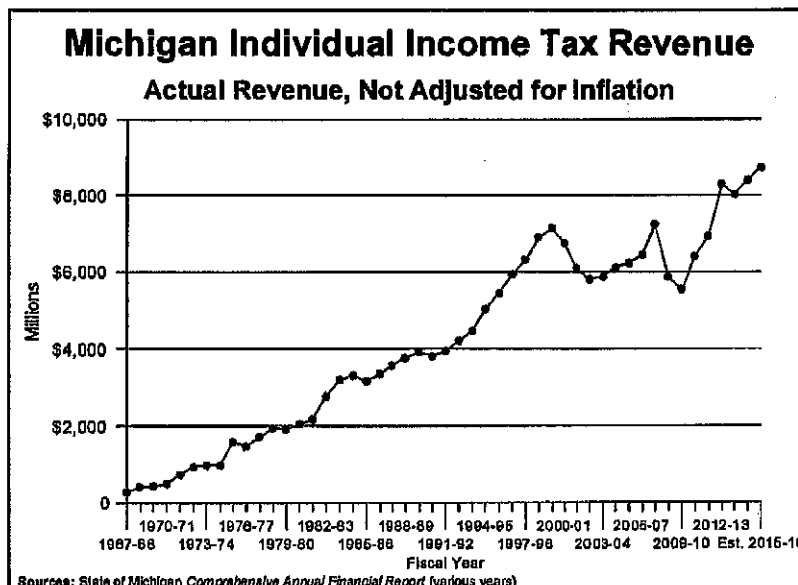
The amount of individual income tax revenue depends on the tax rate, tax base (the Federal adjusted gross income and the additions and subtractions required by Michigan), and the availability of tax exemptions and credits. The structure of the tax is limited by the Michigan Constitution of 1963, which states in Article IX, Section 7: "No income tax graduated as to rate or base shall be imposed by the state or any of its subdivisions." Thus, the Michigan individual income tax is a flat rate tax. It has been levied at a rate of 4.25% since October 1, 2012.

The individual income tax rate frequently is debated by policymakers concerned with the level of taxation and State spending. Since the advent of the tax in 1967, the tax rate has been changed frequently. This article will review the history of the income tax rate, with a focus on the changes made during the last decade.

Individual Income Tax Revenue

The revenue from the individual income tax funds a significant portion of the State budget. In recent years it has provided well over one-third of combined General Fund/General Purpose (GF/GP) and School Aid Fund (SAF) revenue. Figure 1 illustrates the full history of the individual income tax while Table 1 shows the recent history of income tax revenue, with comparisons to combined GF/GP and SAF revenue. Individual income tax collections vary significantly with economic conditions, such as during the recession of 2008-2009, and changes in tax policy, such as the rate reductions implemented from 2000 through 2005. Revenue from the individual income tax has increased in its significance to the State budget over the last decade.

Figure 1



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State Notes
TOPICS OF LEGISLATIVE INTEREST
 Spring 2015



Table 1

Individual Income Tax Revenue as a Percent of Total General Fund/General Purpose and School Aid Fund Revenue Not Adjusted for Inflation			
Fiscal Year	Income Tax Revenue	Total GF/GP and SAF Revenue	Income Tax as a Percent of Total
1997-98	\$6,316.1	\$18,437.9	34.3%
1998-99	6,907.9	19,637.0	35.2%
1999-2000	7,144.2	20,569.9	34.7%
2000-01	6,749.4	19,896.5	33.9%
2001-02	6,096.0	19,483.0	31.3%
2002-03	5,811.8	19,611.3	29.6%
2003-04	5,873.4	19,584.6	30.0%
2004-05	6,108.9	20,168.3	30.3%
2005-06	6,226.3	20,313.8	30.7%
2006-07	6,442.7	20,417.4	31.6%
2007-08	7,226.0	21,849.9	33.1%
2008-09	5,856.8	19,209.4	30.5%
2009-10	5,531.3	18,495.5	29.9%
2010-11	6,417.1	20,061.2	32.0%
2011-12	6,921.0	20,125.4	34.4%
2012-13	8,271.8	20,832.2	39.7%
2013-14	8,020.1	20,539.0	39.0%
Est. 2014-15	8,393.5	21,390.5	39.2%
Est. 2015-16	8,719.7	21,976.9	39.7%

Sources: Michigan Comprehensive Annual Financial Reports, Senate Fiscal Agency, and Consensus Revenue Estimates as of January 16, 2015

Revenue from the individual income tax is determined by the interaction of the tax rate and base. The individual income tax base depends on the Federal definition of adjusted gross income; adjustments to income, including deductions (such as the limited exclusion of pension benefits) and additions; credits; and personal exemptions. As a result, the revenue generated by the tax will reflect a variety of economic factors, such as inflation or changes in economic growth. Individual income tax revenue also is sensitive to the tax rate. Based on current estimates, an increase of 0.1% in the individual income tax rate effective January 1, 2015, would increase State revenue by \$224.2 million in FY 2015-16. [Figure 2](#) illustrates the history of Michigan's individual income tax revenue, adjusted for the effect of inflation. All of the major swings in revenue shown in [Figure 2](#) reflect either changes in the tax, such as changes in the rate or base, or changes in the economy other than those associated with inflation.¹

The revenue from the individual income tax primarily has been deposited in the State General Fund; however, there have been earmarks in effect since the inception of the tax. From FY 1967-68 through FY 1995-96, there were allocations made from income tax revenue to revenue sharing for counties, cities, villages, and townships. Initially, 17.0% of the net revenue was allocated to revenue sharing and the remainder to GF/GP revenue; however, the percentage and distribution of the allocation for revenue sharing were amended frequently as the revenue sharing earmark percentage was reduced in response to increases in the income tax rate and State budget difficulties resulted in payment limits, reductions, and

¹ A comprehensive review of changes to the individual income tax was published by the Michigan Department of Treasury. Please see "Michigan's Individual Income Tax 2012", Michigan Department of Treasury, Office of Revenue and Tax Analysis, Tax Analysis Division, July 2014, available as a link from http://michigan.gov/treasury/0,1607,7-121-44402_44404---,00.html under "Tax Reports".

Exhibit 16

account, the current balance of these accounts, an estimate of the revenue needed in order to fund each revision specified by subsection (4), and an estimate of the revenue needed to be deposited in the working capital reserve account in order for appropriations to be made from the working capital reserve account. The information required by this subsection shall be itemized according to revenue source and accounting procedure deviation.

(4) The accounting procedures of this state for which a revision is required and a transfer shall be made pursuant to subsection (1) shall include:

(a) The accounting on an accrual basis of expenditures which are based on billings paid by the department of social services for the medical assistance program established under title XIX of the social security act, 42 U.S.C. 1396 to 1396p, and for the general assistance medical program established under Act No. 280 of the Public Acts of 1939, being sections 400.1 to 400.121 of the Michigan Compiled Laws.

(b) The accounting on an accrual basis of cost settlement payments for the prevention of utility shutoffs by the department of social services for the voluntary heating fuel program.

21.425 Conditional effective date. [M.S.A. 3.117(5)]

Sec. 5. This act shall not take effect unless House Bill No. 4092 of the 82nd Legislature is enacted into law.

This act is ordered to take immediate effect.
Approved March 29, 1983.

Compiler's note: House Bill No. 4092, referred to in §21.425, was approved by the Governor on March 29, 1983, and became P.A. 1983, No. 15, Imd. Eff. Mar. 29, 1983.

[No. 15]

(HB 4092)

AN ACT to amend sections 51, 301, 351, and 481 of Act No. 281 of the Public Acts of 1967, entitled "An act to meet deficiencies in state funds by providing for the imposition, levy, computation, collection, assessment, and enforcement by lien and otherwise of taxes on or measured by net income; to prescribe the manner and time of making reports and paying the taxes, and the functions of public officers and others as to the taxes; to permit the inspection of the records of taxpayers; to provide for interest and penalties on unpaid taxes; to provide exemptions, credits and refunds of the taxes; to prescribe penalties for the violation of this act; to provide an appropriation; and to repeal certain acts and parts of acts," section 51 as amended by Act No. 155 of the Public Acts of 1982, section 301 as amended by Act No. 515 of the Public Acts of 1982, section 351 as amended by Act No. 169 of the Public Acts of 1982, and section 481 as amended by Act No. 452 of the Public Acts of 1980, being sections 206.51, 206.301, 206.351, and 206.481 of the Michigan Compiled Laws; and to add section 496.

The People of the State of Michigan enact:

Sections amended and added; income tax act of 1967.

Section 1. Sections 51, 301, 351, and 481 of Act No. 281 of the Public Acts of 1967, section 51 as amended by Act No. 155 of the Public Acts of 1982, section 301 as

amended by Act No. 515 of the Public Acts of 1982, section 351 as amended by Act No. 169 of the Public Acts of 1982, and section 481 as amended by Act No. 452 of the Public Acts of 1980, being sections 206.51, 206.301, 206.351, and 206.481 of the Michigan Compiled Laws, are amended and section 496 is added to read as follows:

206.51 Tax rates on taxable income of person other than a corporation; "taxable income" and "person other than a corporation" defined; computation of taxable income of nonresident; resident beneficiary of trust; tax credit; taxable income of nonresident beneficiary of resident estate or trust; including items of income and deductions from trust in taxable income; intention of section; imposition of applicable annualized rate; applicability of rate provided by subsection (1)(d)(ii); additional tax rate; reductions; rate limitation; certification of unemployment rates. [M.S.A. 7.557(151)]

Sec. 51. (1) For receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed a tax at the following rates for the following periods upon the taxable income of every person, other than a corporation:

(a) Through March 31, 1982: 4.6%.

(b) From April 1, 1982 through September 30, 1982: 4.6% plus a temporary emergency surcharge of 1% of the taxable income of every person other than a corporation.

(c) From October 1, 1982 through December 31, 1982: 4.6%.

(d) January 1, 1983 and thereafter, 3.9% plus the following rates for the specified periods:

(i) Except as provided by subsection (12), 2.2%, as adjusted pursuant to subsection (11), or the following rate for the respective period, whichever is the lesser:

(A) From January 1, 1984 through December 31, 1984: 1.95%.

(B) From January 1, 1985 and thereafter: 1.2%.

(ii) 0.25% until the first of the month following the month in which the state treasurer makes the certification required by subsection (10), or through September 30, 1986, whichever date is earlier.

(2) As used in this section, "taxable income" means taxable income as defined in this act subject to the applicable source and attribution rules contained in this act.

(3) As used in this section, a person other than a corporation means in addition to a resident or nonresident individual:

(a) A partner in a partnership as defined in the internal revenue code.

(b) A beneficiary of an estate or a trust as defined in the internal revenue code.

(c) An estate or trust as defined in the internal revenue code.

(4) As used in this section, the taxable income of a nonresident shall be computed in the same manner as in the case of a resident, subject to the allocation and apportionment provisions of this act.

(5) A resident beneficiary of a trust whose taxable income includes all or part of an accumulation distribution by a trust, as defined in section 665 of the internal revenue code, shall be allowed a credit against the tax otherwise due under this act. The credit shall be all or a proportionate part of any tax paid by the trust under this act for any preceding taxable year which would not have been payable if the trust had in fact made distribution to its beneficiaries at the times and in the amounts specified in section 666 of the internal revenue code. The credit shall not reduce the

tax otherwise due from the beneficiary to an amount less than would have been due if the accumulation distribution were excluded taxable income.

(6) Taxable income of a nonresident who is a beneficiary of a resident estate or trust shall not include the beneficiary's share of estate or trust income.

(7) The taxable income of a resident who is required to include income from a trust in his or her federal income tax return under the provisions of subpart E of subchapter J of the internal revenue code, sections 671 through 679, shall include items of income and deductions from the trust in taxable income to the extent required by this act with respect to property owned outright.

(8) It is the intention of this section that the income subject to tax of every person other than corporations shall be computed in like manner and be the same as provided in the internal revenue code, subject to adjustments specifically provided for in this act.

(9) The rates provided in subsection (1), as limited by subsection (12), shall be annualized as necessary by the department for tax years that end after March 31, 1982 and the applicable annualized rate shall be imposed upon the taxable income of every person, other than a corporation, for these tax years.

(10) The rate provided by subsection (1)(d)(ii) shall not apply after the month in which the requirements of section 4(2) of the state accounting and fiscal responsibility account act for appropriation of collections deposited in the state accounting and fiscal responsibility account have been met, as certified by the state treasurer. The state treasurer shall make this certification on the date that the requirements of section 4(2) of the state accounting and fiscal responsibility account act for appropriation of the collections therein have been met.

(11) If the seasonally adjusted average state unemployment rate for each of the last 2 quarters of a state fiscal year is less than 14.5%, the 2.2% additional tax rate imposed pursuant to subsection (1)(d)(i) for a tax year commencing in the immediately following calendar year shall be reduced by 0.1 percentage point for each 0.5 percentage point that the seasonally adjusted average state unemployment rate of these 2 quarters, averaged together, is below 14.5%. However, if the seasonally adjusted average state unemployment rate for each of these 2 last quarters is 9.0% or less but greater than 6.5%, an additional rate under subsection (1)(d)(i) shall be reduced by 1.5 percentage points for a tax year commencing in the immediately following calendar year. However, if the seasonally adjusted average state unemployment rate for each of these last 2 quarters was 4% or less, an additional rate under subsection (1)(d)(i) shall not be imposed for a tax year commencing in the immediately following calendar year. An additional tax rate imposed pursuant to subsection (1)(d)(i) for a tax year commencing in 1984 or any calendar year thereafter shall not exceed the additional tax rate imposed pursuant to subsection (1)(d)(i) for a tax year commencing in the immediately preceding calendar year, or 0.7%, whichever is the greater rate.

(12) For any full calendar year in which the state sales and use tax rates are set by law at greater than 4%, an additional rate under subsection (1)(d)(i) shall not exceed a percentage rate that would equal the difference between the rate effective in that calendar year under subsection (1)(d)(i) without regard to this subsection minus a percentage rate to be determined each year by the department that would have produced the same collections under this act in the state fiscal year immediately preceding the calendar year for which a rate limitation is being determined as produced or would have been produced from any portion of state sales and use tax rates over 4% that was collected, or would have been collected if effective, in the

same state fiscal year immediately preceding the calendar year for which this rate limitation is being determined and that, for the calendar year for which a rate limitation is being determined, are dedicated to the general purpose account of the state general fund. However, the rate limitation set by this subsection shall not be less than 4.6%.

(13) All unemployment rates used in determinations under subsection (11) shall be certified in a timely fashion by the director of the Michigan employment security commission to the state treasurer and shall be calculated by the same method and under the same basis as was in effect and used on December 31, 1982.

206.301 Estimated tax; filing return; due dates; payment; tax credit; estimated annual return and payment instead of quarterly returns and payments; farmer or commercial fisherman; option in filing estimated and annual returns; computation of estimated tax payments. [M.S.A. 7.557(1301)]

Sec. 301. (1) Every individual on a calendar year basis, if his or her annual tax can reasonably be expected to exceed the amount withheld under section 351 and the credits allowed by sections 257, 260, and chapter 9 by more than \$100.00, shall file with the department a return of estimated tax under this act on or before April 15, June 15, and September 15 in his or her tax year and January 15 in the following year and, subject to subsection (3), shall pay an amount equal to 1/4 the taxpayer's estimated tax under this act after first deducting the amount estimated to be withheld under section 351.

(2) In the case of a taxpayer on other than a calendar year basis, there shall be substituted for the due dates provided in subsection (1) the appropriate due dates which in the taxpayer's fiscal year corresponds to the calendar year.

(3) With respect to a taxpayer filing an estimated tax return for his or her first tax year of less than 12 months, the amount paid with each return shall be that fraction of the estimated tax which is obtained by dividing the total amount of estimated tax by the number of payments to be made with respect to the tax year.

(4) There shall be allowed as a credit against the tax imposed by this act the amounts paid the department pursuant to this section.

(5) Any person subject to this section, instead of the quarterly returns and payments, may file an estimated annual return and pay an estimated annual tax for the succeeding tax year. The return and payment shall be made at the same time he or she files the annual return for the previous full tax year.

(6) A farmer or commercial fisherman who elects under the internal revenue code to file an annual federal income tax return by March 1 in the year following the taxpayer's tax year and does not make a quarterly estimate or payment, or who does not make a quarterly estimate or payment and files a tentative annual return with a tentative payment by January 15 in the year following the taxpayer's tax year and a final return by April 15 in the year following the taxpayer's tax year, shall have the same option in filing the estimated and annual returns for the tax imposed by this act.

(7) Notwithstanding section 302, payments of estimated tax shall be computed on the basis of the annualized rate established pursuant to section 51(9) for the appropriate tax year to which the estimated tax payment is applicable.

206.351 Deducting and withholding tax on compensation; computation of amount; withholding tables; disposition of taxes withheld; employer as trustee; liability; nonresident employees; liability of corporate officers for

failure of corporation to file return or remit tax; effect of dissolution; assessment and collection; providing department with copy of certain exemption certificates; withholding rates and tables.

[M.S.A. 7.557(1951)]

Sec. 351. (1) Every employer in this state required under the provisions of the internal revenue code to withhold a tax on the compensation of an individual except as otherwise provided shall deduct and withhold a tax in an amount computed by applying, except as provided by subsection (7), the rate prescribed in section 51 to the remainder of the compensation after deducting therefrom the same proportion of the total amount of personal and dependency exemptions of the individual allowed under this act that the period of time covered by the compensation is of 1 year. The commissioner may prescribe withholding tables which may be used by employers in computing the amount of tax required to be withheld.

(2) The taxes withheld under this section shall accrue to the state on the last day of the month in which they are withheld but shall be returned and paid to the department by the employer within 15 days after the end of any month or as provided in section 355.

(3) Every employer required by this section to deduct and withhold taxes on compensation holds the amount of tax withheld as a trustee for the state and is liable for the payment thereof to the state and is not liable to any individual for the amount of the payment.

(4) Employers in this state shall not be required to deduct and withhold a tax on the compensation paid to nonresident individual employees, who, under the provisions of section 256, are entitled to claim a tax credit equal to or in excess of the tax estimated to be due for the taxable year, or are exempted from liability for the tax imposed by this act. In each taxable year, the nonresident individual shall furnish the employer, on a form approved by the department, a verified statement of nonresidence.

(5) If the employer is a corporation and does not for any reason file the returns or pay the tax due as required under this act, any of the officers of the corporation having control, supervision of, or charged with the responsibility for making the returns and payments shall be personally liable for a failure to file or pay. The dissolution of a corporation shall not discharge a corporate officer's liability for the failure of the corporation to file a return or remit the tax that was due before dissolution. The sum due for any liability imposed upon a corporate officer under this subsection may be assessed and collected as provided in sections 23 and 24 of Act No. 122 of the Public Acts of 1941, as amended, being sections 205.23 and 205.24 of the Michigan Compiled Laws.

(6) Every employer required to withhold a tax under this act shall, by the 15th day of the following month, provide the department with a copy of any exemption certificate on which the employee is claiming more than 9 personal or dependency exemptions or claims a status exempting the employee from withholding as prescribed by this section.

(7) Subject to the deductions and exceptions provided by this section, for the period that commences on the effective date of this subsection and ends on December 31, 1983, the department shall prescribe withholding rates and tables sufficient to withhold the following amounts:

(a) A tax computed by applying 4.6% to the compensation of the individual.

(b) A tax computed by applying to the compensation of the individual paid in the period for which this subsection is applicable, a rate equal to the product of 1.75%

multiplied by the quotient of 365 divided by the number of days in the period for which this subsection is applicable.

206.481 Remittances by state disbursing authority to cities, villages, townships, and counties. [M.S.A. 7.557(1481)]

Sec. 481. (1) Beginning January 1, 1974, the state disbursing authority shall remit to cities, villages, townships, and counties in accordance with Act No. 140 of the Public Acts of 1971, as amended, being sections 141.901 to 141.921 of the Michigan Compiled Laws, a portion of an amount measured by 12.1% of the gross collections before refunds under section 51. Except as provided by subsection (6) for the state fiscal year beginning October 1, 1980, the portion to be remitted shall be in the same ratio as 2.6% bears to the income tax rate levied in section 51 in effect during the quarter the collections of which are being remitted. An appropriation for each distribution is hereby made from like taxes collected during the quarter in which the distribution is required to be made.

(2) Before July 1, 1976:

(a) Fifty percent of the amount determined by subsection (1) shall be distributed to counties in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(b) Fifty percent of the amount determined by subsection (1) shall be distributed to cities, villages, and townships in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(3) Beginning July 1, 1976:

(a) Forty-seven percent of the amount determined by subsection (1) shall be distributed to counties in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(b) Fifty-three percent of the amount determined by subsection (1) shall be distributed to cities, villages, and townships in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(4) Beginning July 1, 1977:

(a) Forty-three percent of the amount determined by subsection (1) shall be distributed to counties in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(b) Fifty-seven percent of the amount determined by subsection (1) shall be distributed to cities, villages, and townships in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(5) Beginning July 1, 1978:

(a) Thirty-nine percent of the amount determined by subsection (1) shall be distributed to counties in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(b) Sixty-one percent of the amount determined by subsection (1) shall be distributed to cities, villages, and townships in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(6) Beginning July 1, 1979:

(a) Thirty-five percent of the amount determined by subsection (1) shall be distributed to counties in accordance with Act No. 140 of the Public Acts of 1971, as amended. For the state fiscal year beginning October 1, 1980, \$7,000,000.00 shall be deducted from the amount to be distributed under this subdivision and shall be paid

to the general fund of the state. The deduction provided by this subdivision shall be made in equal installments at the time payments to counties are made under Act No. 140 of the Public Acts of 1971, as amended.

(b) Sixty-five percent of the amount determined by subsection (1) shall be distributed to cities, villages, and townships in accordance with Act No. 140 of the Public Acts of 1971, as amended.

(7) If it is determined that the federal government shall pay any of the costs for public welfare grants in respect to general relief which are appropriated by the legislature under section 18 of Act No. 280 of the Public Acts of 1939, as amended, being section 400.18 of the Michigan Compiled Laws, the percentage of the amount determined by subsection (1) to be distributed to counties in any year in accordance with subsections (2)(a), (3)(a), (4)(a), (5)(a), and (6)(a) shall be computed as follows commencing with July 1 after the date federal assumption of costs takes place:

(a) Subtract the percentage designated for counties in that year from 50%.

(b) Multiply the difference obtained in subdivision (a) by the percentage obtained by dividing the amount of federal payments by the state appropriation for that year for general relief.

(c) Add the product obtained in subdivision (b) to the percentage designated for distribution to counties in that year.

(d) The difference between the amount that would be distributed using the percentage obtained in subdivision (c) and the amount to be distributed to counties from the income tax in any year shall be appropriated from the general fund and paid to counties with the August payment of the following year as provided under section 11 of Act No. 140 of the Public Acts of 1971.

(8) Any overpayments, underpayments, or errors may be adjusted on the subsequent payment date.

(9) The revenue received from the rate imposed by section 51(1)(d)(ii) shall be credited to the state accounting and fiscal responsibility account in the general fund and shall be subject to the conditions for transfer and appropriation of money in that account as provided in the state accounting and fiscal responsibility account act.

(10) The balance in the general fund shall be disbursed only on appropriation of the legislature.

206.496 Appropriation. [M.S.A. 7.557(1496)]

Sec. 496. There is appropriated to the department for the 1982-1983 state fiscal year from the revenue derived from this act the sum of \$100,000.00 for the purpose of administering and enforcing the requirements of the amendatory act which added this section.

Legislative finding and purpose.

Section 2. Because a severe economic recession has caused an actual deficit in state funds, the legislature finds that this amendatory act is necessary to, and it is the purpose of this amendatory act to, meet the actual deficiencies existing in state funds at the time of this enactment.

This act is ordered to take immediate effect.

Approved March 29, 1983.

Exhibit 17

Legislative Analysis



INCOME TAX ACT CHANGES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4001 CR-1

Sponsor: Rep. Angela Witwer

House Committee: Tax Policy [Discharged]

Senate Committee: Committee of the Whole

Revised 2-8-23

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4001 would amend the Income Tax Act to provide for the phase-out of the three-tier system of taxing retirement and pension benefits, change the tax treatment of police and firefighter retirement income, provide for the issuance of income tax rebates to Michigan taxpayers, increase the value of the state earned income tax credit (EITC), increase the percentage of gross income tax collections earmarked to the School Aid Fund, provide for the deposit of certain revenue collected under the act into various state funds, and create the Michigan Taxpayer Rebate Fund and the Revitalization and Placemaking Fund.

Retirement Tax Phase-Out

The three-tier system for taxing retirement income was created in the Income Tax Act by 2011 PA 38. Prior to that act, federally taxable Social Security, military, federal, and state and local government retirement income were fully exempt from state taxation. Private retirement income (e.g., from private pensions, 401(k)s, etc.) was exempt up to a specific threshold that was adjusted annually for inflation. In addition, defined benefit plans (i.e., pensions) from public employment were fully exempt. Seniors also were able to claim a deduction for interest, dividends, and capital gains received from investments, up to a cap that was adjusted annually for inflation.

Currently, retirement income in Michigan is subject to taxation based on the birth year of the taxpayer (or their spouse) as follows:

- **Tier 1:** Taxpayers born before 1946 continue to be taxed under the same system that existed prior to the changes made by 2011 PA 38. For the 2022 tax year, the deduction of private retirement income was capped at \$56,961 for single filers and \$113,922 for joint returns. The deduction for investment income was capped at \$12,697 for single filers and \$25,394 for joint returns. These taxpayers remain able to claim other personal exemptions for which they are eligible.
- **Tier 2:** Taxpayers born from 1946 to 1952 are able to take a limited deduction (\$20,000 for single filers/\$40,000 for joint returns) against all types of income.¹ These taxpayers remain able to claim other personal exemptions for which they are eligible.
- **Tier 3:** Taxpayers born after 1952 are not able to exempt any retirement income, except for Social Security income, until reaching age 67. After turning 67, these taxpayers who choose to take the \$20,000/\$40,000 deduction against all income will have that deduction reduced by the taxable portion of Social Security and any personal exemptions claimed.

¹ These provisions apply at age 67, which all taxpayers in Tier 2 have already reached.

House Bill 4001 would provide for the phase-out of the three-tier system by the 2026 tax year, as follows:

- For the 2023 tax year, a taxpayer born after 1945 and before 1959 would be able to elect to deduct retirement or pensions benefits up to 25% of the maximum deduction available to taxpayers in Tier 1 for private retirement income.
- For the 2024 tax year, taxpayers born after 1945 and before 1963 would be able to elect to deduct retirement and pension benefits up to 50% the maximum deduction described above.
- For the 2025 tax year, taxpayers born after 1945 and before 1967 would be able to elect to deduct retirement and pension benefits up to 75% the maximum deduction described above.
- For the 2026 tax year, all taxpayers would be able to elect to claim the maximum deduction of retirement and pension benefits described above.

The bill also would allow taxpayers with retirement or pension benefits received for service as a public police or fire department employee, a county corrections officer, or a state police trooper or state police sergeant to claim the tax treatment of retirement income available to taxpayers currently in Tier 1, beginning with the 2023 tax year.

As currently, the deduction available for joint returns would be based on the older spouse's date of birth. If the older spouse died, the surviving spouse could continue qualifying with the older spouse's birth year as long as they did not remarry.

School Aid Fund Earmark

The bill also would change the percentage of income tax collection that is deposited in the State School Aid Fund (SAF). Currently, the act requires a percentage of gross individual income tax revenue (i.e., income tax revenue before refunds) to be deposited in the SAF. That percentage is 1.012% divided by the tax rate (currently 4.25%), or about 23.8%.

For fiscal year (FY) 2023-24, the bill would increase this earmark to the SAF to 1.015% divided by the tax rate. For FY 2024-25, the earmark would be 1.023% divided by the income tax rate. For FY 2025-26, the earmark would be 1.033% divided by the tax rate. Beginning in FY 2026-27, the earmark would be 1.040% divided by the tax rate. The percentage of gross collections earmarked to the SAF is shown in the chart below (for a 4.25% tax rate).

FY 2022-23 (current)	23.812%
FY 2023-24	23.882%
FY 2024-25	24.071%
FY 2025-26	24.306%
FY 2026-27 and beyond	24.471%

Michigan Taxpayer Rebate Fund

The bill also would create the Michigan Taxpayer Rebate Fund in the state treasury. The fund could receive money and other assets from any source. The state treasurer would direct the investment of the fund and credit to the fund any interest and earnings from fund investments.

If the bill takes effect before April 18, 2023, the fund would be used to issue a rebate of \$180 to each *eligible taxpayer* for the 2022 tax year. If the eligible taxpayer was married and did not file a joint return for the 2022 tax year, the rebate would be \$90. If the eligible taxpayer was married and filed a joint return, the rebate would be \$90 for each spouse.

Eligible taxpayer would mean an individual taxpayer who was a resident of this state as of December 31, 2022, and who filed an income tax return for the 2022 tax year on or before October 18, 2023. The term would include a spouse who filed a joint state income tax return for the 2022 tax year, even if only one spouse on the joint return was a Michigan resident as of December 31, 2022. It would also include a *claimant* who did not file a state income tax return for the 2022 tax year but filed a claim for the homestead property tax credit or the home heating credit for the 2022 tax year on or before October 18, 2022. It would not include a nonresident individual or an individual for whom a dependency exemption is allowable to another taxpayer for the 2022 tax year.

Claimant means an individual who filed a claim for the homestead property tax credit or the home heating credit and, if the claim was for the homestead credit, was domiciled in Michigan at least six months of the previous calendar year.

The rebate would be an advance refund payment of a refundable credit against tax liability for the 2023 tax year. The credit amount available to an eligible taxpayer would equal the amount of the rebate, and the credit amount when claimed for the 2023 tax year would be reduced by the amount of the advance refund issued.

The Department of Treasury would have to issue the advance refund payment automatically as soon as practical under procedures established by the department. The payment would be disbursed electronically to the direct deposit account authorized by the taxpayer for the 2022 tax year. If the taxpayer did not authorize direct deposit, the refund would be issued as a negotiable check sent by first-class mail. No advance refunds would be issued after December 31, 2023.

The advance refund payment would be exempt from interception, execution, levy, attachment, garnishment or any other legal process to collect a debt. It could not be applied as an offset to a liability of the taxpayer under 1941 PA 122 or any arrearage or other debt.

Money in the fund at the end of each fiscal year would remain in the fund, except that money in the fund after all rebates have been issued would lapse to the general fund at the end of that fiscal year.

Earned Income Tax Credit Increase

House Bill 4001 would also increase value of the state EITC. The state EITC is a refundable individual income tax credit which is now capped at 6% of the federal EITC. (The state credit was previously capped at 20% of the federal credit until it was reduced to 6% by 2011 PA 38.)

The bill would increase the state EITC cap to 30% of the federal credit, beginning in the 2023 tax year.

In addition, the bill would allow taxpayers that claim the credit for the 2022 tax year to claim an additional one-time credit equal to 24% of the taxpayer's federal EITC. The credit to which each taxpayer is entitled would be calculated by the Department of Treasury and would have to be refunded as soon as practical.

Distribution of Corporate Income Tax Revenue

The bill also would amend the distribution of revenue collected under Part 2 of the Income Tax Act, which includes the corporate income tax and various other business taxes. Currently, the act provides that revenue collected under Part 2 be deposited into the general fund.

If the bill takes effect before April 18, 2023, \$800.0 million of the revenue would be deposited into the Michigan Taxpayer Rebate Fund (see above) for FY 2021-22 only. The remaining revenue collected for that fiscal year would be deposited in the general fund.

The bill also would provide for the distribution of this revenue to various funds in future fiscal years. For FY 2022-23 through FY 2024-25, up to \$1.2 billion would initially be deposited into the general fund. After this amount, deposits would be made in the following order:

- Up to \$50.0 million to the Michigan Housing and Community Development Fund.
- Up to \$50.0 million to the Revitalization and Placemaking Fund (see below).
- Up to \$500.0 million to the Strategic Outreach and Attraction Reserve (SOAR) Fund.
- Any remaining balance to the general fund.

For each fiscal year beginning with FY 2025-26, \$50.0 million of the revenue collected under Part 2 would be deposited in the Michigan Housing and Community Development Fund. The remaining revenue would be deposited in the general fund.

Revitalization and Placemaking Fund

The bill would create the Revitalization and Placemaking Fund in the state treasury. The fund could receive money and other assets from any source. The state treasurer would direct the investment of the fund and credit to the fund any interest and earnings from fund investments. Money in the fund at the end of each fiscal year would remain in the fund.

Beginning with FY 2022-23, the Michigan Strategic Fund (MSF) would expend money from the fund, upon appropriation, to create and operate the Revitalization and Placemaking Grants Program. The program would invest in projects that enable population and tax revenue growth by doing the following:

- Rehabilitating vacant and blighted buildings and historic structures.
- Rehabilitating and developing vacant properties.
- Developing permanent place-based infrastructure associated with social zones and traditional downtowns, outdoor dining, and place-based public spaces.

Residential projects for which grant funds are used would have to comply with other program guidelines and eligibility requirements as determined by MSF.

MSF would have to prepare and submit a report to the House and Senate appropriations committees by December 31 annually detailing the amount of revenue received by the fund and expenditures from it during the prior state fiscal year and the fund balance at the end of the prior fiscal year.

MCL 206.30 et seq.

FISCAL IMPACT:

Using information provided by the Department of Treasury, the phase-in of the exemption against retirement income and changes to the treatment of police and fire retirement pension benefits would reduce general fund revenue by about \$58 million in FY 2022-23, \$233 million in FY 2023-24, \$408 million in FY 2024-25, and about \$515 million in FY 2025-26. The revenue reduction would be expected to grow over time as new retirees become eligible and distributions from retirement accounts increase. It should be noted that, because of the changes to the School Aid Fund earmarks, the School Aid Fund will be held harmless against the revenue loss, with the full reduction coming from general fund revenue.

In addition, an increase in the earned income tax credit from the current 6% of the federal EITC to 30% of the federal EITC beginning with TY 2022 would be expected to reduce individual income tax revenue by about \$385 million per year beginning in FY 2022-23. Because the expanded EITC affects net income tax refunds, the full impact would likely be borne by the general fund.

Earmarks of corporate income tax (CIT) revenue are expected to reduce general fund revenue by \$800 million in FY 2021-22, *up to* \$600 million in FY 2022-23 through FY 2024-25, and *up to* \$50 million per year thereafter beginning with FY 2025-26. The CIT earmark estimates in Table 1 below are based on January 2023 Consensus Revenue Estimating Conference (CREC) projections for CIT revenue. CIT revenue is not estimated to reach \$1.8 billion in FY 2022-23 and FY 2023-24, which would be necessary for the entire SOAR Fund deposit to be realized.

Based on January 2023 CREC revenue estimates and preliminary final revenue, the FY 2021-22 earmark of CIT revenue would reduce FY 2021-22 GF/GP revenue to an amount below capped GF/GP revenue, which would result in no income tax rate reduction.

From the \$800.0 million of CIT revenue earmarked in FY 2021-22 to the Michigan Taxpayer Rebate Fund, the bill would authorize the Department of Treasury to distribute a tax rebate of \$180 to each eligible taxpayer. Under the provisions of the bill, both a joint return and single return would receive \$180. Any amount remaining in the fund not distributed as a rebate would lapse to the general fund.

According to the Department of Treasury, the EITC provisions requiring the department to distribute refunds to taxpayers for the 2022 tax year via check will cost approximately \$925,000. Costs include mailing, printing, and issuing checks to taxpayers, as well as processing returns, handling correspondence with taxpayers, and any other activities necessary to administer the changes. The provisions could require up to two additional full-time equated positions.

The department indicated that the retirement tax phase-in component would increase annual administrative costs by approximately \$225,000 to accommodate 2.0 FTEs over four years beginning in FY 2023-24. Additionally, the tax rebates are expected to increase administrative costs by \$2.2 million on a one-time basis for temporary staff, information technology system changes, and tax rebate check processing. Of that total, approximately \$2.0 million would support check processing.

Table 1: Estimated Impact on GF/GP Revenue (in millions)

	FY 2022	FY 2023	FY 2024	FY 2025	FY 2026
Retirement Income Tax Exemption Phase-in	--	(\$58.0)	(\$233.0)	(\$408.0)	(\$515.0)
Earned Income Tax Credit Increase	--	(385.0)	(385.0)	(385.0)	(385.0)
CIT Earmarks:*					
Strategic Outreach and Attraction Reserve Fund	--	(460.0)	(465.0)	(500.0)	--
Michigan Taxpayer Rebate Fund	(800.0)	--	--	--	--
Revitalization and Placemaking Fund	--	(50.0)	(50.0)	(50.0)	--
MI Housing and Community Development Fund	--	(50.0)	(50.0)	(50.0)	(50.0)
TOTAL	(\$800.0)	(\$1,003.0)	(\$1,183.0)	(\$1,393.0)	(\$950.0)

*CIT Earmark estimates are based on January 2023 Consensus Revenue Estimating Conference revenue estimates.

Legislative Analyst: Alex Stegbauer
 Fiscal Analysts: Jim Stansell
 Ben Gielczyk

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

Appendix 3: Court of Claims Decision

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 VANDERKLOK,

Plaintiffs,

v

Case No. 23-000120-MB

RACHAEL EUBANKS, in Her Official Capacity
as Treasurer of Michigan,

Hon. Elizabeth L. Gleicher

Defendant.

**OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY
DISPOSITION AND DENYING PLAINTIFFS' COUNTERMOTION FOR SUMMARY
DISPOSITION AND MOTION FOR A SHOW-CAUSE ORDER**

Pending before the Court are defendant's motion for summary disposition under MCR 2.116(C)(4), (8) and (10), and plaintiffs' counter-motion for summary disposition under MCR 2.116(C)(9) and (10), in this action for declaratory and mandamus relief. Also pending before the Court is plaintiffs' ex parte motion for a show-cause order under MCR 3.305(C) and for an expedited schedule. For the reasons discussed, the Court GRANTS defendant's motion for summary disposition and DENIES plaintiffs' counter-motion for summary disposition and plaintiffs' ex parte motion to show cause.

I. BACKGROUND

Plaintiffs include two advocacy groups, Associated Builders and Contractors of Michigan (ABC), and National Federation of Independent Business, Inc. (NFIB) (collectively, the advocacy group-plaintiffs); Michigan Senator Edward McBroom and Michigan Representative Dale Zorn in their official capacity (collectively, the legislator-plaintiffs); and six individual Michigan taxpayers (collectively, the individual taxpayer-plaintiffs)

This matter concerns the interpretation of MCL 206.51(1), which sets Michigan's income tax rate. Specifically, the parties dispute whether defendant's announcement that, under MCL 206.51(1)(c), the income tax rate will decrease from 4.25% to 4.05% for tax year 2023 rendered 4.05% the default rate on a going-forward basis, or whether the rate will revert back to 4.25% after the 2023 tax year. According to plaintiffs, the difference between a 4.25% rate and a 4.05% rate amounts to an approximate \$714 million difference in state revenue per calendar year. They allege that the rate should remain at 4.05% and that the Legislature relied on the lower rate when passing the 2023-2024 fiscal-year budget. Therefore, plaintiffs request that the Court conclude that the state income tax rate is capped at 4.05%, and ask that the Court issue a writ of mandamus requiring defendant, State Treasurer Rachael Eubanks, to apply that rate for tax year 2024.¹

MCL 206.51(1) provides, in relevant part:

(1) For receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed under this part upon the taxable income of

¹ The statute has been amended four times since 2015, but, as plaintiffs note in their complaint, those amendments are not material to this case. See MCL 206.51, as amended by 2016 PA 266, 2018 PA 588, 2020 PA 75 and 2023 PA 4. The statute was amended in 2023, but the changes will not impact the relevant language once they go into effect in February 2024. See MCL 206.51, as amended by 2023 PA 4 (effective February 13, 2024).

every person other than a corporation a tax at the following rates in the following circumstances:

(a) On and after October 1, 2007 and before October 1, 2012, 4.35%.

(b) Except as otherwise provided under subdivision (c), on and after October 1, 2012, 4.25%.

(c) 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. For purposes of this subdivision only, the state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall determine whether the total revenue distributed to general fund/general purpose revenue has increased as required under this subdivision based on the comprehensive annual financial report prepared and published by the department of technology, management, and budget in accordance with section 23 of article IX of the state constitution of 1963. The state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall make the determination under this subdivision no later than the date of the January 2023 revenue estimating conference . . . and the date of each January revenue estimating conference conducted each year thereafter. [Emphasis added.]

The parties dispute the meaning of the phrase “the current rate” in Subsection (1)(c). In plaintiffs’ view, “the current rate” means the “most recent” rate, or the rate that is in effect when the analysis outlined in MCL 206.51(1)(c) is conducted. Because the tax rate was reduced to 4.05% for tax year 2023 based on a determination that the economic conditions outlined in the statute were met, plaintiffs argue that the 4.05% tax rate is the default rate for all subsequent years. Defendant maintains that the phrase “the current rate” refers to the 4.25% rate in Subsection (1)(b), which took effect beginning on October 1, 2012. So, in defendant’s view, any reductions in the tax rate based on the economic conditions outlined in Subsection (1)(c) are temporary, and the tax rate reverts back to 4.25% for each tax year.

On March 23, 2023, Attorney General Dana Nessel issued an opinion, at defendant's request, that addressed this issue. Defendant asked the Attorney General to address the following question in a formal opinion: "If the income tax rate for a particular year is reduced under MCL 206.51(1)(c), does the income tax rate return to 4.25% as described in MCL 206.51(1)(b) in the subsequent year, or does the rate remain at the reduced rate calculated under MCL 206.51(1)(c)?" (Bolded emphasis omitted.)

The Attorney General concluded, "[E]xamining MCL 206.51(1) as a whole, it is apparent that the Legislature intended any income tax reduction under subsection (1)(c) to be for that tax year only, where the conditions described in subsection (1)(c) apply." OAG, 2020, No. 7320, at (March 23, 2023), p 2. The Attorney General explained that under Subsection (1)(c), the rate that is subject to reduction is the "current rate." *Id.* She concluded that the term "current" means "existing at the present time" *Id.*, quoting www.merriam-webster.com/dictionary/current. After "considering the physical and logical relation of the subsections and subdivisions in MCL 206.51," the Attorney General concluded that Subsection (1)(b) established the default tax rate that applied unless the triggering event outlined in Subsection (1)(c) reduced temporarily the current rate. *Id.* at 3. In other words, for each tax year, a determination must be made whether a reduction of the rate in Subsection (1)(b) is warranted. "[A]ny reduction in that rate that occurred by operation of the triggering event is for a single tax year only, as provided in subsection (1)(c)." *Id.*

The Attorney General explained that MCL 206.51(10), which defines the terms used in the statute, does not contain a definition of "current rate" that would require a permanent change to the tax rate. *Id.* The Attorney General further reasoned that her conclusion was supported by the purpose of the triggering conditions outlined in Subsection (1)(c): "Essentially, the Legislature has determined that if a situation exists where a percentage increase in state revenue in the immediately

proceeding fiscal year is greater than the rate of inflation for that same year and the inflation rate is positive, then the State can afford to provide relief to taxpayers.” *Id.* She reasoned that because the economic situation allowing for a reduction in the tax rate would only be temporary, the Legislature intended for that relief to be temporary as well. *Id.*²

Then, on March 29, 2023, defendant stated, in a Department of Treasury announcement, that the 2023 income tax rate would be reduced from 4.25% to 4.05% for one year, only. According to defendant, the timing of her announcement corresponded with the release of the 2022 Annual Comprehensive Financial Report. The next day, the Department of Treasury issued a notice to taxpayers in relation to the 2023 income tax reduction. Relevant to this matter, the Department indicated that its withholding-rate tables for the 2023 tax year would not be updated to accommodate the revised tax rate.

These two announcements prompted plaintiffs to sue defendant in this Court about five months later, on August 25, 2023. In their two-count complaint, plaintiffs request (1) a declaratory judgment that the term “current” in MCL 206.51(1)(c) means “most recent,” so that the income tax rate is capped at 4.05% until the triggering event occurs again; and (2) a writ of mandamus requiring defendant to apply plaintiffs’ interpretation of MCL 206.51(1)(c) to the current and future tax years. In their briefing, plaintiffs state that their declaratory-judgment claim relates only to the individual plaintiffs and the advocacy group-plaintiffs in their role as “membership organizations.” The mandamus claim is limited to the legislator-plaintiffs and the advocacy group-plaintiffs in their role as “advocacy organizations.” Along with their complaint, plaintiffs moved,

² Attorney General opinions are not binding on the Court but may be considered persuasive. *Risk v Lincoln Charter Twp Bd of Trustees*, 279 Mich App 389, 398-399; 760 NW2d 510 (2008).

on an ex parte basis, for a show-cause order under MCR 3.305(C), requesting a “final resolution” of the issue by December 15, 2023, as well as a speedy hearing under MCR 2.605(D).

Defendant’s response to the complaint was a motion for summary disposition under MCR 2.116(C)(4), (8), and (10). First, defendant argues that this Court lacks jurisdiction over the case, and dismissal is warranted under MCR 2.116(C)(4), because plaintiffs filed an untimely complaint under MCL 205.22 of the Revenue Act. Defendant further argues that plaintiffs lack standing to sue defendant because they have no specialized injury, and their claims are not ripe for review because the tax rate for tax year 2024 will not be set until after the January 2024 revenue estimating conference.³ Next, defendant argues that mandamus is not a proper remedy because the state treasurer does not have a duty to set the tax rate; her obligation is to work with the House and Senate Fiscal Agencies in relation to the January 2024 revenue conference. As for the merits, defendant argues that the plain language of MCL 206.51(1)(c) supports that the 4.25% rate is the default rate for each year in which the contingency is not satisfied. Defendant notes that, if plaintiffs’ interpretation were current, then the tax rate would continue to decrease each year the contingency is triggered until the tax rate reaches zero.

Plaintiffs countermove for summary disposition under MCR 2.116(C)(9) and (10). Plaintiffs respond that MCL 205.22 does not apply because plaintiffs are not appealing “ ‘an assessment, decision or order of the department.’ ” As for standing, plaintiffs argue that the legislator-plaintiffs have a constitutional right, under Const 1963, art 4, § 31, to receive a “precise revenue estimate” for budgeting purposes. So they are entitled to know the correct income tax

³ The first revenue estimating conference occurs during the second week of January and is generally the first step in the budget cycle. See MCL 18.1367b(1).

rate. They contend that the advocacy group-plaintiffs often advocate for their members during the budgeting process and, therefore, require accurate revenue estimates. Plaintiffs contend that their claims are ripe for adjudication because the Legislature recently passed the fiscal 2023-2024 budget, which was impacted by defendant's interpretation of MCL 206.51(1). They argue that the individual taxpayers will need to make decisions soon about whether to challenge an income tax assessment.

On the merits, plaintiffs argue that the word "current" means "most recent." They argue that defendant's reading of the statute would render the word "current" superfluous because, up until January 1, 2023, the only rate that could exist was the 4.25% rate. Plaintiffs also point out that, in earlier versions of the statute, the Legislature limited rate adjustments to particular tax years, showing that the Legislature knows how to limit rate adjustments when it wants to. They argue that the tax rate is unlikely to decrease over time because when the tax rate decreases, so will revenue, making the contingency in Subsection (1)(c) less likely to occur. And, they argue, it is not unreasonable for the income tax rate to be zero, as it was until 1967. As for their request for mandamus, plaintiffs argue that defendant executes the income tax rate and has a clear legal duty to do so accurately.

Finally, in their show-cause motion, plaintiffs repeat their arguments on the substantive issues and request a final resolution of the matter by December 15, 2023. They ask that the Court rule that the 4.05% tax rate remains in effect until the conditions in MCL 206.51(1)(c) trigger another decrease in the income tax rate.

II. STANDARDS OF REVIEW

Defendant requests summary disposition under MCR 2.116(C)(4) on the basis that plaintiffs failed to timely sue defendant under MCL 205.22. Summary disposition under MCR 2.116(C)(4) is appropriate when the Court lacks subject-matter jurisdiction over the case. *True Care Physical Therapy, PLLC v Auto Club Group Ins Co*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 362094); slip op at 4, lv pending. “ ‘For jurisdictional questions under MCR 2.116(C)(4), this Court determines whether the affidavits, together with the pleadings, depositions, admissions, and documentary evidence, demonstrate a lack of subject matter jurisdiction.’ ” *Id.* (citation omitted).

A motion to dismiss under MCR 2.116(C)(8) tests the legal sufficiency of the claim as alleged in the complaint. *Bailey v Antrim Co*, 341 Mich App 411, 421; 990 NW2d 372 (2022). “A motion under MCR 2.116(C)(8) may . . . be granted when a claim is so clearly unenforceable that no factual development could possibly justify recovery.” *Id.* (citation and quotation marks omitted). The Court will consider the factual allegations in the complaint as true for purposes of a (C)(8) motion. *Jawad A Shah, MD, PC v State Farm Mut Auto Ins Co*, 324 Mich App 182, 206; 920 NW2d 148 (2018).

Similarly, a motion for summary disposition under MCR 2.116(C)(9) tests the sufficiency of the defendant’s pleadings. *Allen Park Retirees Ass’n, Inc v Allen Park*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket Nos. 357955 & 357956); slip op at 5. “ ‘When deciding a motion under MCR 2.116(C)(9) . . . the trial court must accept as true all well-pleaded allegations and properly grants summary disposition where a defendant fails to plead a valid defense to a claim.’ ” *Id.* at ___; slip op at 5 (citation omitted). Summary disposition is proper when the

defendant's pleading is "so clearly untenable" that, as a matter of law, no factual development could deny the plaintiff's ability to recover. *Id.* at ___; slip op at 5.

When considering a (C)(10) motion, the Court reviews the evidence in the light most favorable to the party opposing the motion. *Johnson v VanderKooi*, 502 Mich 751, 761; 918 NW2d 785 (2018). "Summary disposition under MCR 2.116(C)(10) is appropriately granted if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Greene v AP Prod, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006) (citation and quotation marks omitted). A genuine issue of material fact exists when the "record which might be developed . . . would leave open an issue upon which reasonable minds might differ." *Debano-Griffin v Lake Co*, 493 Mich 167, 175; 828 NW2d 634 (2013) (cleaned up). "Generally, summary disposition under MCR 2.116(C)(10) is premature if it is granted before discovery on a disputed issue is complete." *Marilyn Froling Revocable Living Trust v Bloomfield Hills Country Club*, 283 Mich App 264, 292; 769 NW2d 234 (2009). The relevant inquiry is whether additional discovery will stand a fair chance of uncovering additional factual support for the nonmovant's position. *Id.*

Plaintiffs also request a show-cause order under MCR 3.305(C). MCR 3.305 governs mandamus actions in the Court of Claims. MCR 3.305(A). MCR 3.305(C) provides, "On ex parte motion and a showing of the necessity for immediate action, the court may issue an order to show cause. The motion may be made in the complaint. The court shall indicate in the order when the defendant must answer the order."

The parties ask the Court to interpret MCL 206.51(1)(c), a tax statute within the Income Tax Act of 1967, MCL 206.1 *et seq.*, as well as a section of the Michigan Constitution of 1963.

Interpretation of a statute is a question of law. *Krohn v Home-Owners Ins Co*, 490 Mich 145, 155; 802 NW2d 281 (2011). When interpreting a statute, the primary goal of the Court is to determine and give effect to the Legislature’s intent. *O’Connor v Dep’t of Treasury*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket No. 360002); slip op at 2. The Court considers provisions of a statute in the context of the entire statute and “must ‘give effect to every word, phrase, and clause . . . [to] avoid an interpretation that would render any part of the statute surplusage or nugatory.’ ” *Id.* at ___; slip op at 2 (citation omitted; alteration in original). If the statutory terms are not defined, the Court will examine and determine their plain and ordinary meaning, considering the context, and may consult a dictionary. *Id.* at ___; slip op at 2.

Only when there is an ambiguity in the plain language will the Court engage in judicial construction of the statute. *Zug Island Fuels Co, LLC v Dep’t of Treasury*, 341 Mich App 319, 327; 989 NW2d 879 (2022). “A statute is ambiguous when an irreconcilable conflict exists between statutory provisions or when a statute is equally susceptible to more than one meaning.” *Id.* (cleaned up). When faced with two reasonable alternative interpretations of an ambiguous statute, the Court must utilize the interpretation that “more faithfully advances” the statutory purpose. *Id.* (cleaned up). And, in the context of a tax statute, ambiguities are to be resolved in favor of the taxpayer. *Menard Inc v Dep’t of Treasury*, 302 Mich App 467, 472; 838 NW2d 736 (2013). Additionally, when the Court concludes that the statute’s plain language is ambiguous, the Court may refer to legislative history to determine the Legislature’s intent. *Rouch World, LLC v Dep’t of Civil Rights*, 510 Mich 398, 410; 987 NW2d 501 (2022).

When interpreting a constitutional provision, the Court’s goal is to effectuate the intent of the people who ratified the Constitution by applying a standard known as the rule of “common understanding.” *Citizens Protecting Michigan’s Constitution v Secretary of State*, 503 Mich 42,

61; 921 NW2d 247 (2018). This is the meaning that “ ‘reasonable minds, the great mass of people themselves’ ” would assign to the constitutional provision. *Wayne Co v Hathcock*, 471 Mich 445, 468; 684 NW2d 765 (2004). Words should generally be given their plain meaning at the time the Constitution was ratified. *Id.* at 468-469.

III. ANALYSIS

Plaintiffs assert claims for a writ of mandamus and a declaratory judgment.

To obtain the extraordinary remedy of a writ of mandamus, the plaintiff must show that (1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result. In relation to a request for mandamus, a clear, legal right is one clearly founded in, or granted by, law; a right which is inferable as a matter of law from uncontroverted facts regardless of the difficulty of the legal question to be decided. [*Berry v Garrett*, 316 Mich App 37, 41; 890 NW2d 882 (2016) (cleaned up).]

As for the request for a declaratory judgment, it is governed by MCR 2.605. *Davis v Wayne Co Election Comm*, ___ Mich App ___, ___; ___ NW2d ___ (2023) (Docket Nos. 368615 & 368628); slip op at 14, lv pending. The court rule states, in relevant part, “In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” MCR 2.605(A)(1). The decision whether to grant a declaratory judgment is within the trial court’s “sound discretion.” *Davis*, ___ Mich App at ___; slip op at 15 (cleaned up). The court rule incorporates the doctrines of standing, mootness, and ripeness. *Id.* at ___; slip op at 15.

A. JURISDICTION UNDER MCL 205.22

Before reaching the merits of plaintiffs’ claims, defendant raises several challenges to the justiciability of the issues before the Court. Defendant first argues that this Court lacks jurisdiction

because plaintiffs did not appeal an adverse tax decision, order, or assessment to this Court within 90 days of her March 29, 2023 notice (or by June 28, 2023), as required under MCL 205.22. The Court disagrees because MCL 205.22 does not apply to plaintiffs' claims.

MCL 205.22 provides, in relevant part:

(1) 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. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal. . . .

* * *

(4) The assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.

(5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section.

Defendant cites MCL 205.20 in support of her position that the Revenue Act, MCL 205.1 *et seq.*, applies to plaintiffs' claims. MCL 205.20 provides, "Unless 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 [of the Revenue Act]." Defendant reasons that, because no provision of the Income Tax Act provides a different appeal procedure, plaintiffs are bound by the time frame outlined in MCL 205.22 of the Revenue Act.

The issue with defendant's argument is that plaintiffs are not appealing an adverse tax decision, assessment, or order of the Department of Treasury. Defendant's March 29, 2023 notice

and the Department's March 30, 2023 announcement are not tax assessments on any of the plaintiffs. Nor are they orders or decisions of the Department of Treasury, such as a final decision upholding a tax assessment. At this time, defendant has not assessed any tax against any of the individual plaintiffs for the 2024 tax year. Rather, plaintiffs are requesting declaratory and mandamus relief, on a prospective basis, regarding defendant's interpretation of the tax rate for tax year 2024. Plaintiffs' lawsuit is an original action before the Court, rather than an appeal of an agency's order or decision. Defendant has not cited any legal source that would extend the application of MCL 205.22 to a notice announcing defendant's anticipated tax policy for a future tax year.

Other language in MCL 205.22 provides context about the scope of the statute. MCL 205.22(5) refers to the fact that a person is not entitled to any "refund of any tax, interest, or penalty" paid under a tax assessment unless they appeal that assessment as required under MCL 205.22. The statute, therefore, contemplates that the tax assessment, decision, or order will relate to the assessment of a tax. Moreover, MCL 205.22 appears in the context of several statutes outlining the procedures for payment of taxes. MCL 205.21 governs the failure or refusal to file a tax return or pay tax, as well as the procedure for contesting liability for a tax assessment. MCL 205.21. MCL 205.23 relates to the Department's determination that a taxpayer has not satisfied a tax liability or that a claim was excessive. MCL 205.23(1). MCL 205.24 relates to the assessment of tax against a taxpayer who fails or refuses to file a tax return or pay timely a tax under the Revenue Act. MCL 205.24(1). So the surrounding sections of the Revenue Act also relate to the assessment of tax. This lends further support to plaintiffs' position that MCL 205.22 only applies

once the Department of Treasury assesses a tax.⁴ The Court concludes, therefore, that MCL 205.22 did not apply to plaintiffs' claims, and plaintiffs were not subject to the time restrictions outlined in that statute.

B. STANDING

Next, defendant argues that the legislator-plaintiffs and advocacy group-plaintiffs lack standing to challenge the interpretation of MCL 206.51(1)(c). The Court agrees.

The Michigan Supreme Court has articulated the test for standing as follows:

[A] litigant has standing whenever there is a legal cause of action. Further, whenever a litigant meets the requirements of MCR 2.605, 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 Educ Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010).]

To establish standing, the plaintiff must have “ ‘a present legal controversy, not one that is merely hypothetical or anticipated in the future.’ ” *League of Women Voters of Mich v Secretary of State*, 506 Mich 561, 586; 957 NW2d 731 (2020) (citation omitted). In general, standing is determined at the outset of the case. *Id.* at 590. Standing does not depend on the merits of the case. Rather, “[w]hen a party’s standing is contested, the issue becomes whether the proper party is seeking adjudication, not whether the issue is justiciable.” *Tennine Corp v Boardwalk Commercial, LLC*, 315 Mich App 1, 7; 888 NW2d 267 (2016).

⁴ Defendant does not argue that plaintiffs failed to timely notify her of their claims, as required under MCL 600.6431.

Plaintiffs request declaratory and mandamus relief. MCR 2.605 incorporates the doctrine of standing. *T & V Assoc, Inc v Dir of Health & Human Servs*, ___ Mich App ___; ___ NW2d ___ (2023) (Docket No. 361727); slip op at 5. To assert a declaratory-judgment claim, “the plaintiff (1) must allege a case of actual controversy within the jurisdiction of the court, and (2) the [plaintiff] must be an interested party seeking a declaratory judgment.” *Id.* at ___; slip op at 6 (cleaned up). “An actual controversy exists when a declaratory judgment is needed to guide a party’s future conduct in order to preserve that party’s legal rights.” *Id.* at ___; slip op at 6 (cleaned up). An interested party is one that “has a legally protected interest that is in jeopardy of being adversely affected,” and “a special injury or right, or substantial interest that will be detrimentally affected in a manner different from the citizenry at large.” *Id.* at ___; slip op at 6 (cleaned up). In other words, the plaintiff must “plead and prove facts which indicate an adverse interest necessitating a sharpening of the issues raised.” *Davis*, ___ Mich App at ___; slip op at 15 (cleaned up)

Beginning with the legislator-plaintiffs, resolution of this issue requires the Court to examine several appellate cases analyzing when legislators have standing to challenge the interpretation of a statute. In *Killeen v Wayne Co Rd Comm*, 137 Mich App 178, 181; 357 NW2d 851 (1984), a group of plaintiffs sued the Wayne County Road Commission for declaratory relief and superintending control in relation to a six-year agreement between the defendant and a newly formed labor organization, arguing that the agreement was contrary to law and public policy. One of the plaintiffs was a state senator who was initially described in the complaint as merely a taxpayer residing in the county. *Id.* at 182. When the plaintiffs’ standing to sue was challenged, it was revealed that the state senator was suing the defendants in his official capacity, and the complaint was amended to reflect that he had permission to sue on behalf of the Michigan Senate.

Id. at 182-183. On appeal, the Court of Appeals noted that federal caselaw had permitted legislators to sue when they alleged their votes had been nullified. *Id.* at 189. In that case, however, the Senator's vote had been counted and his "legislative work-product" was enacted. *Id.* Thus, by the time of the lawsuit, his "special interest" as a lawmaker had "ceased." *Id.* So the Court affirmed the trial court's ruling that he lacked standing. See *id.* at 185-186, 190.

In *House Speaker v State Administrative Bd*, 441 Mich 547, 550; 495 NW2d 539 (1993), four members of the Legislature challenged the authority of the State Administrative Board to transfer funds appropriated for one program to another program within a department of state government. Like in this case, the plaintiffs sued as individual members of the Legislature, and their lawsuit was not authorized by either the Michigan House or Senate. *Id.* at 553. And, like in this case, the plaintiffs sought equitable relief. *Id.* The plaintiffs alleged they had standing because the transfers "reduced their effectiveness as legislators" and worked to nullify "the effect of their votes." *Id.* at 554-555. They asserted that the defendant's conduct interfered with certain plaintiffs' ability to approve or disapprove of intradepartmental transfers, or to appoint members to their respective appropriations committees. *Id.* at 555.

When deciding the issue, the Michigan Supreme Court explained that legislators must overcome a heavy burden to establish standing in light of the potential separation-of-powers implications. *Id.* The Court expressed its reluctance to decide issues that would affect "the allocation of power" between the legislative and executive branches of government, which may prevent resolution of the conflict through the "normal political process." *Id.* at 555-556. Thus, rather than asserting " 'a generalized grievance that the law is not being followed,' " legislator-plaintiffs must establish that they were "deprived of a 'personal and legally cognizable interest peculiar to [them].'" *Id.* at 556 (citations omitted; alteration in original).

The Court held that only one of the plaintiffs had demonstrated a personal injury that was sufficient to establish standing. *Id.* at 561. That plaintiff was the Chair of the House Appropriations Committee, who had a specific statutory right to approve or disapprove of the transfers. *Id.* at 559-560. Thus, the board’s actions, as alleged, deprived the Chair “ ‘of that specific statutory right to participate in the legislative process.’ ” *Id.* at 560 (citation omitted). In contrast, another legislator (an appropriations committee member) alleged that he did not have the opportunity to vote on the disputed transfer. *Id.* The Court held that he lacked standing because he was not suing to “maintain the effectiveness of his vote” but instead, was “suing to reverse the outcome of a political battle that he lost.” *Id.* at 560-561.

Most recently, in *League of Women Voters*, 506 Mich at 570, 572, the Michigan Supreme Court addressed the issue of legislative standing in the context of a constitutional challenge to recent amendments to the Michigan Election Law, MCL 168.1 *et seq.*, that the Attorney General had concluded were unconstitutional. The issue in *League of Women Voters* involved the standing of the Legislature as a whole, as opposed to the standing of individual legislators. *Id.* at 592. The Court reasoned that whether the Legislature had a sufficient interest to sue an executive officer in light of that officer’s “actual or threatened nondefense of legislation” was a “thorny issue.” *Id.* The Court declined to reach the issue, however, concluding that it was moot because the Court had vacated the lower-court decisions for other reasons. *Id.* at 595.⁵

⁵ Nevertheless, the Court reasoned that the Legislature did not have standing to pursue its case on the basis of the Attorney General’s opinion, reasoning that a holding that Legislature has standing to sue for a declaratory judgment any time the Attorney General issued a formal opinion concluding that a statute is unconstitutional would be an “outlier.” *Id.* at 596, 598.

Justice CLEMENT disagreed, reasoning that the Court needed to address legislative standing. *Id.* at 604 (CLEMENT, J., concurring in part and dissenting in part). Justice CLEMENT explained, “I do not believe a legislative declaratory-judgment action against an executive officer is justiciable when the Legislature seeks nothing more than a judicial declaration that the executive must implement a law as the Legislature prefers.” *Id.* at 605. She reasoned that doctrines like the political-question doctrine exist to avoid interference with the separation of powers between the branches of government. *Id.* at 607. In Justice CLEMENT’s view, the issue was properly viewed through the lens of justiciability rather than standing, but she nevertheless concluded that the Legislature’s claims were nonjusticiable. *Id.*

Plaintiffs argue that Const 1963, art 4, § 31 grants them a special interest in this matter.

That constitutional section provides:

The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year’s operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an *itemized statement of estimated revenue* by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed. [Emphasis added.]

Plaintiffs rely on the historical background of the Michigan Constitution to support their interpretation of the constitutional provision. In addition to citing various committee reports, discussions, and proposed amendments, plaintiffs cite the Notice to the Address to the People,⁶

⁶ The Address to the People is among the historical records that may be considered when interpreting constitutional provisions. See *In re Request for Advisory Opinion Regarding Constitutionality of 2011 PA 38*, 490 Mich 295, 309; 806 NW2d 683 (2011).

which was issued in relation to the passage of the 1963 Michigan Constitution. The Address to the People indicated that the purpose of Article 4, § 31, was twofold:

1. To focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation.
2. To require the legislature (as well as the governor by a subsequent provision) to set forth by major item its own best estimates of revenue.

The legislature frequently differs from executive estimates of revenue. It is proper to require that such differences as exist be specifically set forth for public understanding and future judgment as to the validity of each. [2 Official Record, Constitutional Convention 1961, p 3375.]

Plaintiffs also cite Committee Proposal 46b, a proposal of the Committee on the Executive Branch, which proposed what would later become Const 1963, art 4, § 31. That proposal noted that the purpose and intent of the proposal was “to establish a constitutional executive budget process for the orderly management of the state’s fiscal affairs.” 1 Official Record, Constitutional Convention 1961, p 1635. The rationale behind the provision was “(a) to focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills . . . [and] (b) to require the legislature . . . to set forth by major item its own best estimates of revenue.” *Id.* at 1636. The proposal explains, “The legislature frequently differs from executive revenue estimates. It seems only proper to require that such differences as exist be specifically set forth for public understanding and future judgment as to the validity of each.” *Id.*

Plaintiffs also note that, in the early 1990s, Michigan created a process known as the revenue estimating conference, which is attended by the state budget director or the treasurer, and the Directors of both the Senate Fiscal Agency and the House Fiscal Agency, or their designees. See MCL 18.1367b(2). The statute requires the entities present at the revenue estimating conference to “establish an official economic forecast of major variables of the national and state

economies,” as well as “a forecast of anticipated state revenues as the conference determines,” which includes “[s]tate income tax collections.” MCL 18.1367b(3)(a).

Based on art 4, § 31 and MCL 18.1367b(3), the legislator-plaintiffs contend that they “need to know how much is going to be collected in tax-collection revenue for the 2023-24 fiscal year and beyond” so that they can “engage in budget discussion and voting.” They argue that, based on their estimate, defendant’s interpretation of MCL 206.51(1)(c) will lead to a \$714.2 million overstatement in the revenue projection, and the Michigan Constitution guarantees legislators a “precise revenue estimate for budgeting.”

Plaintiffs do not support their claim that they are entitled to “precise revenue estimates” for budgeting. As defendant notes, the very concept of a precise estimate is oxymoronic considering that an estimate is, by its very nature, imprecise.⁷ Article 4, § 31 does not contain such a requirement. Rather, the Constitution simply requires that the Legislature estimate revenues and refrain from passing an appropriations bill that exceeds the revenue estimates. See Const 1963, art 4, § 31. Nor does the Address to the People support plaintiffs’ position. That document simply referred to a “best estimate” of revenue. The other historical documentation plaintiffs cite do not support that the Legislature is entitled to any precision in the revenue estimate. As defendant notes, the budget process involves numerous steps, including the revenue estimating conference, and estimates are provided throughout the year. See MCL 18.1342 (requiring the state budget

⁷ The *Merriam-Webster* Online Dictionary, a source cited by both parties, defines the term “estimate,” in relevant part, as “a rough or approximate calculation.” *Merriam-Webster Online Dictionary, Definition of “Estimate,”* available at <<https://www.merriam-webster.com/dictionary/estimate>> (accessed on December 19, 2023). Considering this definition, the Court agrees with defendant that a concept that is rough or approximate is not reasonably understood to also require precision.

director or treasurer to “establish and maintain an economic analysis, revenue estimating, and monitoring activity,” which must “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”). Plaintiffs cite no source that would entitle them to a “precise” revenue estimate.

As far as whether the legislator-plaintiffs have a specialized interest, while the two legislator-plaintiffs both served in the Legislature in 2015 when the relevant amendment to MCL 206.51 was passed, they clarify in their brief that neither is suing as a voting member of the 2015 Legislature. Rather, they contend that defendant’s interpretation of the statute affects their ability as current legislators to perform their duty of creating a budget. But as our Supreme Court concluded in *House Speaker*, 441 Mich at 554-555, a general reduction in a legislator’s ability to do his or her job does not confer standing. Neither legislator-plaintiff alleges that he is on the appropriations committee, and neither asserts that he has a specific statutory right, as did the legislator-plaintiff in *House Speaker* who had standing. See *id.* at 559-561. Thus, they have not met their heavy burden to establish a specialized interest peculiar to them. See *id.* at 555-556.

Plaintiffs do not provide a detailed analysis as it relates to the advocacy group-plaintiffs. They assert that the advocacy groups have both “institutional interests” as organizations that engage in lobbying efforts during the budgeting process, as well as “associational interests” as membership organizations with members who pay income tax. Plaintiffs argue that these entities are “well-known organizations that often advocate during the budget process on behalf of their members.” But they recognize that the advocacy groups have no constitutional right to accurate budget information, and provide no other legal source that would grant them standing in this context. Plaintiffs also assert that these groups “participate in the budget process in a manner

different from that of the general public,” but once again they do not support that the advocacy groups suffer from a specialized injury or have a legally protected interest distinct from the public at large. Additionally, the advocacy group-plaintiffs’ claims are hypothetical, as these entities argue that defendant’s interpretation of MCL 206.51(1)(c) will make their lobbying efforts more difficult. Accordingly, the legislator-plaintiffs and advocacy group-plaintiffs lack standing to sue defendant.

C. RIPENESS

Defendant also contends that plaintiffs’ claims are not ripe for adjudication. The Court agrees.

The Court of Appeals has held that the doctrine of ripeness is “closely related” to the standing doctrine because both concepts focus on the timing of the lawsuit. *Van Buren Charter Twp v Visteon Corp*, 319 Mich App 538, 553; 904 NW2d 192 (2017). For a claim to be ripe, the plaintiff must have “sustained an actual injury.” *Id.* at 554. “A party may not premise an action on a hypothetical controversy.” *Id.* Once again, because plaintiffs request a declaratory judgment, they must plead and establish facts that would indicate an adverse interest that would necessitate a “sharpening of the issues raised.” *Davis*, ___ Mich App at ___; slip op at 15 (cleaned up). “‘The doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained. A claim that rests on contingent future events is not ripe.’” *Id.* at ___; slip op at 15 (citation omitted). Thus, the timing of the action is the Court’s “primary focus.” *Id.* at ___; slip op at 15.

Plaintiffs assert that the legislator-plaintiffs and the advocacy group-plaintiffs have been injured by defendant’s interpretation of MCL 206.51(1)(c) because the Legislature already passed

the 2023-2024 fiscal-year budget based on what plaintiffs allege was “bad information” about the income tax rate. They assert that this injury (an alleged \$714 million difference in the revenue estimate) will have “wide-ranging policy impacts” both for tax year 2024 and beyond. As noted earlier, these groups lack standing. As for the individual taxpayer-plaintiffs, defendant argues that “in about 3 months or less, 5 million taxpayers (including ABC and NFIB members) will have to make decisions whether to challenge an income-tax assessment” through informal dispute-resolution, filing a Tax Tribunal claim, or suing in this Court.

Plaintiffs overlook one key fact: the tax rate for the 2024 tax year has not been determined. In other words, although defendant (and the Attorney General) have opined that the tax rate will revert back to 4.25% for the 2024 tax year, a determination whether to reduce that rate under the exception outlined in MCL 206.51(1)(c) may occur as late as the January 2024 revenue estimating conference (for 2023, the new rate was not announced until late March 2023). See MCL 206.51(1)(c) (“The state treasurer, the director of the senate fiscal agency, and the director of the house fiscal agency shall make the determination under this subdivision no later than the date of the January 2023 revenue estimating conference . . . and the date of each January revenue estimating conference conducted each year thereafter.”). So, at this stage, we do not know if the 2024 tax rate will be 4.25%, 4.05%, or some other rate. The rate may even be *lower* than 4.05%. Therefore, it is not clear whether (and to what extent) the 2024 tax rate will impact the 2023-2024 fiscal-year budget. And no individual taxpayer-plaintiff has paid income tax, had any income tax withheld, or received a tax assessment based on the 2024 tax rate. As even plaintiffs acknowledge, defendant’s interpretation of the 2024 tax rate will not begin to affect Michigan taxpayers until at least January 1, 2024. Thus, while plaintiffs argue that they can request forward-looking relief,

this Court cannot craft a remedy without knowledge of what the 2024 tax rate will be.⁸ Plaintiffs' claims are unripe.

D. MEANING OF MCL 206.51(1)(c)

Plaintiffs' claims are not ripe for adjudication as of the date of this Court's decision. However, because the Court recognizes that plaintiffs' claims may become ripe for adjudication in the near future, the Court will analyze the merits of plaintiffs' claims in the event that the tax rate reverts back to 4.25%. In short, the Court agrees with defendant's interpretation of the Income Tax Act.

MCL 206.51(1) of the Income Tax Act imposes income tax on individuals and outlines the applicable tax rates. MCL 206.51(1)(a) provides that a 4.35% income tax rate was in effect between October 1, 2007, and October 1, 2012. For income taxes imposed on or after October 1, 2012, the applicable tax rate is 4.25%. MCL 206.51(1)(b). Subsection (1)(b) provides, "Except as otherwise provided under subdivision (c), on and after October 1, 2012, 4.25%." Defendant argues that the language "except as otherwise provided" anticipates the condition outlined in Subsection (1)(c). That Subsection provides, in relevant part:

⁸ This fact distinguishes the matter from *Taxpayers Allied for Constitutional Taxation v Wayne Co*, 450 Mich 119; 537 NW2d 596 (1995), a case on which plaintiffs rely to support their argument that they may obtain an injunction in relation to future tax years. In *Taxpayers Allied*, the issue was an increase in the real-property transfer tax, which the plaintiff challenged under the Headlee Amendment, Const 1963, art IX, § 25. *Id.* at 120. The statute permitted a county to increase the real estate transfer tax, and the defendant (Wayne County) had already increased the tax rate by the time of the lawsuit. *Id.* at 121. The Court determined that the plaintiff's refund claim was barred by the applicable statute of limitations, but that the plaintiff could obtain an injunction to enjoin the imposition of future taxes that violated the Michigan Constitution. *Id.* at 125-127. However, unlike in this case, the county had already started to assess tax at the increased rate, and the increased rate was certain.

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. [MCL 206.51(1)(c) (emphasis added).]

Defendant argues that the phrase in Subsection (1)(b) that the 4.25% rate applies “[e]xcept as otherwise provided under subdivision (c)” suggests that the two provisions must be read in harmony, and that the triggering conditions in Subsection (1)(c) must be evaluated each year. Otherwise, the 4.25% rate is the default rate. The Court agrees.

The fact that Subsection (1)(b) provides that the 4.25% rate applies “except” as provided in Subsection (1)(c) suggest that the 4.25% is the default rate unless the triggering conditions in Subsection (1)(c) are met. Unlike Subsection (1)(a), Subsection (1)(b) does not provide an end date for the 4.25% tax rate or suggest that the rate expires once the conditions in Subsection (1)(c) are triggered.

Moreover, Subsection (1)(c) provides for conditions that apply “[f]or each tax year” beginning after January 1, 2023, which further supports that a determination must be made each year whether the triggering conditions are met to lower the income tax rate. Then, subdivision (c) adds that “if” certain conditions are met, then the current rate will be reduced as specified in the statute. See MCL 206.51(1)(c) (emphasis added). The common understanding of the term “if” is that something must happen before something else will occur. The use of the term “if” suggests that the reduction will only occur when the specified conditions are met, further supporting defendant’s interpretation that the rate defaults to 4.25% each year. See also *In re Casey Estate*,

306 Mich App 252, 260; 856 NW2d 556 (2014) (consulting a dictionary to define the term “if” as “ ‘in case that; granting or supposing that; on condition that[.]’ “) (alteration in original).

The parties dispute the meaning of “current rate” in Subdivision (c). The word “current” is not defined in the definitions listed in MCL 206.51(10), or in the general provisions and definitions section for the Income Tax Act, see generally MCL 206.1 through MCL 206.30. Thus, the parties consult dictionary definitions to determine the meaning of the term. Both parties consult Merriam-Webster’s Online Dictionary. The relevant dictionary definitions of the word “current” include (1) “occurring in or existing at the present time”; (2) “presently elapsing”; and (3) “most recent.” Merriam-Webster’s Online Dictionary, *Definition of Current*, <<https://www.merriam-webster.com/dictionary/current>> (accessed on December 14, 2023). Defendant advocates for the “existing at the present time” definition, while plaintiffs argue for the “most recent” definition.

In *Honigman Miller Schwartz & Cohn LLP v Detroit*, 505 Mich 284, 307; 952 NW2d 358 (2020), the Michigan Supreme Court outlined the following legal standard to assist the Court with determining the meaning of a statutory term when the parties provide differing statutory definitions that render plausible interpretations of a statute. The Court explained:

[I]n order to determine the most reasonable meaning of statutory language, such language cannot be read in isolation or in a manner disregardful of context; this Court will not extract words and phrases from within their context or otherwise defeat their import as drawn from such context. A statute should be interpreted in light of the overall statutory scheme, and [a]lthough a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context. [*Id.* (cleaned up; alteration in original).]

When the word “current” is read in context, the Court concludes that defendant’s definition is the more appropriate understanding of the term. Reading the term “current” as “existing at the present time,” it becomes clear that Subsection (1)(b) sets the default rate on or after October 1,

2012, which remains in effect each year unless the triggering events in Subsection (1)(c) occur. Reading the statute sequentially, Subsection (1)(a) is a rate with a definite start and end date. Subsection (1)(b) outlines the current tax rate of 4.25% unless the conditions in Subsection (1)(c) trigger a reduction. Subsection (1)(c) then provides for a reduction of the rate that exists at the present time (4.25%) if certain conditions are met. The reference to “that rate” in Subsection (1)(c) refers to the “current” rate, which is the 4.25% rate outlined in Subsection (1)(b).

Plaintiffs argue that, if defendant’s interpretation is correct, then the word “current” would be superfluous. They argue that if the rate defaulted back to 4.25% each year, then there would only be one rate, and so the term “current” would not be required. Instead, the statute would have simply read “the rate.” However, plaintiffs’ argument overlooks that the income tax rate has changed over time. For example, before 2012, the tax rate was set at 4.35%. MCL 206.51(1)(a). The Legislature may amend the statute at any time to set a new “current rate.” As a hypothetical example, in 2024, the Legislature could amend the statute to set a new income tax rate of 4.15%. If that were the case, then the 4.15% would become the “current rate” for purposes of Subsection (1)(c).

On the other hand, the Court is persuaded by defendant’s argument that under plaintiffs’ interpretation, the tax rate would continue to decrease each time the condition in Subsection (1)(c) is triggered, which could ultimately reduce the income tax rate to zero. As the Attorney General explained in her opinion, which the Court finds persuasive, the triggering condition is based on economic circumstances that change each year. OAG 7320, p 3. When the percentage increase in state revenue in the previous fiscal year is greater than the inflation rate, and the inflation rate is positive, then the Legislature has determined that the state can provide relief to taxpayers. *Id.* That situation is temporary. Logically, it would make little sense to provide a permanent tax cut based

on economic circumstances that exist in one calendar year. The Legislature did not indicate in the language of MCL 206.51 that it intended a continuous reduction in the income tax rate.

Plaintiffs further argue that it is not an “absurd” result to have no income tax, as this state did not have a broad-based income tax until 1967, and several states still do not assess income taxes. But, once again, there is no indication in the language of MCL 206.51 (or the Income Tax Act) as a whole that the Legislature sanctioned the prospect of no income tax. The language of the statute merely suggests that, for tax years 2023 and beyond, when certain economic conditions are met, a lower tax rate may be warranted based on those economic conditions.

Finally, plaintiffs note that the Legislature previously used a numeric income tax rate in 1983 PA 15, a previous iteration of MCL 206.51. Plaintiffs explain that, in that version of the statute, the Legislature created a formula for setting the income tax, establishing a tax rate of 3.9% as the starting point. MCL 206.51(1), as amended by 1983 PA 15, provided, in relevant part:

(1) For receiving, earning, or otherwise acquiring income from any source whatsoever, there is levied and imposed a tax at the following rates for the following periods upon the taxable income of every person, other than a corporation:

(a) Through March 31, 1982: 4.6%.

(b) From April 1, 1982 through September 30, 1982: 4.6% plus a temporary emergency surcharge of 1% of the taxable income of every person other than a corporation.

(c) From October 1, 1982 through December 31, 1982: 4.6%.

(d) January 1, 1983 and thereafter, 3.9% plus the following rates for the specified periods:

(i) Except as provided by subsection (12), 2.2%, as adjusted pursuant to subsection (11), or the following rate for the respective period, whichever is the lesser:

(A) From January 1, 1984 through December 31, 1984: 1.95%.

(B) From January 1, 1985 and thereafter: 1.2%.

(ii) 0.25% until the first of the month following the month in which the state treasurer makes the certification required by subsection (10), or through September 30, 1986, whichever date is earlier.

Plaintiffs argue that because the previous version of MCL 206.51 contained a specific, numeric income tax rate, the Legislature “intentionally chose a definition with the flexibility to handle a rate, which could be lower each and every year after the formulaic rate-setting process was applied.” Plaintiffs also cite Subsection 9, which provided, “The rates provided in subsection (1), as limited by subsection (12), shall be annualized as necessary by the department for tax years that end after March 31, 1982 and the applicable annualized rate shall be imposed upon the taxable income of every person, other than a corporation, for these tax years.” MCL 206.51(9), as amended by 1983 PA 15. Plaintiffs argue that the statute contains the phrase “these tax years,” which further supports the Legislature knows how to limit a rate adjustment to a particular tax year. Finally, plaintiffs note that Subsection (11) of the 1983 version of the statute contained another “identified constant”—the statute used a 14.5% unemployment rate to allow for certain additional income tax adjustments. MCL 206.51(11), as amended by 1983 PA 15.

The Court disagrees that the 1983 version of the statute explains the Legislature’s intent in relation to the 2015 amendment. The only thing that can be determined from the language of 1983 PA 15 is the fact that the Legislature intended for specific rates to apply for specific time periods. The same can be said for the current iteration of MCL 206.51, which sets specific rates for the period from October 1, 2007 to October 1, 2012, see MCL 206.51(1)(a), and sets another tax rate from October 1, 2012 to the present, see MCL 206.51(1)(b).

Moreover, the Michigan Supreme Court has explained that “to whatever extent courts correctly divined past legislatures’ intents using previously enacted language, those intents should

not guide our interpretation of the *unambiguous* language of the current versions of the statutes; the acts of past legislatures do not bind the power of successive legislatures to enact, amend, or repeal legislation.” *People v Gardner*, 482 Mich 41, 65-66; 753 NW2d 78 (2008). Plaintiffs’ reliance on *Honigman*, 505 Mich at 311, is misplaced when, in that opinion, the Supreme Court compared the language in one tax statute with the language in two different tax statutes (rather than a previous iteration of the same statute). The 1983 version of the statute is not persuasive.

Plaintiffs also point to legislative history. Plaintiffs rely on House and Senate Fiscal Agency Legislative Analyses for the 2015 amendment to MCL 206.51. The House Fiscal Agency Analysis indicated that any revenue reductions resulting from a lowering of the tax rate “would continue in subsequent years.” House Legislative Analysis, SB 414 (November 3, 2015). Plaintiffs also rely on the Senate Consensus Revenue Estimate Conference document corresponding with the 2023 Revenue Estimating Conference. Senate Fiscal Agency, Michigan’s Economic Outlook and Budget Review, January 11, 2023, p 29. Plaintiffs note that the Senate Fiscal Agency stated, in its report, that a reduction in the tax rate was likely and that the reduction in the income tax rate would be “permanent.” *Id.* Plaintiffs also rely on remarks by certain legislators during the debate process to support their interpretation of the statute.

Because the Court concludes that the language of the statute is unambiguous, the Court need not consult legislative history as a guide. See *Rouch World*, 510 Mich at 430 n 19 (explaining the “practical difficulties” with determining legislative intent from legislative history); *Mich Gun Owners, Inc v Ann Arbor Pub Sch*, 318 Mich App 338, 350 n 6; 897 NW2d 768 (2016) (noting that our Supreme Court has concluded that “[r]esort to legislative history of any form is proper only where a genuine ambiguity exists in the statute. Legislative history cannot be used to create an ambiguity where one does not otherwise exist.”) (cleaned up), *aff’d* 502 Mich 695 (2018).

As our Supreme Court has explained, “sources like bill analyses, committee reports, and floor debate, which may reflect the views of some group of legislators, are of dubious value.” *Rouch World*, 510 Mich at 430 n 19. As even plaintiffs acknowledge, the Michigan Supreme Court has held that legislative analyses, in particular, are weak indicators of legislative intent. See *id.* (“(1) [S]uch analyses are not an official form of legislative record in Michigan, (2) such analyses do not purport to represent the views of legislators, individually or collectively, but merely to set forth the views of professional staff offices situated within the legislative branch, and (3) such analyses are produced outside the boundaries of the legislative process as defined in the Michigan Constitution.”) (cleaned up); *People v Byczek*, 337 Mich App 173, 186 n 6; 976 NW2d 7 (2021) (noting that a legislative analysis is “ ‘nothing more than the summaries and interpretations of unelected employees of the legislative branch’ ”) (citation omitted). For these reasons, the Court declines to consider external sources, such as legislative materials, to determine the meaning of MCL 206.51(1).

E. MANDAMUS RELIEF

Because the meaning of MCL 206.51(1) is clear from its language, declaratory relief is not warranted. Nor is mandamus relief. Plaintiffs acknowledge that their request for mandamus relief relates only to the legislator-plaintiffs and the trade-association plaintiffs “as advocacy organizations” (but not as “membership organizations”), neither of which have standing (as noted earlier). As discussed earlier, neither of these sets of plaintiffs have established a clear legal right to “correct information” about the income tax rate. Additionally, plaintiffs have not articulated a clear legal duty to implement plaintiffs’ interpretation of the statute.

Plaintiffs rely on *Berdy v Buffa*, 504 Mich 876, 876 (2019),⁹ a binding Michigan Supreme Court order. In *Berdy*, an election case which involved the interpretation of a city charter, the Supreme Court cited 55 CJS, Mandamus, § 74, p 107, for the position 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.’ ” (Emphasis added.) The Court determined that the defendant (the city elections commission) had a clear legal duty to remove names of challenged candidates from the ballot in an election for city council, which the Court concluded was a ministerial task. *Id.* at 879.

Here, however, the Court has determined that the statute, as interpreted, does not obligate defendant to perform any action. Nor does Const 1963, art 4, § 31. Because plaintiffs have not established a clear legal right to their requested interpretation of the statute, and have established no legal duty to impose a 4.05% tax rate for 2024, the Court does not address whether the act would be ministerial in nature or whether no other adequate legal or equitable remedy exists that might achieve the same result. See *Berry*, 316 Mich App at 41. Additionally, because summary disposition is granted on both of plaintiffs’ claims, the Court DENIES plaintiffs’ motion for a show-cause order.

⁹ A Michigan Supreme Court order is binding precedent if it is a final disposition on an application for leave to appeal and contains a “concise statement” of the facts and rationale for the decision. *DeFrain v State Farm Mut Auto Ins Co*, 491 Mich 359, 371; 817 NW2d 504 (2012).

IV. CONCLUSION


For the reasons discussed, IT IS ORDERED that defendant's motion for summary disposition is GRANTED.

IT IS FURTHER ORDERED that plaintiffs' countermotion for summary disposition is denied.

IT IS FURTHER ORDERED that plaintiffs' motion for a show-cause order is DENIED.

This is a final order that dispenses with the final claim and closes the case.

Date: *December 21, 2023*


Elizabeth L. Gleicher
Judge, Court of Claims



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committee on legislative organization, and then to the executive branch in the regular schedule.

I mentioned Monday night, and tried to bring this up yesterday, and the reason that I am introducing this motion is primarily because we haven't yet settled on a legislature, and here we are going to be dealing with problems which will be very pertinent to our considerations on the executive branch. It would seem in a proper, logical order that the legislative organization, once settled, would make possible more expeditious handling of the other committee proposals, and I would therefore urge your consideration of moving to legislative organization proposals so as to alleviate some unnecessary discussion with regard to the executive branch proposals. That is all I care to say on this, Mr. President.

VICE PRESIDENT HUTCHINSON: The question is upon the motion by Mr. Faxon that the agreed orders in committee of the whole be changed, and that the committee of the whole next consider the legislative organization proposals instead of the executive branch proposals as previously ordered. All those in favor of the motion will say aye. Opposed will say no.

The motion does not prevail.

DELEGATES: Division.

VICE PRESIDENT HUTCHINSON: A division is called for. Is the division supported? It is supported. All those in favor of Mr. Faxon's motion will vote aye. Those opposed will vote no. Have you all voted? If so, the secretary will lock the machine and total the vote.

SECRETARY CHASE: The vote on Mr. Faxon's motion to change the order of consideration in committee of the whole, the yeas are 43; the nays are 83.

VICE PRESIDENT HUTCHINSON: The motion does not prevail. Are there any further motions or resolutions?

SECRETARY CHASE: None on file, Mr. President.

VICE PRESIDENT HUTCHINSON: Unfinished business.

SECRETARY CHASE: None.

VICE PRESIDENT HUTCHINSON: Special orders of the day.

SECRETARY CHASE: No special orders.

VICE PRESIDENT HUTCHINSON: General orders of the day. The gentleman from Genesee, Mr. Millard.

MR. MILLARD: Mr. President, I move that the convention resolve itself into committee of the whole for the purpose of considering matters on the general orders calendar.

VICE PRESIDENT HUTCHINSON: The question is upon the motion to resolve into committee of the whole. All those in favor will say aye. Opposed will say no.

The motion prevails. The committee will convene and Mr. Millard will preside.

[Whereupon, Mr. Millard assumed the Chair to preside as chairman of the committee of the whole.]

CHAIRMAN MILLARD: The committee will be in order. Is there anything on the calendar, Mr. Secretary?

SECRETARY CHASE: Item 1 on the calendar, from the committee on executive branch, by Mr. Martin, chairman, **Committee Proposal 46**, A proposal pertaining to the executive budget and item veto. Amends article VI.

Following is Committee Proposal 46 as read by the secretary, and the reasons submitted in support thereof:

The committee recommends that the following be included in the constitution:

Sec. a. THE GOVERNOR SHALL SUBMIT TO THE LEGISLATURE, NOT LATER THAN 21 CALENDAR DAYS AFTER THE CONVENING OF EACH REGULAR SESSION, OR AT A TIME FIXED BY LAW, A BUDGET FOR THE ENSUING FISCAL PERIOD SETTING FORTH IN DETAIL ALL PROPOSED EXPENDITURES AND ESTIMATED REVENUE OF THE STATE. PROPOSED EXPENDITURES SHALL NOT EXCEED ESTI-

Explanation—Matter within [] is stricken, matter in capitals is new.

MATED REVENUE. ON THE SAME DATE, THE GOVERNOR SHALL CAUSE TO BE SUBMITTED TO EACH HOUSE OF THE LEGISLATURE GENERAL APPROPRIATION BILLS TO EMBODY THE PROPOSED EXPENDITURES AND ANY NECESSARY BILL OR BILLS FOR NEW OR ADDITIONAL REVENUES TO MEET PROPOSED EXPENDITURES. THE AMOUNT OF ANY GENERAL FUND SURPLUS CREATED OR DEFICIT INCURRED DURING THE LAST PRECEDING FISCAL PERIOD SHALL BE APPROPRIATELY ENTERED AS AN ITEM IN THE BUDGET AND IN THE APPROPRIATION BILLS. THE GOVERNOR, PRIOR TO FINAL ACTION OF THE LEGISLATURE THEREON, MAY CAUSE TO BE SUBMITTED TO THE LEGISLATURE ANY AMENDMENTS TO THE GENERAL APPROPRIATION BILLS, AND SHALL CAUSE TO BE SUBMITTED ANY BILLS TO MEET DEFICIENCIES IN CURRENT APPROPRIATIONS.

Sec. b. GENERAL APPROPRIATION BILLS FOR THE SUCCEEDING FISCAL PERIOD SHALL BE ACTED UPON BEFORE EITHER HOUSE OF THE LEGISLATURE SHALL PASS ANY OTHER APPROPRIATION BILL, EXCEPT BILLS SUPPLEMENTING APPROPRIATIONS FOR THE CURRENT YEAR'S OPERATION. ANY BILL WHICH WILL REQUIRE AN APPROPRIATION TO CARRY OUT ITS PURPOSE SHALL BE CONSIDERED AN APPROPRIATION BILL. ONE OF THE GENERAL APPROPRIATION BILLS AS ENACTED BY THE LEGISLATURE SHALL CONTAIN AN ITEMIZED STATEMENT OF ESTIMATED REVENUE BY MAJOR SOURCE, THE TOTAL OF WHICH SHALL NOT BE LESS THAN THE TOTAL OF ALL APPROPRIATIONS PROPOSED IN THE GENERAL APPROPRIATION BILLS.

Sec. c. The governor shall have power to disapprove of any item or items of any bill making appropriations of money embracing distinct items; and the part or parts approved shall be the law; and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto.

Sec. d. NO APPROPRIATION SHALL BE DEEMED A MANDATE TO SPEND. THE GOVERNOR SHALL REDUCE EXPENDITURES OF EXECUTIVE AGENCIES WHENEVER IT APPEARS THAT ACTUAL REVENUES FOR A FISCAL PERIOD WILL FALL BELOW THE REVENUE ESTIMATES ON WHICH APPROPRIATIONS FOR THAT PERIOD WERE BASED, SUCH REDUCTIONS IN EXPENDITURES TO BE MADE IN ACCORDANCE WITH PROCEDURES ESTABLISHED BY LAW. THE GOVERNOR'S POWER TO REDUCE EXPENDITURES SHALL NOT APPLY TO THE LEGISLATIVE AND JUDICIAL BRANCHES OR TO THOSE SERVICES FOR WHICH FUNDS ARE MANDATED BY THIS CONSTITUTION.

Mr. Martin, chairman of the committee on executive branch, submits the following reasons in support of Committee Proposal 46:

The purpose and intent of this proposal are to establish a constitutional executive budget process for the orderly management of the state's fiscal affairs. The executive budget system is common to 41 states, by statutory or constitutional provisions. Michigan has had some features of this type of system by statute since 1919. The responsibility of the executive for formulating, presenting, and eventually administering a periodic budget is recognized as a part of good management in public business. Executive budget provisions similar to those proposed herein are included in 3 of the 4 most recently adopted state constitutions (Missouri, Alaska, Hawaii) and are a key feature of the model state constitution. The 4 sections here proposed are deemed by this committee to embody minimum and basic essentials of an executive budget:

- 1) executive preparation and submission of the budget to the legislature;
- 2) embodiment of the executive budget in bill form for legislative consideration;
- 3) legislative action on the appropriation bills and enactment of fiscal policy, subject to executive veto, including the item veto; and
- 4) executive administration of appropriations and expenditures in accordance with legislative directives.

The present constitution does not clearly and completely embody the essential principles of an executive budget system. Provisions in the newer state constitutions, the emphasis on the executive budget in the majority of states, and the thinking among students of governmental finance have combined with the fundamental importance of budgeting in the conduct of responsible government to impel this committee to propose these 4 provisions for inclusion in the state constitution.

Sec. a. The first sentence of the proposal establishes that the governor shall prepare and present to the legislature a budget for the ensuing fiscal period. Twenty-one calendar days, or 3 weeks, give adequate time for preparation, and if sessions are to start as now on the second Wednesday in January, would mean (a) time for reappraisal of forecasts for the new year's conditions and (b) budget submission sometime between January 29 and February 4. This 21 day period also gives time for getting out of the way the normal organizational aspects of the legislature. Budget submission may be changed to "a time fixed by law", if it should appear at some future time that this was desirable, or that a different timing was more appropriate in the case, for example, of a governor elect. It is further required that the budget set forth proposed expenditures and revenue in detail, and that proposed expenditures not exceed estimated revenue, whether from existing or proposed new revenue sources.

To be a true executive budget, the proposed expenditures and estimated revenue must also be presented to the legislature in bill form for legislative action. This is the reason for the requirement that on the same date, bills embodying the budget plan and any proposed new revenues be introduced. Introduction in each house will allow a subsequent joint or concurrent consideration by the appropriate committees of each bill or its component parts, as may be determined by the legislature.

Provision is then made that the surplus created or deficit incurred during the previous fiscal period be included in the budget and appropriation bills for the next year. The words, "appropriately entered as an item" are used to avoid excess language while conveying the meaning that any surplus of the preceding fiscal year shall be a credit to estimated revenues, while any deficit of the preceding fiscal year would be a corresponding initial charge against expenditures.

The next requirement of the section does 2 things: (a) it allows the introduction of executive amendments to general appropriation bills prior to final action of the legislature (final passage by both houses) to cover contingencies such as omissions, oversights or emergency situations that may arise; (b) it requires the executive to cause bills for deficiencies expected to occur in current appropriations to be submitted. The further intent of both provisions is to emphasize initial executive responsibility for all matters relating to budget preparation and submission in bill form for legislative consideration.

Sec. b. The second provision is intended to accomplish 2 major points: (a) to focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation; (b) to require the legislature (as well as the governor, by section a) to set forth by major item its own best estimates of revenue. The legislature frequently differs from executive revenue estimates. It seems only proper to require that such dif-

ferences as exist be specifically set forth for public understanding and future judgment as to the validity of each.

Sec. c. This provision repeats verbatim the existing provision for the so called item veto, article V, section 37. It is deemed to be an integral part of an executive budget process.

Sec. d. The last provision contains a statement of policy in its first sentence that is in line with commonly accepted thinking in the field of governmental finance. It would also cover situations in which unforeseen efficiencies and economies might become possible. The second sentence requires executive control of expenditures in accordance with statutory directives "whenever it appears that actual revenues for a fiscal period will fall below the revenue estimates on which appropriations for that period were based."

Legislative directives for expenditure reductions in the past few years have not been adopted by the executive office because they were believed to be unconstitutional. The legislature, as the initiator of fiscal policy, should be able constitutionally to direct that expenditure reductions shall be made under specified conditions. This provision would remove any question as to the constitutionality of legislative control over general fiscal policy of the state, and would require current action to minimize impending year end deficits.

The final sentence protects the separation of powers doctrine by preventing executive reduction of expenditures for the coordinate legislative and judicial branches. In actual fact, expenditures for these 2 branches account for less than 1 per cent of the general fund, general purpose spending, the vast bulk of which is in the area of the executive branch. It would also prohibit the governor from making reductions in funds dedicated by the constitution for specific purposes.

Following is the minority report to Committee Proposal 46 as offered and the reasons submitted in support thereof:

Mr. Marshall, Miss Hart and Mrs. Daisy Elliott, a minority of the committee on executive branch, submit the following minority report to Committee Proposal 46:

A minority of the committee recommends that the following be included in the constitution:

Sec. a. THE GOVERNOR SHALL SUBMIT TO THE LEGISLATURE, AT A TIME FIXED BY LAW, A BUDGET FOR THE ENSUING FISCAL PERIOD SETTING FORTH IN DETAIL ALL PROPOSED EXPENDITURES AND ESTIMATED REVENUE OF THE STATE. THE GOVERNOR SHALL ALSO CAUSE TO BE SUBMITTED TO EACH HOUSE OF THE LEGISLATURE GENERAL APPROPRIATION BILLS TO EMBODY THE PROPOSED EXPENDITURES AND ANY NECESSARY BILL OR BILLS FOR NEW OR ADDITIONAL REVENUES TO MEET PROPOSED EXPENDITURES.

Sec. b. Strike all of section b of the committee proposal.

Sec. c. LEAVE AS IS IN THE COMMITTEE PROPOSAL.

Sec. d. Strike all of section d of the committee proposal.

Mr. Marshall, Miss Hart and Mrs. Daisy Elliott, a minority of the committee on executive branch, submit the following reasons in support of the foregoing minority report, which accompanied Committee Proposal 46:

One of the driving forces, if not the primary reason behind Michigan citizens calling a constitutional convention was the need to rid the state's constitution of the administrative detail that is limiting the discretion of the legislature and governor to such an extent that they cannot adjust and meet the needs of a changing society. Thus, it was hoped that steps would be taken to rid the new con-

Explanation—Matter within [] is stricken, matter in capitals is new.

revenues fail to come up to expectations is placed in here subject to statute. In other words, the legislature shall provide how it shall be used. I think that is very proper. As long as that is there, it does not bring the governor into the legislative field so that he is, in fact, legislating. As a matter of fact, the legislature has been using similar language in the appropriation statutes now for several years.

Taking it all together, I think we have here a very definite improvement in the fiscal management of our state government.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, I would like to yield now to Mr. Karn to discuss the details of the first section.

MR. MARSHALL: Point of order, Mr. Chairman.

CHAIRMAN MILLARD: State the point of order, please.

MR. MARSHALL: The point of order is, am I lead to believe that the committee chairman is going to now get into an explanation of the entire majority proposal, or are we going to take up the minority report?

CHAIRMAN MILLARD: As the Chair understands, Mr. Marshall, we are on the first paragraph, section a, at this time, and as the Chair understands it, Mr. Martin has yielded to Mr. Karn to explain that particular section, after which the minority report will come up. Mr. Martin.

MR. MARTIN: Mr. Chairman, may I? I think Mr. Marshall had not come in at the moment when I made my first statement, and he will be handling the minority report. I wanted him to understand that I was proposing to have the minority report discussed section by section as we go along, but in order to do it in orderly fashion we need to have an explanation of what the majority position is on each of these sections.

CHAIRMAN MILLARD: The Chair recognizes Mr. Karn.

MR. KARN: Mr. Chairman, members of the committee, in order that we might have in mind, for discussion purposes, the thoughts and reasoning that was in the minds of the committee members when this was drafted, I would like to read the comments on section a, which are found in the journal on page 401.

[The reasons in support of section a were read by Mr. Karn. For text, see above, page 1636.]

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Karn, do you desire to yield to anyone further on that?

MR. KARN: I would like to yield at this time, if I may, to Mr. Rajkovich who will make some comments on section a.

CHAIRMAN MILLARD: The Chair will recognize Delegate Rajkovich.

MR. RAJKOVICH: Mr. Chairman, fellow delegates, Mr. Karn has already pointed out many of the things in section a that we are concerned with. In general I would like to say that over the last 50 years, maybe a little more than that, the states have adopted executive budgets in order to promote efficiency in government and to promote economy in government. That budgetary system has been one of the major government reforms, and in this system is an implicit recognition that the governor has positive responsibilities to perform and that he intends to perform these responsibilities.

The budgeting system that we propose in this section does clarify the responsibilities in government, whether the range of this government shall be wide or whether it shall be narrow. It makes those provisions. Also, we set up in this section very sound budgeting procedures, I believe, which state that the budget should be prepared by the executive and that he shall present this program of work for the fiscal period, whatever that might be. Also, it should include all estimated receipts and expenditures. This means all. This is very important. Not just part of the receipts or expenditures should be included.

Further, we propose that the expenditures should not exceed estimated revenues. This is a must in any good budget; the

2 should balance. We believe that the expenditures should be classified in the budget by various funds involved or specific services to be performed or the nature of things to be purchased. Finally, we believe that the executive should exercise large measure of control over the execution of the budget after it has been approved by the legislature. As a result of the feeling of this, I urge you to support the committee report.

CHAIRMAN MILLARD: Mr. Martin.

MR. MARTIN: Mr. Chairman, if Mr. Marshall wishes to have the minority report introduced now, then we can have that amendment on the first section in front of us.

CHAIRMAN MILLARD: Are you yielding the floor to Mr. Marshall?

MR. MARTIN: Yes.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Detroit, Mr. Marshall. Mr. Marshall, would you like to have your amendment read by the secretary?

MR. MARSHALL: Yes.

SECRETARY CHASE: Pursuant to the minority report of Mr. Marshall, Miss Hart and Mrs. Daisy Elliott,

Mr. Marshall offers the following amendment:

1. Amend page 1, line 6, after "Sec. a.", by striking out the balance of the section and inserting "The governor shall submit to the legislature, at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail all proposed expenditures and estimated revenue of the state. The governor shall also cause to be submitted to each house of the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills for new or additional revenues to meet proposed expenditures."

CHAIRMAN MILLARD: The Chair recognizes Mr. Marshall for discussion of the minority report.

MR. MARSHALL: Mr. Chairman and fellow delegates, in the beginning, I regret the action that was taken this morning on the Faxon motion because many of the issues that we will be discussing in the report of the committee on executive branch, as well as legislative powers and others will be directly related to apportionment. I, for one, have felt all along that that should be brought up as early as possible on the calendar and disposed of, but since the majority has not seen fit to do that, we will move on now to the minority report and cover section a.

Again, we are attempting here to legislate rather than to write the basic law of the state. The majority on the committee has submitted a 2 page proposal that is statutory and legislative in nature, taking away much of the discretion of the legislature and the governor to act in this area. One of the driving forces, if not the primary reason behind Michigan's citizens calling a constitutional convention was the need to rid the state's constitution of the administrative detail that is limiting the discretion of the legislature and governor to such an extent that they cannot adjust and meet the needs of a changing society. Thus it was hoped that steps would be taken to rid the new constitution of this detail, but the majority report will constitutionally freeze several matters that might better be left to legislative discretion.

The inclusion of statutory items in the proposed constitution is a serious weakness in itself; but the majority report, ladies and gentlemen, goes farther, and, in effect, destroys the traditional separation of powers doctrine.

In dealing with section a, there is no need to make reference to a submission date of 21 days after the legislature convenes. It would be far better to leave sole responsibility for fixing a submission date to the legislature. The same criticism can be made of the requirement that the governor submit on the same date general appropriation bills to embody the proposed expenditures and new or additional revenues to meet proposed expenditures. There is simply no logical reason to include this requirement and, in fact, this could cause procedural problems. Although the budget and revenue programs are developed concurrently, the physical job of readying the budget for the printer, drafting and printing appropriation

first. It still appears to me that in explaining the majority report, the speakers are, instead of the chairman getting up and reading and explaining it, he is yielding to other people and in a sense it seems that they are talking on the majority proposal, thereby crystallizing the views. I come along with a mop and pail and make my little spiel and then they come along and tear it apart again. The question I want to ask is, does the minority report come up first? That is number one. Number two, if it does, should not the majority proposal only be read, or should it be thoroughly explained and discussed prior to hearing the minority report? Now, I would like a ruling on that.

CHAIRMAN MILLARD: Mr. Marshall, the convention, in committee of the whole, has followed the procedure that the majority report will be discussed first and then the minority report will be taken up afterwards. We have divided this proposal. There are 4 sections to it and we take up each section at a time. The majority report is discussed and then you go directly to the minority report for that section.

MR. MARSHALL: Well, this morning, is it discussed or just explained? There is a difference, I think, in discussing and explaining. In other words, reading the majority report and briefly explaining it is one thing; discussing it is another.

CHAIRMAN MILLARD: You have to discuss a report in order to get the meat of it. The Chair can't see any other way that you can get the substance of the report before the committee.

MR. MARSHALL: I guess I am confused, and I admit that I am dense. I would at this time yield the floor to Delegate Elliott, one of the cosponsors of the minority report.

CHAIRMAN MILLARD: Mr. Marshall yields the floor to Mrs. Elliott.

MRS. DAISY ELLIOTT: Mr. Chairman, fellow delegates, I am very deeply disturbed about section b.

[The supporting reasons for the minority report for section b were read by Mrs. Daisy Elliott. For text, see above, page 1637.]

Therefore, I would urge that you support the minority report.

CHAIRMAN MILLARD: Mr. Marshall.

MR. MARSHALL: I have nothing further to say on this section.

CHAIRMAN MILLARD: The Chair recognizes the chairman of the committee, Mr. Martin.

MR. MARTIN: Mr. Chairman, just one additional word of explanation. The fundamental purpose of this section is to get the attention of the legislature to the main business of appropriations, that is, the general appropriation bills before it acts on so called special bills for this, that, or the other thing, which are thrown in by individual legislators and which do not come from a consideration of the total needs of the state government and the total revenue. This seems to be the only way and the best way to do it, and it is certainly the orderly way to get these matters considered. We think it is an integral part of this whole proposal and makes extremely good sense in getting the legislature to consider the main problems first and then, if it is desired, to add additional appropriations. This does not prevent it. This does not prevent any special bill from being acted upon. It simply says, act on the main bills first.

CHAIRMAN MILLARD: The question is on the minority report amendment to strike out section b of Committee Proposal 46. Are you ready for the question? All those in favor will say aye. Opposed, no.

The amendment is not adopted. Are there any further amendments to section b?

SECRETARY CHASE: None have been submitted, Mr. Chairman.

CHAIRMAN MILLARD: If there are no further amendments to section b, it will pass.

Section b is passed. The secretary will read.

SECRETARY CHASE: Section c:

[Section c was read by the secretary. For text, see above, page 1635.]

CHAIRMAN MILLARD: The Chair recognizes Mr. Martin.

MR. MARTIN: Mr. Chairman, this is the same provision as is now in article V, section 37 of the constitution, and the committee on legislative powers had the responsibility with respect to this section. I want to call on the chairman of the committee on legislative powers, Mr. Hoxie, if he or a member of his committee wishes to make a statement.

CHAIRMAN MILLARD: The Chair will recognize the chairman of the legislative powers committee, Mr. Hoxie.

MR. HOXIE: Mr. Chairman and fellow delegates, as explained by Mr. Martin, Committee Proposal 46 was the primary responsibility of the executive department and the finance and taxation and legislative powers committees had concurrent jurisdiction of this proposal. Our particular section c, which is now under discussion, was section 37 of article V dealing with the subject of veto. We had a coordinating committee composed of our chairman of this committee, along with Mr. Downs, Mrs. Koeze and Mr. Wanger. At this time I yield to Mrs. Koeze for an explanation.

CHAIRMAN MILLARD: The Chair will recognize the delegate from Grand Rapids, Mrs. Koeze.

MRS. KOEZE: Mr. Chairman, Mr. Hoxie, I would refer this committee to the journal, page 401, section c.

[The supporting reasons for section c were read by Mrs. Koeze. For text, see above, page 1636.]

For the committee of the whole, the item veto originated in the confederate constitution. This section of the executive article in the Michigan constitution originated in the 1907-08 constitution. In the debate on the item veto, some fear was expressed at that time that it was a very dangerous power to give the governor. However, those supporting the item veto pointed out it would prevent log rolling, and allow the governor to strike out unwarranted items without having to veto the entire appropriation bill.

In 1911, Governor Osborn started the practice of reducing appropriation items in addition to vetoing entire items. At that time a Pennsylvania court decision had interpreted a similar provision in the Pennsylvania constitution as authorizing the governor to reduce as well as to strike out items subject to legislative override. Later, courts in 5 other states denied this power to reduce items in the absence of specific constitutional authority to do so. During the administration of Governor Brucker—that is, in 1931—the Supreme Court of Michigan denied the governor of Michigan the power to reduce items in appropriation bills after this interpretation had been held for 20 years.

The procedure for the item veto in Michigan, as specified in article V, section 37, is not detailed. In 1951, the governor of Michigan signed and filed with the then secretary of state an appropriation bill with disapproved items indicated on the bill. Although the language of this section of the constitution might infer that this method of item vetoing, as used by the governor at this time and also used in some 41 other states was proper, an attorney general's opinion held that the veto of those items was not, and that the entire bill should have been returned to the legislature for its action on the items.

Forty-one states have, or provide for the governor to veto in appropriation bills. Alaska's constitution, one of the newer constitutions, is unique in that it requires 3/4 of its members elected to both houses, in joint session, to override the veto of an appropriation bill or items of an appropriation bill. The model constitution provides for an item veto in its finance article in connection with budget procedure. The United States constitution does not provide for an item veto.

CHAIRMAN MILLARD: Mr. Hoxie.

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judicial branches or to those services for which funds are mandated by this constitution.

PRESIDENT NISBET (continuing): Mr. Martin.

MR. MARTIN: Mr. President, the proposal has some changes in it which the style and drafting committee has made. We have examined these and we find that they carry out the purpose of the original proposal. The proposal was completed in style and drafting. We have no objection. We think, in fact, it is an improvement. So we recommend its adoption.

PRESIDENT NISBET: Is there an amendment?

SECRETARY CHASE: Mr. Marshall and Miss Hart offer the following amendment:

1. Amend page 1, line 5, [section a] after "state.", by striking out the balance of the section; and in line 18, by striking out all of section b; and on page 2, line 13, by striking out all of section d.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: Mr. President and fellow delegates, I will be as brief as possible. As all of you know, in our debate in committee of the whole I gave about a 5 or 6 page explanation of the minority position at that time in explaining the minority report. So I will not attempt to go through and explain in detail, as I did then, all of the reasons, which would probably be the same reasons for the amendments I am offering now. I only want to point out to the delegates once again that one of the primary reasons behind Michigan citizens' calling a constitutional convention was the need to rid the state's constitution of the administrative detail that has limited the discretion of the legislature and the governor to such an extent that they cannot adjust to meet the needs of a changing society. Thus it was hoped that steps would be taken to rid the new constitution of this detail. But Committee Proposal 46 would constitutionally freeze several matters that might better be left to legislative discretion. The inclusion of statutory items in the constitution is a serious weakness in itself. Committee Proposal 46 goes further and, as I said before, in effect, destroys the traditional separation of powers doctrine. We believe that if the amendments that are offered and that are before you now are adopted, that we will still retain in the constitution the basic fundamental guidelines and that the language would then be sufficient without going in and having all of the statutory language incorporated in the constitution. I urge the adoption of the amendment.

PRESIDENT NISBET: The question is on the adoption of the amendment. Mr. Martin.

MR. MARTIN: Mr. President, if the reasons are the same on the other 2 amendments, I wonder if Mr. Marshall would have them considered as a single amendment. I don't want to urge it but —

MR. MARSHALL: Yes. In order to expedite things, I would be pleased to have all 3 of them considered as one amendment because it is all related.

PRESIDENT NISBET: Mr. Martin, are you through?

MR. MARTIN: Yes. Simply that these are essentially the same amendments which were offered during committee of the whole and we oppose them for the same reason — the majority of the committee, I should say, because the minority did not support the proposal.

PRESIDENT NISBET: Mr. Marshall.

MR. MARSHALL: I am going to ask for the yeas and nays and call for the previous question.

PRESIDENT NISBET: The yeas and nays have been demanded. Is the demand seconded? Sufficient number up.

The previous question has been asked for. Is that demand seconded? It is supported. The question is: shall the previous question be put? Those in favor say aye. Opposed, no.

The previous question is ordered. The question now is on the amendment offered by Mr. Marshall and Miss Hart. The yeas and nays have been demanded. Those in favor of the amendment will vote aye.

A DELEGATE: Can we have it read?

PRESIDENT NISBET: The secretary will read.

SECRETARY CHASE: Mr. Marshall and Miss Hart have offered the following amendment:

[The amendment was again read by the secretary. For text, see above.]

PRESIDENT NISBET: Those in favor of the amendment will vote aye. Those opposed will vote nay. Have you all voted? If so, the secretary will lock the machine and record the vote.

The roll was called and the delegates voted as follows:

Yeas—29

Austin	Faxon	McGowan, Miss
Baginski	Follo	Ostrow
Balcer	Garvin	Perlich
Barthwell	Hart, Miss	Sablich
Bradley	Jones	Snyder
Buback	Kelsey	Suzore
Cushman, Mrs.	Lesinski	Walker
Douglas	Mahinske	Young
Downs	Marshall	Youngblood
Elliott, Mrs. Daisy	McCauley	

Nays—74

Allen	Gust	Richards, J. B.
Andrus, Miss	Haskill	Richards, L. W.
Anspach	Hatch	Romney
Batchelor	Heideman	Rood
Beaman	Higgs	Rush
Bentley	Hoxie	Seyferth
Blandford	Hubbs	Shackleton
Brake	Iverson	Shanahan
Butler, Mrs.	Judd, Mrs.	Sharpe
Conklin, Mrs.	Karn	Spitler
Cudlip	Kirk, S.	Stafseth
Danhof	Knirk, B.	Staiger
Dehnke	Kuhn	Sterrett
Dell	Leibrand	Thomson
Donnelly, Miss	Leppien	Tubbs
Doty, Dean	Martin	Turner
Doty, Donald	McAllister	Tweedie
Durst	McLogan	Upton
Elliott, A. G.	Millard	Van Dusen
Erickson	Nisbet	Wanger
Farnsworth	Page	White
Figy	Perras	Wood
Finch	Plank	Woolfenden
Goebel	Powell	Yeager
Gover	Prettie	

SECRETARY CHASE: On the amendment offered by Mr. Marshall and Miss Hart, the yeas are 29; the nays, 74.

PRESIDENT NISBET: The amendment is not adopted. The secretary will read the next amendment.

SECRETARY CHASE: Mrs. Cushman offers the following amendment:

1. Amend page 2, line 13, after "Sec. d.", by striking out "No appropriation shall be deemed a mandate to spend."

PRESIDENT NISBET: Mrs. Cushman.

MRS. CUSHMAN: Mr. President and fellow delegates, to my way of thinking, this sentence has no real meaning. It is not constitutional language and it is a gratuitous insult. For those reasons, I suggest that we seriously consider removing this sentence.

PRESIDENT NISBET: The question is on the amendment by Mrs. Cushman. Mr. Marshall.

MR. MARSHALL: Mr. President, I rise to support the Cushman amendment for the reasons that were given in committee of the whole and for the reasons just given now by Mrs. Cushman. I think that the delegates should give serious consideration to adopting the Cushman amendment.

PRESIDENT NISBET: Mr. Martin.

MR. MARTIN: Mr. President, the phrase which the amendment is proposed to strike is a very important statement of policy. We want it clear that appropriations are not mandates to spend. This is not a reflection on any individual or governor or any other person who may have held the office, but it is

No change from Sec. 24, Article V, of the present constitution except for the insertion of the words "and serving" to clarify the method of computing a majority provided in Sec. 14 of this Article.

General appropriations; priority.

Sec. 31. The general appropriation bills for the succeeding fiscal period covering items set forth in the budget shall be passed or rejected in either house of the legislature before that house passes any appropriation bill for items not in the budget except bills supplementing appropriations for the current fiscal year's operation. Any bill requiring an appropriation to carry out its purpose shall be considered an appropriation bill. One of the general appropriation bills as passed by the legislature shall contain an itemized statement of estimated revenue by major source in each operating fund for the ensuing fiscal period, the total of which shall not be less than the total of all appropriations made from each fund in the general appropriation bills as passed.

This is a new section designed to accomplish two major purposes:

1. To focus legislative attention on the general appropriation bill or bills to the exclusion of any other appropriation bills, except those supplementing appropriations for the current year's operation.
2. To require the legislature (as well as the governor by a subsequent provision) to set forth by major item its own best estimates of revenue.

The legislature frequently differs from executive estimates of revenue. It is proper to require that such differences as exist be specifically set forth for public understanding and future judgment as to the validity of each.

Laws imposing taxes.

Sec. 32. Every law which imposes, continues or revives a tax shall distinctly state the tax * * * *.

This is a revision of Sec. 6, Article X, of the present constitution. It requires a distinct and clear statement of any tax imposed upon the citizens of this state.

The section eliminates the requirement that tax laws specify "the objects to which (the tax) is to be applied". This has been judicially construed to mean "the purpose for which the money is to be spent". In a complex system of taxation, when the proceeds of one general tax may be devoted to many different purposes, this seems obsolete.

Also deleted is the present statement that "it shall not be sufficient to refer to any other law to fix such tax". This eliminates the possible question of the legislature's right to refer to income determined for federal tax purposes. It is not the intention of the section, however, to permit any delegation of the power to fix a tax or tax base to another legislative authority.

Bills passed; approval and veto by governor.

Sec. 33. Every bill passed by the legislature shall be presented to the governor before it becomes law, and the governor shall have 14 days

measured in hours and minutes from the time of presentation in which to consider it. If he approves, he shall within that time sign and file it with the secretary of state and it shall become law. If he does not approve, and the legislature has within that time finally adjourned the session at which the bill was passed, it shall not become law. If he disapproves, and the legislature continues the session at which the bill was passed, he shall return it within such 14-day period with his objections, to the house in which it originated. That house shall enter such objections in full in its journal and reconsider the bill. * * * If two-thirds of the members elected to and serving in that house pass the bill notwithstanding the objections of the governor, it shall be sent with the objections to the other house * * for reconsideration. The bill shall become law if passed by two-thirds of the members elected to and serving in that house. * * The vote of each house shall be entered in the journal with the votes and names of the members voting thereon. * * If any bill is not returned by the governor within such 14-day period, the legislature continuing in session, it shall become * law * * as if he had signed it. * * *

This is a revision of Sec. 36, Article V, of the present constitution to clarify and change existing language regarding the executive veto. It provides as follows: (1) The governor shall have 14 days in which to consider a bill; and his 14-day period for consideration and approval will not be affected by whether or not the legislature adjourns its session. (2) If during that period he signs the bill, it becomes law. (3) If during that period he does not sign the bill, and the legislature has adjourned its session, the bill does not become law. (4) If during that period he does not approve, he must send it back to the house of origin, if the legislature is still in session, for consideration of his veto. (5) If during that period he neither approves nor returns the bill with a veto message, the legislature continuing in session, it becomes a law as if he had signed it.

The time for consideration by the governor has been extended from 10 to 14 days in accordance with testimony by former governors that some additional time is desirable.

The two-thirds vote of the legislature to override the governor's veto is retained.

Referendum on certain bills.

Sec. 34. Any bill passed by the legislature and approved by the governor, except a bill appropriating money, may * * * provide that it will not become * law unless approved by a majority of the electors voting thereon.

No change from Sec. 38, Article V, of the present constitution except for improvement in phraseology.

Publication of laws.

Sec. 35. All laws enacted at any session of the legislature shall be published in book form within 60 days after * final adjournment of the session, and shall be distributed in the manner * * provided by law. The prompt publication of * judicial decisions * * * shall be provided * by law. All laws and judicial decisions shall be free for publication by any person.

TABLE III—ARTICLES AND SECTIONS OF 1963 CONSTITUTION TO 1908 CONSTITUTION WITH COMMITTEE PROPOSAL REFERENCE

The Committee Proposal number and section are as re-referred to the committee on style and drafting.

* Created by the committee on style and drafting.

1963		1908		Committee Proposal	1963		1908		Committee Proposal	1963		1908		Committee Proposal
Preamble		Preamble			Art.	Sec.	Art.	Sec.		Art.	Sec.	Art.	Sec.	
I	1	II	1	15-1	IV	24	V	21	121	VI	11	VII	8	93a
I	2	none		26	IV	25	V	22	105	VI	12	VII	9,23	93b
I	3	II	2	15-2	IV	26	V	21	121	VI	13	VII	10	93c
I	4	II	3	15-3	IV	27	V	22	105	VI	14	VII	11	93d
I	5	II	4	15-4	IV	28	V	23	104	VI	15	VII	13	94a
I	6	II	5	15-5	IV	29	V	21	121	VI	16	VII	14,23	94b
I	7	II	6	15-6	IV	30	V	22	105	VI	17	none		96a ¹
I	8	II	7	15-7	IV	31	none		41	VI	18	VII	12	96g
I	9	II	8	15-8	IV	32	X	6	46b	VI	19	VII	17	96a
I	10	II	9	15-9	IV	33	V	36	53	VI	20	VII	19	96b
I	11	II	10	15-10	IV	34	V	38	70	VI	21	VII	9	96c
I	12	II	11	15-11	IV	35	V	39	113	VI	22	none		96l
I	13	II	12	15-12	IV	36	V	40	24	VI	23	VII	20	96d
I	14	II	13	15-13	IV	37	none		108	VI	24	VII	23	96e
I	15	II	14	15-14	IV	38	XVI	5	123	VI	25	IX	6	96h
I	16	II	15	15-15	IV	39	XVI	5	122	VI	26	VII	15,16,21	96i
I	17	II	16	15-16	IV	40	XVI	11	122	VI	27	VII	6,11	96n
I	18	II	17	15-17	IV	41	V	33	27	VI	28	none		95
I	19	II	18	15-18	IV	42	V	33	100	VI	29	VII	18	96o
I	20	II	19	15-19	IV	43	VIII	30	87					
I	21	II	20	15-20	IV	44	XII	9	5	VII	1	VIII	1	81a
I	22	II	21	15-21	IV	45	V	27	99	VII	2	none		89
I	23	none		15-1	IV	46	V	28	106	VII	3	VIII	2	81b
II	1	III	1,2,3	58a	IV	47	none		20	VII	4	VIII	3	81c
II	2	none		58b	IV	48	V	26	111	VII	5	VIII	4	81d
II	3	none		58c	IV	49	XVI	7	109	VII	6	VIII	5	81e
II	4	III	1,8	58d	IV	50	V	29	110	VII	7	VIII	7	81f
II	5	V	12	58e	IV	51	none		127	VII	8	VIII	8	81g
		VI	1		IV	52	none		126	VII	9	VIII	9	81h
		VII	2,9,14		IV	53	none		125	VII	10	VIII	13	81j
		VIII	3,18				VI	1	78	VII	11	VIII	12	81i
		XI	2,3,6,7,16		V	1	VI	2	2	VII	12	VIII	14	81k
II	6	III	4	58f	V	2	none		71b	VII	13	none		81n
II	7	III	9	58h	V	3	none		71b	VII	14	VIII	15	81l
II	8	III	8	58g	V	4	none		71b	VII	15	none		85c
II	9(¶2*)	V	1	118b	V	5	none		71b	VII	16	VIII	26	86a
					V	6	none		71g	VII	17	VIII	16	82a
III	1	I	2	10	V	7	VI	10	71g	VII	18	VIII	17,18	82b,c
III	2	IV	1,2	21	V	8	VI	3	71e	VII	19	VIII	19	82e
III	3	VI	11,12	18	V	9	VI	1	71d	VII	20	none		82d
III	4	XV	1,2,3	19	V	10	IX	7	71c	VII	21	VIII	20	83a
III	5	none		128	V	11	IX	5	71g	VII	22	VIII	21	83b
III	6	X	14	101	V	12	VI	4	71f	VII	23	VIII	22	83c
III	7	S	1	44a	V	13	VI	6	3	VII	24	VIII	23	83e
III	8	none		96k	V	14	VI	9	7	VII	25	VIII	25	83f
					V	15	VI	7	16	VII	26	VIII	25	83d
IV	1	V	1	118a	V	16	VI	8	8	VII	27	VIII	31	88a
IV	2	V	2	80a	V	17	VI	8	9	VII	28	VIII	31	88b
IV	3	V	3	80b	V	18	VI	5	4	VII	29	VIII	31	88c
IV	4	none		80c	V	19	none		46a	VII	30	VIII	28	85a
IV	5*	none		...	V	20	V	37	46c	VII	31	VIII	29	85b
IV	6	V	4	79	V	21(¶3*)	none		46d	VII	32	VIII	27	86b
IV	7	V	5	32	V	22	VI	1	71a	VII	33	IX	8	57
IV	8	V	6	112	V	23	VI	13	17	VII	34	IX	8	42e
IV	9	V	7	120	V	24	VI	21	75			none		84
IV	10	V	7	115	V	25	VI	19	77	VIII	1	XI	1	1
		V	25		V	26	VI	16,17	71b	VIII	2	XI	9	30
IV	11	V	8	33	V	27	VI	18	72	VIII	3	XI	2,6	47
IV	12	V	9,10	28	V	28	none		71h	VIII	4	XI	10	98a
IV	13	V	13	116	V	29	none		71i-71A	VIII	5	XI	3,4,5,7,8,16	98b
IV	14	V	14	34						VIII	6	none		98c
IV	15	none		102c	VI	1	VII	1	90	VIII	7	none		98d
IV	16	V	15	102a	VI	2	VII	2,23	91a	VIII	8	XI	15	13
IV	17	none		102b	VI	3	VII	2	91b	VIII	9	XI	14	31
IV	18	V	16	114	VI	4	VII	4	91c					
IV	19	V	17	117	VI	5	VII	5	91d	IX	1	X	2	50
IV	20	V	18	103	VI	6	VII	7	91e	IX	2	X	9	54
IV	21	V	18	103	VI	7	VII	6	91f	IX	3	X	3,4,7,8	51
IV	22	V	19	35	VI	8	none		92a	IX	4	none		51
IV	23	V	20	29	VI	9	none		92b	IX	5	X	3,5	52
					VI	10	none		92c	IX	6	X	21	56

Appendix 6: Webster's New American Dictionary--1965

WEBSTER'S ★ ★ ★ ★ ★ ★ ★ ★
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Illustrated — Self-Pronouncing — Synonyms — Antonyms

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lishers of Webster's Dictionary, or by their successors

1965

———— PUBLISHERS COMPANY, INC. ————

WASHINGTON, D. C.

- which shrubs and fruit trees are trained to grow flat; a tree or plant so trained. — *vt.* To train on an espalier.
- esparto** (es pār'tō) *n.* Tall rushlike perennial grass of N. Africa and s. Eur., used in cordage, shoes, paper, and woven goods: also *esparto grass*.
- especial** (es pesh'al) *adj.* Chief, particular.
- especially** (es pesh'al i) *adv.* Chiefly, in particular.
- Esperanto** (es pe rān'tō or -ran'tō) *n.* International language devised by Russian Dr. L. Zamenhof, 1887, based on root words common to the principal Eur. languages.
- espial** (es pi'al) *n.* Act of spying; discovery; observation.
- espionage** (es'pi ō naj) *n.* The practice of spying; a system of spying.
- esplanade** (es pla nād') *n.* A level walk or drive, esp. on the seashore; a level open space in front of a fortification where attackers are open to fire.
- espousal** (es pouz'al) *n.* Act of espousing; celebration of betrothal or marriage; adoption or advocacy of a cause.
- espouse** (es pouz') *vt.* To marry; to adopt or sponsor, as a cause.
- esprit** (es prē') *n.* Spirit; vivacity; wit. **e. de corps** (dē kōr'). Common spirit of loyalty and enthusiasm developed among members of a group.
- espy** (es pī') *vt.* [espied] To see at a distance; to discover, as something hidden.
- esque** (-esk) *suffix.* Having the style or manner of, as in *picturesque*, *Dantesque*.
- Esquiline** (es'kwī līn) *n.* Highest of the seven hills of Rome.
- Esquimau** (es'ki mō) *n.* [-maux (-mō or -mōz)] Var. of *Eskimo*.
- esquire** (es kwīr') *n.* Formerly a knight's attendant; now used as a respectful form of address.
- ess** (es) *n.* [esses] The letter S; an object shaped like an S.
- ess** (-es) *suffix.* Used to form feminine nouns, as in *peeress*.
- essay** (es'ā) *n.* 1 An attempt; 2 A literary composition, generally confined to a single or personal phase of a subject. **essay'ist** *n.*
- essay** (e sā') *vt.* To try.
- essence** (es'ens) *n.* 1 The fundamental characteristic of anything. 2 Substance. 3 Concentrated extract, as, *essence of wintergreen*.
- Essene** (e sēn') *n.* Member of a pre-Christian ascetic sect of Jews in Palestine. **-'nian**, **-'ic** *adj.*
- essential** (e sen'shal) *adj.* 1 Necessary, indispensable. 2 Absolute, perfect, as *essential joy*. **-sential'ity** *n.* — **-sen'tially** *adv.*
- essonite** (es'ō nīt) *n.* Variety of garnet, colored yellow to brown.
- est** (-est) *suffix.* Used to form the superlative degree of adjectives and adverbs, as in *greatest*.
- establish** (es tab'lish) *vt.* To set up, settle; to ordain, as laws; to found, as a colony; to gain recognition of, as, to *establish* a reputation.
- establishment** (es tab'lish ment) *n.* 1 The act of establishing. 2 An organized undertaking, as a household or domestic *establishment*, a store or business *establishment*, an army and navy or national military *establishment*.
- estaminet** (es tā mē nā') *n.* Small cafe or wineshop.
- estate** (es tāt') *n.* One's condition in life; a person's property and possessions.
- esteem** (es tēm') *n.* Regard, respect, favorable opinion.
- esteem** (es tēm') *vt.* 1 To set high value upon, respect, prize. 2 To consider, regard, as, I would *esteem* it a favor.
- ester** (es'tēr) *n.* Compound consisting of one or more alcohol radicals united to one or more acid radicals.
- Esther** (es'tēr) *n.* Jewish heroine of the O. Test. book bearing her name.
- esthesia or aesthesia** (es thē'zhi a) *n.* Perception; sensibility; capacity for feeling.
- esthete** (es'thēt). Var. of *aesthete*.
- Esthonian** (es thō'ni an). Var. of *Estonian*.
- estimable** (es'ti ma bl) *adj.* 1 Worthy of respect. 2 Capable of being estimated or calculated.
- estimate** (es'ti mat) *n.* An appraisal; a calculation, as of probable cost; a judgment or opinion.
- estimate** (es'ti māt) *vt.* To appraise; to form an opinion of; to calculate approximately. *Syn.* Appreciate, value. To *estimate* is to determine in one's mind an approximate figure; to *appreciate* is to perceive the exact worth of something; to *value* is to prize highly. **-'timative** *adj.* — **-'timator** *n.*
- estimation** (es ti mā'shun) *n.* 1 The act of estimating or calculating; the result of estimating or calculating. 2 An approximate judgment, an opinion; esteem, high regard.
- estival or aestival** (es'ti val or es tī'val) *adj.* Pert. to or appearing in summer, as *estival foliage*. **-vate** *vi.* To pass the summer; to be dormant in summer, as certain animals. **-va'tion** *n.*
- Estonian** (es tō'ni an) *n.* A person of Estonia. — *adj.* Pert. to Estonia.
- estop** (es top') *vt.* To prevent or preclude by estoppel. **estop'page** *n.*
- estoppel** (es top'el) *n.* In law, the stopping of a person from making a claim or denial

property. *Syn.* End, upshot, effect, result, progeny.

issue (ish ū) *vi. & vt.* To come or flow forth; to send forth; to put into circulation, as a newspaper or money; to be descended; to accrue, as rents; to be derived. *Syn.* Emerge, rise, emanate, spring, flow, proceed. **is'suer** *n.*

-ist (ist) *suffix.* Forming agent nouns signifying to make a practice of, occupied with, skilled in, adheres to.

isthmian (is'mi an) *adj.* Relating to an isthmus.

isthmian (is'mi an) *n.* A native or resident of an isthmus.

isthmus (is'mus) *n.* A narrow neck of land connecting two larger bodies of land; *anat.* a slender part or passage connecting two larger parts or cavities.

istle (is'tle) or **ixtle** (iks'tle) *n.* A valuable fiber obtained from a wild pineapple, *Bromelia sylvestris*, or from a species of Mexican agaves: used for cordage and basket weaving.

Istrian (is'tri an) *n., adj.* Of or from Istria.

it (it) *pron.* The neuter singular pronoun, used in the third person.

it (it) *n.* The designation given to certain players in certain games, as, he is *it*.

itacolumite (it a kol'ū mit) *n.* A granular, quartzose, talcomiceous slate, called flexible sandstone.

Italian (i tal'yan) *adj.* Pertaining to Italy or its language.

Italian (i tal'yan) *n.* A native or a citizen of Italy; a member of one of the Italian races; the language of the Italians.

Italianate (i tal'yan āt) *adj.* Having Italian qualities.

Italianate (i tal'yan āt) *vt.* To Italianize.

Italianism (i tal'yan izm) *n.* An Italian practice, feature, or trait; Italian quality, spirit, or taste; attachment to Italian ideas; sympathy with Italy.

Italianize (i tal'yan iz) *vi. & vt.* To become or cause to become Italian in any respect; to speak Italian. **Italianiza'tion** *n.*

Italic or **italic** (i tal'ik) *adj.* Pertaining to Italy or its people; denoting a kind of type with slanting letters, as *italic*.

italic (i tal'ik) or **italics** (i tal'iks) *n.* A kind of letter or type in which the characters slope to the right: used usu. for emphasis, for distinction, or to denote words or phrases borrowed from a language different from that used in the text, ex.: *italics*.

Italicism (i tal'i sizm) *n.* An Italianism.

italicize (i tal'i siz) *vi. & vt.* To print with



Isthmus.

italic letters; to underline, for purpose of emphasizing, for distinctiveness, or as a printer's mark indicating the use of *italics*.

itch (ich) *n.* A feeling of irritation in the skin; a constant desire, as, an *itch* for adventure; an itching disease of the skin, caused by a minute organism that burrows in the skin; scabies.

itch (ich) *vi.* To be afflicted with an irritated condition of the skin; to have a constant desire for something, as, he simply *itches* for excitement. **itchy** *adj.*

-ite (it) *suffix.* Used to end nouns, signifying a native of, a citizen of, member of a party, sympathizer with, advocate of, an explosive, a mineral, a fossil, an organ of or a part of the body of an animal; in chemistry it is a variant of **-itol**.

-ite *suffix.* Used with Latin past participle roots to form adjectives and verbs, as *erudite*, *composite*.

-ite. In chemistry, the systematic termination of the salts of acids denoted by adjectives ending in *-ous*, as *nitrite*, the salt of nitrous acid.

item (i'tem) *adj.* Also or in like manner: used to designate each item in a list or an enumeration.

item (i'tem) *n.* A separate unit in a list; a particular article in a newspaper, as, a short note; a sum entered in an account.

item (i'tem) **itemize** (i'tem iz) *vt.* To set down by items; to enter as an item.

iterance (it'ēr ans) *n.* Iteration; a repeating.

iterant (it'ēr ant) *adj.* Iterating; repeating.

iterate (it'ēr āt) *vt.* To utter or do over again or repeatedly.

iteration (it'ēr ā'shun) *n.* Repetition.

iterative (it'ēr ā tiv) *adj.* Characterized by repeating or being repeated.

Ithunn or **Ithun** (ē'thōon) *n.* In Norse mythology, the custodian of the golden apples of youth and the wife of Bragi.

Ithuriel (i thū'ri el) *n.* The angel of *Paradise Lost* who found Satan in the form of a toad and changed him back to his natural form.

ithyphallic (ith i fal'ik) *adj.* Pertaining to the phallus carried in the procession at Bacchic festivals; hence, lewd or indecent; having the meter of Bacchic hymns.

ithyphallic (ith i fal'ik) *n.* A poem or song in ithyphallic meter.

itineracy (i tin'ēr a si) or **itinerancy** (i tin'ēr an si) *n.* Itinerating or the condition of being itinerant; a group of wanderers; the performance of duties requiring many changes of residence; itinerant preaching.

itinerant (i tin'ēr ant) *adj.* Wandering. **-ly** *adv.*

Appendix 7: 9/25/2023 Ex-Parte Denial

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, KIMBERLY DAVIES, OWEN PYLE,
WILLIAM LUBAWAY, BARBARA CARTER,
and ROSS VANDERKLOCK,

Plaintiffs,

v

Case No. 23-000120-MB

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

Hon. Elizabeth L. Gleicher

Defendant.

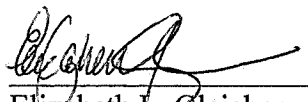
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ORDER DENYING PLAINTIFFS' EX PARTE MOTION TO SHOW CAUSE

Pending before the Court is plaintiffs' ex parte motion to show cause why a writ of mandamus should not be issued in this matter.

Because the case is now being actively defended and the parties have entered in to a mutually agreed-upon scheduling order that has been signed by the Court, plaintiffs' ex parte motion to show cause why a writ of mandamus should not be issued is DENIED. Plaintiffs' request for mandamus relief otherwise remains pending before the Court.

Date: September 25, 2023



Elizabeth L. Gleicher
Judge, Court of Claims

