

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

Date: 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

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).

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).

A handwritten signature in blue ink that reads "Dana Nessel". The signature is written in a cursive, flowing style.

DANA NESSEL
Attorney General