

STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY	SUMMONS	CASE NO. 2026- -MT
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Court address **Court telephone no.**

COURT OF CLAIMS, 925 West Ottawa St., P.O. Box 30185, Lansing, MI 48909

Plaintiff's name, address, and telephone no.
 Mitten Distro X LLC, et. al.

v

Defendant's name, address, and telephone no.
 Michigan Department of Treasury
 431 West Allegan St.
 Lansing, MI 48922

Plaintiff's attorney, bar no., address, and telephone no.
 Lynn A. Gandhi (P60466)
 Foley & Lardner LLP
 500 Woodward Ave., Ste. 2700, Detroit, MI 48226
 (313) 234-2715

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. I have separately filed a completed confidential case inventory (MC 21) listing those cases.
- It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- MDHHS and a contracted health plan may have a right to recover expenses in this case. I certify that notice and a copy of the complaint will be provided to MDHHS and (if applicable) the contracted health plan in accordance with MCL 400.106(4).
- There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has

been previously filed in this court, _____ Court, where

it was given case number _____ and assigned to Judge _____

The action remains is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to **file a written answer with the court** and serve a copy on the other party **or take other lawful action with the court** (28 days if you were served by mail or you were served outside of Michigan).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date	Expiration date*	Court clerk
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*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.

PROOF OF SERVICE

TO PROCESS SERVER: You must serve the summons and complaint and file proof of service with the court clerk before the expiration date on the summons. If you are unable to complete service, you must return this original and all copies to the court clerk.

CERTIFICATE OF SERVICE / NONSERVICE

I served personally by registered or certified mail, return receipt requested, and delivery restricted to the addressee (copy of return receipt attached) a copy of the summons and the complaint, together with the attachments listed below, on:

I have attempted to serve a copy of the summons and complaint, together with the attachments listed below, and have been unable to complete service on:

Name	Date and time of service
Place or address of service	
Attachments (if any)	

I am a sheriff, deputy sheriff, bailiff, appointed court officer or attorney for a party.

I am a legally competent adult who is not a party or an officer of a corporate party. I declare under the penalties of perjury that this certificate of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee	
\$		\$	
Incorrect address fee	Miles traveled	Fee	TOTAL FEE
\$		\$	\$

Signature

Name (type or print)

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of a copy of the summons and complaint, together with

Attachments (if any) on _____
Date and time

Signature on behalf of _____

Name (type or print)

STATE OF MICHIGAN
COURT OF CLAIMS

MITTEN DISTRO X LLC, REFINE
MICHIGAN CO., MICHIGAN
CANNABIS INDUSTRY ASSOCIATION
AND AFFILIATES, AND SANTINO
HERMIZ.

Plaintiffs,

v.

Court of Claims No. 26-_____ -MT
Hon.

MICHIGAN DEPARTMENT OF
TREASURY,

Defendant.

LYNN A. GANDHI (P60466)
Foley & Lardner LLP
500 Woodward Avenue, Suite 2700
Detroit, Michigan 48226
(313) 234-2715
lgandhi@foley.com
Attorney for Plaintiffs

The Complaint alleges a statute or other state governmental action is invalid. There is no other pending or resolved civil action arising out the transaction or occurrence alleged in the Complaint.

PLAINTIFFS' 03/27/2026 COMPLAINT

Parties and Jurisdiction

Plaintiffs Mitten Distro X LLC, Refine Michigan Co., Michigan Cannabis Industry Association and affiliates, and Santino Hermiz (collectively, “Plaintiffs”), by and through their attorneys, Foley & Lardner LLP, files its Complaint against Defendant Michigan Department of Treasury (“Defendant” or the “Department”), and states as follows:

1. Plaintiff Mitten Distro X LLC is licensed under the Michigan Regulation and Taxation of Marihuana Act (“MRTMA”), MCL 333.27951 *et seq.* as both a Class C grower and a processor.

2. Refine Michigan Co. is licensed under the MRTMA as a retailer.

3. Michigan Cannabis Industry Association is a Michigan non-profit corporation and a trade association under Section 501(c)(6) of the Internal Revenue Code; its corporate purpose is to promote the common business interest of the Michigan cannabis industry.

4. Santino Hermiz is an individual who made a purchase from a licensed retailer in Michigan after January 1, 2026.

5. The Department is an administrative department of the State of Michigan that is statutorily charged with the duty of administering the Revenue Act, MCL 205.1 *et seq.* (the “Revenue Act”) and the Comprehensive Road Funding Tax Act, MCL 205.901 *et seq.* (the “CRFTA”).

6. A claim for refund based upon the validity of a tax law based on the laws or constitution of the United States or the state constitution of 1963 shall not be paid unless the claim is filed within 90 days after the date set for filing a return. 205.27a(7).

7. This matter is within the jurisdiction of the Court of Claims pursuant to MCL 205.27a(7) and MCL 600.6419(1)(a).

8. This Court has jurisdiction to provide the declaratory relief sought pursuant to MCL 600.6419(1)(a) and MCR 2.605.

Michigan Constitution of 1963

9. The Michigan Constitution prohibits the imposition of the state sales tax at a rate of more than 6% of the gross taxable sales of tangible personal property. MI Const, Article IX, Section 8.

10. The Constitution requires that “every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.” MI Const, Article IX, Section 3.

Enactment of the Comprehensive Road Funding Tax Act

11. The Comprehensive Road Funding Tax Act, MCL 205.901 *et seq.* (the “CRFTA”), was effective January 1, 2026 and established a so-called excise tax regime on wholesale transactions involving adult-use marihuana.

12. The CRFTA’s stated purposes include “to provide for the imposition and collection of excise taxes on certain sales of marihuana; to provide for the establishment of procedures for the collection, administration, and enforcement of those taxes; to provide for the disposition of the taxes; to provide for the promulgation of rules; to create the comprehensive road funding fund; and to prescribe the powers and duties of certain state governmental officers and entities.”

13. Effective January 1, 2026, Michigan began imposing an excise tax on wholesale sales or transfers of adult-use “marihuana,” as defined under MCL 333.27953(h) (hereinafter

the “CRFTA levy”). MCL 205.905; Revenue Administrative Bulletin (“RAB”) 2026-3, *Wholesale Marihuana Tax* (last updated March 24, 2026).¹

14. Pursuant to the CRFTA, the CRFTA levy is imposed on the wholesale price² of the sale or other transfer of marihuana at the following rates in the following circumstances:

- a. The first sale or transfer of marihuana from a “marihuana establishment”³ (such as a marihuana grower or marihuana processor) to a marihuana retail licensee.⁴ MCL 205.905(a).
- b. Marihuana cultivated and processed for retail sale by a marihuana retail licensee itself (e.g., a marihuana microbusiness). MCL 205.905(b).
- c. Sales or transfers of marihuana from medical marihuana provisioning centers⁵ to adult-use marihuana retail licensees. MCL 205.905(c).

¹ Available at <https://www.michigan.gov/taxes/rep-legal/rab/2026-revenue-administrative-bulletins/revenue-administrative-bulletin-2026-3>.

² For transactions between unaffiliated persons, the “wholesale price” is the actual price paid to a marihuana establishment by a marihuana retail licensee to acquire marihuana from the marihuana establishment. MCL 205.903(m)(i). For transactions between affiliated persons, the “wholesale price” is the “average wholesale price.” MCL 205.903(m)(ii).

³ “Marihuana establishment” means a marihuana grower, marihuana safety compliance facility, marihuana processor, marihuana microbusiness, marihuana retailer, marihuana secure transporter, or any other type of marihuana-related business licensed by the cannabis regulatory agency. MCL 205.903(g); MCL 333.27953(l).

⁴ “Marihuana retail licensee” means a marihuana retailer, marihuana microbusiness, or any other person authorized by the cannabis regulatory agency under the MRTMA, MCL 333.27951 to 333.27967, to sell or otherwise transfer marihuana to individuals who are 21 years of age or older. MCL 205.903(j).

⁵ “Provisioning center” means a licensee that is a commercial entity located in this state that purchases marihuana from a grower or processor and sells, supplies, or provides marihuana to registered qualifying patients, directly or through the patients’ registered primary caregivers. Provisioning center includes any commercial property where marihuana is sold at

15. The CRFTA levy “applies to all taxable sales and transfers of marihuana occurring on and after [January 1, 2026]. The date that a particular sale or transfer occurs for purposes of the wholesale tax is when ownership of the marihuana transfers from the wholesaler to the marihuana retail licensee or, for microbusinesses, the date that the marihuana product is packaged for retail.” RAB 2026-3, Section 1.

16. The CRFTA levy applies to all taxable transactions “in addition to all other taxes” imposed by the State. MCL 205.905.

17. The CRFTA levy may be directly passed on by the wholesaler to the retailer and collected from the retailer. RAB 2026-3, Section 2.A.

18. Thus, the buying entity bears the burden of the CRFTA levy.

19. Additionally, “the 24% wholesale marihuana tax applies in addition to the existing 10% excise tax on retail sales of adult-use marihuana imposed under the MRTMA, as well as the 6% state sales tax that is imposed on all non-exempt sales of tangible personal property.” RAB 2026-3, Applicability of Other Taxes.

20. The CRFTA levy requires any person subject to the CRFTA to “file periodic returns at the times and in the manner prescribed by the department and remit the total amount of tax due with each return.” MCL 205.909(1).

**COUNT I: THE TAX IMPOSED BY THE CRFTA IS IN FACT A DISGUISED
SALES TAX**

21. Plaintiff re-alleges and incorporates by reference the allegations made in paragraphs 1 through 20 above.

retail to registered qualifying patients or registered primary caregivers. MCL 205.903(l); MCL 333.27102(w).

22. Under the CRFTA, MCL 205.905 imposes a levy on the wholesale price of the marijuana sold or transferred.

23. Such levy though styled as an excise tax is—in substance—a sales tax.

24. The sales tax is an example of an ad valorem tax—that is, a tax based on the price of the item sold. Institute on Taxation and Economic Policy, *How Sales and Excise Taxes Work*.⁶

25. Under Michigan’s General Sales Tax Act, a sales tax is levied “upon and there shall be collected from all persons engaged in the business of making sales at retail,⁷ by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable as provided by law, less deductions allowed by this act.” See MCL 205.52(1).

26. The key hallmarks of a sales tax are: (1) a transfer in ownership of tangible personal property; (2) the transfer must be for a consideration; that is, something of value given in exchange for the property received; (3) the transfer must be in the ordinary course of the seller’s business; and (4) the purpose of the transfer must be for the buyer’s consumption or use. MCL 205.52(1); MCL 205.51(1)(b).

27. As our Michigan Supreme Court explained in *National Bank of Detroit v. Department of Revenue*, “it was the intention of the legislature that the general sales tax is a tax

⁶ Available at <https://archive.legmt.gov/content/Committees/Interim/2019-2020/Revenue/Meetings/July-2020/HJ-35/ITEP-How-Sales-and-Excise-Taxes-Work.pdf>.

⁷ “Sale at retail” or “retail sale” means a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent. MCL 205.51(1)(b).

whose economic burden falls chiefly on the consumer” and that “in this sense, economically speaking, that the general sales tax is a tax on the privilege of doing a retail business in the State.” *Nat’l Bank of Detroit v Dep’t of Revenue*, 334 Mich 132, 138; 54 NW2d 278 (1952).

28. Excise taxes are sales taxes that apply to particular products. Institute on Taxation and Economic Policy, *How Sales and Excise Taxes Work*.

29. The Michigan Supreme Court adopted the principle that “an excise is a tax imposed upon the performance of an act, the engaging in an occupation, or the enjoyment of a privilege.” *Dooley v City of Detroit*, 370 Mich 194, 206; 121 NW2d 724 (1963).

30. Unlike general sales taxes, excise taxes are usually applied on a per-unit basis instead of as a percentage of the purchase price. Institute on Taxation and Economic Policy, *How Sales and Excise Taxes Work*.

31. Sales taxes are inherently regressive because the lower a family’s income, the more of its income the family must spend on items subject to the tax. *Id.*

32. Excise taxes are often even more regressive than general sales taxes. This is because excise taxes are based on units sold, rather than the purchase price of any particular item. The same amount of tax is due whether a customer is purchasing premium-cost products, or much lower-cost versions of these same products. *Id.*

33. The CRFTA levy—in substance—is a sales tax, not an excise tax.

34. Despite the Legislature’s use of the term “excise tax” in the CRFTA, the CRFTA contains all the hallmarks of a sales tax.

35. Under the CRFTA, there is (1) a transfer in ownership of tangible personal property, i.e., marihuana; (2) the transfer is for consideration; (3) the transfer is in the ordinary

course of the seller's business; and (4) the purpose of the transfer is for the purchasing entity's consumption or use.

36. The Department of Treasury's guidance affirms that the CRFTA levy has several attributes of a sales tax.

37. If the CRFTA levy was a true excise tax, the tax would be completely borne by the seller/wholesaler.

38. Under a true excise tax regime, it is irrelevant whether the buyer returns its purchase, as an excise tax is on the privilege of selling a good.

39. Yet, under the CRFTA, the wholesaler is entitled to take a deduction on the CRFTA levy paid on a refunded transaction. See RAB 2026-3, Section 3, Ex. G ("In these cases, if the wholesaler provides a refund or credit to the retailer for the purchase price of the returned marijuana product, the wholesaler is entitled to deduct the tax paid on the transaction on its next quarterly wholesale tax return as an overpayment.").

40. Further, the CRFTA levy is imposed on the selling price, not on a per-unit basis as generally applied for excise taxes. See Institute on Taxation and Economic Policy, *How Sales and Excise Taxes Work*.

41. The CRFTA ultimately functions as a sales tax as the final consumer will bear the cost of the taxes paid by the buyer/retailer.

WHEREFORE, Plaintiffs respectfully request that this Court hold as follows:

- a. The CRFTA levy is not a true excise tax solely borne by the grower or processor;
- b. The CRFTA levy contains the key elements of a sales tax;
- c. The CRFTA levy as imposed functions as a sales tax;

- d. Plaintiffs shall have such other and further relief as this Court shall determine to be permitted by law and to which Plaintiff is justly entitled.

COUNT II: THE TAX IMPOSED BY THE CRFTA RESULTS IN AN EFFECTIVE TAX RATE BEYOND THE CONSTITUTIONALLY ALLOWABLE 6% SALES TAX RATE.

42. Plaintiff re-alleges and incorporates by reference the allegations made in paragraphs 1 through 41 above.

43. The Michigan Constitution forbids the imposition of a sales tax rate that exceeds 6%. MI Const, Article IX, Section 8.

44. “A constitutional limitation must be construed to effectuate, not to abolish, the protection sought by it to be afforded.” *Lockwood v Nims*, 357 Mich 517; 98 NW2d 753 (1959).

45. “At this point we take judicial notice of what every citizen of this State knows from his daily life. In actual operation of the tax, the accommodation devices are being given their intended effect. A tax of 4% upon retail sales is now being collected by retailers in every city and village and township of Michigan. The citizens of this State are under no illusion—the tax payable by them upon their retail purchases has been increased above the 3% rate despite the prohibition in their Constitution.” *Lockwood v Nims*, 357 Mich 517, 553–54; 98 NW2d 753 (1959).

46. Marihuana is subject to a sales tax and the MRTMA excise tax.⁸ MCL 205.52 (6% on gross proceeds); MCL 333.27963 (excise tax of 10% on the sales price).

⁸ The MRTMA excise tax levy is not at issue in the instant case.

47. With the enactment and imposition of the CRFTA levy, the Department will collect an additional 24% tax on the “wholesale price” of marihuana.

48. Because the 10% MRTMA excise tax and 6% sales tax are imposed on a sale price that will include the CRFTA levy, the product is taxed multiple times in a pyramid structure.

49. The CRFTA levy imposes a 24% levy and the 6% sales tax on the same product, resulting in impermissible tax pyramiding.

50. By applying the 6% sales tax on a sale price that includes the CRFTA levy, the State imposes an effective sales tax burden that exceeds the permissible rate of 6%.

51. The impact of the CRFTA levy results in an effective sales tax rate that exceeds the constitutional limit of 6%.

52. The chart below demonstrates that the CRFTA levy results in an effective sales tax rate above the constitutional 6% limit.

	Under CRFTA	Without CRFTA
Wholesale Price on Sale from Processor to Retailer	\$100	\$100
24% Excise Tax under CRFTA	\$24	-
Sales Price to Final Consumer	\$124	\$100
10% MRTMA Excise Tax	\$12.40	\$10
6% Sales Tax	\$7.44	\$6
Total Price Paid by Consumers	\$143.84	\$116
Effective Sales Tax Rate	28.85%	6%

53. The pyramiding of the CRFTA levy is material and central to this action because it is the re-taxation of that levy at the 6% rate that results in an effective sales tax rate borne by the purchaser to exceed 6%.

54. Stated differently, the 6% sales tax is not applied solely to the underlying sales price of the product, but also to the CRFTA levy embedded in that price.

55. As a result, purchasers pay tax not only on the product itself, but also on the amount of the CRFTA levy, increasing the total tax burden above the constitutional limit of 6%.

56. As the CRFTA levy is more akin to a sales tax than a true excise tax, this tax pyramiding imposes a greater and unlawful burden on consumers.

57. Defendant has no sufficient constitutional or statutory justification for imposing this increased tax burden through pyramiding the CRFTA levy into the sales tax base.

58. On its face, the challenged tax structure authorizes and requires a tax-on-tax regime that results in an effective rate above 6%.

59. Because the CRFTA authorizes the resulting over-taxation by its terms, it is facially unconstitutional.

WHEREFORE, Plaintiff respectfully requests that this Court hold as follows:

- a. The effective sales tax rate due to the CRFTA levy exceeds 6%;
- b. The CRFTA levy is unconstitutional and invalid;
- c. The Department shall refund the amounts illegally collected from taxpayers; and
- d. Plaintiff is entitled to costs and attorneys' fees; and

- e. Plaintiffs shall have such other and further relief as this Court shall determine to be permitted by law and to which Plaintiff is justly entitled.

COUNT III: THE CRFTA VIOLATES THE EQUAL PROTECTION CLAUSES OF THE U.S. AND MICHIGAN CONSTITUTIONS.

60. Plaintiff re-alleges and incorporates by reference the allegations made in paragraphs 1 through 59 above.

61. The Equal Protection Clause requires all states to govern impartially and not draw distinctions solely on differences that are not related to a legitimate governmental objective. US Const, Am XIV. “The State must proceed upon a rational basis and may not resort to a classification that is palpably arbitrary. The rule has often been stated to be that the classification must rest upon some ground of difference having a fair and substantial relation to the object of the legislation.” *Allied Stores of Ohio, Inc v Bowers*, 358 US 522, 527; 79 S Ct 437; 3 L Ed 2d 480 (1959) (internal quotation marks omitted).

62. The Michigan Constitution also requires that “[e]very tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.” MI Const Art 9, § 3. To comply with the Equal Protection Clause of the United States Constitution, the State and the Department are required to exercise “equal treatment of similarly situated taxpayers.” *Armco Steel Corp v Dep’t of Treasury, Corp Franchise Fee Div*, 419 Mich 582, 592; 358 NW2d 839 (1984).

63. The CRFTA levy violates the federal and state Equal Protection Clauses as the CRFTA levy treats retailers and consumers of marihuana sales differently from other taxpayers for purposes of road funding.

64. Taxpayers who do not sell or purchase marihuana do not contribute to the comprehensive road funding account.

65. The State has not demonstrated a need to treat taxpayers who sell and purchase marihuana differently from all other taxpayers.

66. There is no precedent to support the disparate treatment of taxpayers involved in the sale of marihuana.

67. The imposition of the CRFTA levy violates the federal and state Equal Protection Clauses by failing to treat Plaintiff equally to similarly situated taxpayers.

WHEREFORE, Plaintiff respectfully requests that this Court hold as follows:

- a. The CRFTA violates the Equal Protection Clauses of the U.S. and Michigan Constitutions;
- b. Department shall refund the amounts illegally collected from taxpayers under the CRFTA; and
- c. Plaintiffs shall have such other and further relief as this Court shall determine to be permitted by law and to which Plaintiff is justly entitled.

Respectfully submitted,

FOLEY & LARDNER LLP

Dated: March 27, 2026

By: /s/ Lynn A. Gandhi
Lynn A. Gandhi (P60466)
500 Woodward Avenue, Suite 2700
Detroit, Michigan 48226-3489
313-234-2715
lgandhi@foley.com
Attorney for Plaintiffs

VERIFICATION

1. I have full knowledge of, and am competent to testify to, all matters stated in this Verification.

2. I am presently a Manager for Mitten Distro X LLC, and I am authorized to execute this verification on Plaintiffs' behalfs.

3. The factual matters set forth in the Complaint are not all solely within my personal knowledge, but I am informed by the review of Plaintiffs' records and information received from individuals with personal knowledge of the facts contained therein.

4. I declare under the penalties of perjury that this Complaint has been examined by me and that its contents are true to the best of my information, knowledge, and belief. This verification is not intended to extend to any legal objections, arguments, or conclusions contained therein.

Further affiant sayeth not.

[SIGNATURE ON FOLLOWING PAGE]

Executed on 3/27/2026, 2026

DocuSigned by:
Joseph Thomas
C4C52A87655941E...
Mitten Distro X LLC

By: Joseph Thomas

Its: Manager

Subscribed and sworn to before me in Macomb County, acting in oakland

State of Michigan, this 27th day of March, 2026

Signature: Sara Edwards

Print Name: Sara Edwards

Notary Public, State of Michigan, County of Macomb

My commission expires 1-12-30

Acting in the County of Oakland

SARA EDWARDS
NOTARY PUBLIC, STATE OF MI
COUNTY OF MACOMB
MY COMMISSION EXPIRES Jan 12, 2030
ACTING IN COUNTY OF Oakland

