



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

NEWARK PROPERTY ASSOCIATION;
DELAWARE APARTMENT
ASSOCIATION; FIRST STATE
MANUFACTURED HOUSING
ASSOCIATION; DELAWARE HOTEL &
LODGING ASSOCIATION;

Plaintiffs,

v.

C.A. No. 2025-____ - ____

STATE OF DELAWARE; MATT MEYER,
Governor of the State of Delaware;
MARCUS HENRY, New Castle County
Executive, DAVID DEL GRANDE, Acting
Chief Financial Officer of New Castle
County; APPOQUINIMINK SCHOOL
DISTRICT BOARD OF EDUCATION;
BRANDYWINE SCHOOL DISTRICT
BOARD OF EDUCATION; CHRISTINA
SCHOOL DISTRICT BOARD OF
EDUCATION; COLONIAL SCHOOL
DISTRICT BOARD OF EDUCATION;
NCC VOCATIONAL TECHNICAL
SCHOOL DISTRICT BOARD OF
EDUCATION; RED CLAY
CONSOLIDATED SCHOOL DISTRICT
BOARD OF EDUCATION;

Defendants.

**VERIFIED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiffs Newark Property Association, Delaware Apartment Association,
First State Manufactured Housing Association, and Delaware Hotel & Lodging
Association, by and through their undersigned counsel, for their Verified Complaint
for Declaratory and Injunctive Relief against Defendants State of Delaware, Matt

Meyer, Marcus Henry, David Del Grande, and the Appoquinimink School District Board of Education, Brandywine School District Board of Education, Christina School District Board of Education, Colonial School District Board of Education, NCC Vocational Technical School District Board of Education, and Red Clay Consolidated School District Board of Education (collectively, the "School Boards" or "School Board Defendants"), allege as follows:

INTRODUCTION

1. This action stems from the General Assembly's hasty attempt to quell political backlash from homeowners who received higher property tax bills that more accurately reflect the market value of their real estate following New Castle County's first general reassessment in four decades. The General Assembly's action retroactively shifts tax burdens away from wealthy and upper-middle-class homeowners directly onto those least able to afford it—low-income renters and residents in manufactured homes. The consequences are extraordinary, and if the General Assembly's action is left undisturbed, the harms will be irreparable. For some small businesses that own apartment buildings, the retroactive tax rate increase—which in some cases *more than triples* their tax bill compared to last year's—will trigger loan defaults leading to foreclosure. And for many apartment and manufactured home residents, particularly those who are elderly or disabled and live on fixed incomes, even a modest increase in monthly expenses caused by the retroactive tax increase will require them to forgo critical healthcare to make ends meet. The General Assembly's regressive action is not just bad policy—it is unlawful

many times over. Indeed, just this week the Newark City Manager and City Solicitor advised the City Council to reject the adoption of a similar two-tier taxation system out of concern it would violate the Delaware Constitution's Uniformity Clause. The Court should temporarily enjoin the issuance of the unlawfully increased tax bills to prevent irreparable harms to Plaintiffs and the public.

2. In 2020, this Court ruled that “assessing properties using base-year valuations from three and four decades ago ... is not the same as assessing properties at their present fair market value.” *In re Delaware Pub. Schs. Litig.*, 239 A.3d 451, 464 (Del. Ch. 2020). Because over the past four decades “different properties have appreciated at different rates,” the County’s failure to conduct a general reassessment since 1983 violated the True Value Statute (9 Del. C. § 8306(a)) and the Uniformity Clause of the Delaware Constitution (Del. Const. Art. VIII, § 1). *Id.* New Castle County thereafter agreed to promptly complete a general reassessment so that “[o]wners whose properties have appreciated more pay” a tax reflective of the “present fair market value” of their property. *Id.*

3. The purpose of the reassessment was to align tax obligations with the true market value of properties. In particular, residential properties in Delaware have appreciated in market value at a rate that outpaces other types of real estate and the overall residential market in the United States. Thus, over the past four decades, the substantial majority of homeowners in New Castle County had been paying artificially low tax bills, bearing just a fraction of the tax burden their homes were actually worth as their homes were, in substantial measure, underassessed in

value. The reassessment ensured that these homes, and all other properties, were now assessed at their *actual* values, so that real estate owners bear a tax burden proportionate to the present value of their properties.

4. But it was not just residential homes that sustained increases in assessed value following the reassessment. All multi-family buildings, with four or more units, are classified as “non-residential” (that is, commercial) for tax purposes. The vast majority of these buildings saw very substantial increases in assessed values, and in turn, their property tax bills—in some cases, doubling or nearly tripling compared to last year’s bills. For example, the property tax bill for River Commons, an income-restricted apartment building in Wilmington, more than doubled (116% increase) compared to last year. For The Garrison, an apartment building in New Castle, the school district taxes alone increased from \$77,680.99 in 2024 to \$206,111.29 in 2025 after the reassessment, a 165% increase.

5. After property tax bills were revised to reflect the actual, present-day value of properties, many owners of single-family homes loudly decried the resulting increase in taxes. In response, the General Assembly rushed to enact legislation to shift tax burden away from homeowners onto commercial property owners. The General Assembly convened a special session on August 12, 2025, to enact a slew of bills late in the night while bypassing ordinary committee procedures, squeezing “weeks worth of proceedings in Dover into a single day.” Karl Baker, *State lawmakers ease residential property tax burden in testy special session*, Spotlight Delaware (Aug. 13, 2025), perma.cc/6WTQ-BFZC.

6. At issue here is one of those bills—House Bill 242, “An Act Relating to Local School Taxes in the 2025-2026 Tax Year” (HB242). The Act purports to authorize the School Board Defendants to retroactively recalculate the tax rate for the current tax year, this time differentiating between a residential and non-residential property tax rate. Under this process, HB242 permits the School Board Defendants to reset the non-residential rate to be no less than, and up to twice as high as, the residential property tax rate. In effect, HB242 authorizes the School Board Defendants to undo what the reassessment sought to accomplish—to ensure that property owners bear a proportionate tax burden relative to the values of their properties.

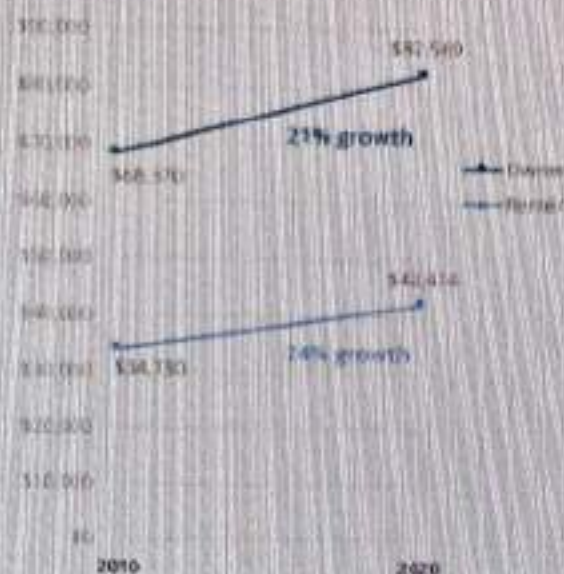
7. Within days of HB242’s enactment, the School Board Defendants approved new, higher tax rates—up to 80% higher than in the initial bills—for the 2025-2026 school year for non-residential property owners. The School Board Defendants delivered new tax warrants to the County, which will imminently send supplemental tax bills to non-residential property owners for the 2025-2026 school year that will be due at the end of November.

8. The School Board Defendants’ implementation of HB242 operates to shift tax burden away from wealthy and upper-middle-class homeowners, whose homes have drastically increased in market value, primarily onto the owners of multi-family buildings and other “non-residential” properties who themselves had already sustained an increase in tax burden due to the reassessment. After HB242, the tax bill for many of these properties will more than *triple* compared to last year,

increasing by hundreds of thousands of dollars. As just one example, The Garrison's school district tax bill will now exceed \$280,000, an increase of more than 260% in just one year.

9. Given the thin margins on which these businesses operate, the upshot is that if properties are to avoid financial ruin, these increased costs will have to be passed through to tenants through rent or a decrease in services, to the extent allowed under state law. But renters generally have much lower incomes than homeowners and are less equipped to bear unexpected increases in housing costs. Nearly 40% of Delaware renters have incomes below 50% of the area median income (AMI)—that is, lower than \$33,000 annually for a two-person household. Delaware State Housing Authority, *Statewide Housing Needs Assessment* (Nov. 2023), perma.cc/6RNM-KMLV, at Section I, pp. 3, 31. The median Delaware homeowner, on the other hand, has nearly *double* the income of the median renter, as the figure below illustrates:

I



Id. at Section I, p. 24. Fig. I-23 (Median Income by Tenure, Delaware, 2010 and 2020). Half of Delaware renters, moreover, are already cost burdened—paying more than 30% of their monthly income on housing—compared to only 21% of homeowners. *Id.* at Section III, p. 5.

10. For a manufactured home resident like Lorraine Burns, who lives on a fixed social security income of less than \$2,000 per month, even a \$45 increase in monthly rent would require cutting back on doctor visits, medications, and even food. Or for another manufactured home resident like Evelyn Marshall, who is already cutting back on air conditioning to keep bills down, a \$20 increase in monthly rent would mean having to cut back on certain medications and treatments for her degenerative health conditions. That is, as the Newark City Manager explained in proposing to reject a similar policy at the local level, HB242 is a “regressive” action that shifts tax burden away from those who can most afford it onto those who can

least afford it. Josh Shannon, *Newark opts not to adjust tax rate to address reassessment problems*, Newark Post (Sept. 9, 2025), perma.cc/MF6F-79TY.

11. Plaintiffs are associations whose members own properties classified as non-residential for tax purposes—from apartment buildings to hotels to land used for manufactured homes. Plaintiffs' members will bear the brunt of the consequences from HB242. Without interim relief preserving the status quo—that is, maintaining the tax obligations presently due on September 30 under the pre-HB242 tax rates—the downstream consequences of HB242's retroactive, heightened tax rate will imminently cause numerous irreparable harms to Plaintiffs' members, including the permanent loss of their properties through foreclosure.

12. The drastic, unexpected increased costs on members' businesses associated with the retroactive tax rate increases will require immediate diversion of substantial funds. At a minimum, this disruption of cash flow will severely impair business operations, forcing many members to stall ongoing property improvement projects at the expense of their residents, causing members to permanently miss out on business opportunities.

13. Worse, for some properties, like The Garrison, the retroactive tax expense will likely lead to default and foreclosure. These properties, due to softening tenant demand, are already operating on thin or non-existent margins at present. They simply do not have the funds, or the ability to generate the funds, to make such a large, unexpected payment, without triggering acceleration provisions in their loans requiring them to repay the loans sooner or in full. That practically means having to

generate hundreds of thousands, if not millions of dollars, to immediately pay back property loans. Such a task is simply impossible for some properties, and it will likely trigger imminent loan defaults and foreclosures, resulting in a permanent loss of these members' properties.

14. These irreparable harms cannot be later compensated. And even if Plaintiffs ultimately prevail in their suit, it is doubtful that their members could recoup their overpayments of unlawful taxes—the school districts will have spent the funds by then.

15. Defendants' implementation of HB242 is unlawful for several reasons. To start with, HB242 is unlawful on its face: it violates two provisions in the Delaware Constitution—the Uniformity Clause and the Constitution's prohibition on retroactive tax increases. Additionally, HB242 does not displace the longstanding statutory requirement that only a majority of voters in a referendum special election can authorize an increase in a school district's property tax rate. School districts therefore must still seek approval in a special election for their increased rates, notwithstanding HB242. Finally, the Act upends the recent assessments for non-residential properties by diminishing their values from retroactively increasing tax burden, violating the statutory requirement that they be assessed at their fair market values and creating a substantial due process problem.

16. The balance of the equities heavily favors interim relief. Because Defendants' *ultra vires* acts cannot later be unscrambled, the Court should temporarily preserve the status quo until it decides the merits. Temporary relief

staves off any irreparable harm to Plaintiffs and their tenants. And it does not prejudice Defendants—the school districts will receive the same amount of tax revenue regardless.

PARTIES

17. Plaintiff Newark Landlord Association d/b/a Newark Property Association is a non-profit trade organization incorporated under the laws of the State of Delaware representing property owners in the City of Newark. Its mission is to build beneficial relationships between property owners, tenants, the City of Newark, and service providers for the enhancement of the City of Newark community. All of its members who own properties classified as non-residential for tax purposes will receive retroactive tax increases under HB242. It maintains its principal office at 58 Corbit St., Newark, DE 19711.

18. Plaintiff Delaware Apartment Association is a non-profit trade organization incorporated under the laws of the State of Delaware representing multi-family housing owners, managers, and developers. Its mission is to advance the rental housing industry through education, legislative and informational support, and to help its members successfully operate while contributing to their communities. Its members who own apartment buildings within the school districts located entirely within New Castle County will receive retroactive tax increases under HB242. It maintains a mailing address at 125 Rickey Blvd., PO Box 1086, Bear, DE 19701.

19. Plaintiff First State Manufactured Housing Association is a non-profit organization representing the interests of the manufactured housing market in

Delaware. Its mission is to maintain and enhance the climate for sound growth of the manufactured housing market in Delaware, thereby assuring that its citizens can participate in and enjoy the privilege of home ownership. Its principal place of business is 1675 S. State Street, Suite E, Dover, DE 19901.

20. Plaintiff Delaware Hotel and Lodging Association is a non-profit trade organization incorporated under the laws of the State of Delaware. It represents forty-five member hotels in Delaware. Its mission is to bring together the hospitality industry to achieve common goals, including through educating business leaders and lawmakers on legislative actions and needs. Its principal place of business is 1612 N. Dupont Hwy., New Castle, DE 19720.

21. Defendant State of Delaware is a sovereign state of the United States of America. The State of Delaware is represented by the Delaware Attorney General, who is the "chief law officer of the State." *Darling Apartment Co. v. Springer*, 22 A.2d 397, 403 (Del. 1941); see 29 Del. C. § 2504.

22. Defendant [Matt Meyer is Governor of the State of Delaware. He is obligated by the Delaware Constitution to take care that the laws of Delaware are faithfully executed in accordance with the Delaware Constitution.

23. Defendant Marcus Henry is the County Executive for New Castle County. He oversees New Castle County's executive and administrative agencies, including the Office of Finance, and ensures that the laws enacted by the State of Delaware that are required to be administered by the County are executed.

24. Defendant David Del Grande is the Acting Chief Financial Officer for New Castle County. He is responsible for the collection of taxes due to New Castle County and the school districts located therein.

25. Defendant Appoquinimink School District Board of Education serves as a trustee and governing body for the Appoquinimink School District, which is located entirely in New Castle County. The Board has fiscal responsibility for the school district.

26. Defendant Brandywine School District Board of Education serves as a trustee and governing body for the Brandywine School District, which is located entirely in New Castle County. The Board has fiscal responsibility for the school district.

27. Defendant Christina School District Board of Education serves as a trustee and governing body for the Christina School District, which is located entirely in New Castle County. The Board has fiscal responsibility for the school district.

28. Defendant Colonial School District Board of Education serves as a trustee and governing body for the Colonial School District, which is located entirely in New Castle County. The Board has fiscal responsibility for the school district.

29. Defendant NCC Vocational Technical School District Board of Education serves as a trustee and governing body for the NCC Vocational Technical School District, which is located entirely in New Castle County. The Board has fiscal responsibility for the school district.

30. Defendant Red Clay Consolidated School District Board of Education serves as a trustee and governing body for the Red Clay Consolidated School District, which is located entirely in New Castle County. The Board has fiscal responsibility for the school district.

31. All Defendants are sued only in their official capacities.

JURISDICTION

32. This Court has jurisdiction under 10 *Del. C.* § 341. Plaintiffs seek an interim injunction staying Defendants' actions under HB242 pending adjudication on the merits because they will be irreparably harmed absent such relief.

33. This Court also has jurisdiction to issue a declaratory judgment under 10 *Del. C.* §§ 6501 and 6502.

34. Venue is proper in this Court and the Court has personal jurisdiction over the Defendants because Defendants are State bodies and/or are individuals sued in their official capacities as agents of the State of Delaware.

FACTS

A. Delaware public school funding and local property taxes

35. Delaware public schools receive funding from a combination of appropriations from the General Assembly and local property tax revenue. See generally 14 *Del. C.* §§ 1701, 1902.

36. The General Assembly delegates to the Boards of Education in each school district the authority to "levy and collect additional taxes for school purposes

upon the assessed value of all taxable real estate in the district," with certain exceptions. 14 *Del. C.* § 1902.

37. This delegated authority contains a specific limitation: "[b]efore any school board levies a tax under § 1902 of this title, it shall determine whether the tax shall be on the basis of a specified amount or of a specified rate of taxation and shall call a special election to be held" to seek approval of that amount or rate. 14 *Del. C.* § 1903.

38. After this amount or rate is set, school boards may levy that same tax annually without "further election or referendum." 14 *Del. C.* § 1914.

39. But if the school boards wish to impose "additional tax," a majority referendum vote under § 1903 is again required. 14 *Del. C.* § 1911.

40. The amount of school district property tax an individual property owner pays depends on two variables: the tax rate set by the school board, and a property's assessed value.

41. The Delaware Code provides that "[a]ll property subject to assessment shall be assessed at its fair market value as of the date of the most recent reassessment base year in the county." 9 *Del. C.* § 8306(a).

42. The General Assembly specifically addressed how school boards should handle reassessments when it comes to levying local property taxes: if there is "a subsequent general reassessment of all real estate" after voter approval of a tax under § 1903, "the local board of education of each such local school district shall calculate a new real estate tax rate which, at its maximum, would realize no more than [a] 10%

increase in actual revenue over the revenue derived by real estate tax levied in the fiscal year immediately preceding such reassessed real estate valuation." 14 *Del. C.* § 1916(b).

43. In other words, school boards can take advantage of the increased assessed property values to increase their total tax revenue by up to 10% without voter approval.

44. But the school board "shall" set the "new real estate tax rate" to achieve no more than this amount of revenue "no later than the second Thursday in July," when it must "deliver its warrant, with a duplicate of the assessment list, to the receiver of taxes and county treasurer of the county or counties where the district is located." 14 *Del. C.* § 1916(b), (d).

45. "Any subsequent increase in rate of taxation shall be achieved only by an election of the qualified voters in such local school district according to the procedures in § 1903 of this title." 14 *Del. C.* § 1916(b).

B. The 2025 general reassessment

46. This past year, New Castle County conducted its first general reassessment of property values since 1983. New Castle County agreed to conduct the reassessment in the wake of this Court's holding that county officials' practice of assessing property values using valuations from decades earlier violated the True Value Statute (9 *Del. C.* § 8306(a)) and the Uniformity Clause of the Delaware Constitution (Del. Const. Art. VIII, § 1). *In re Delaware Pub. Schs. Litig.*, 239 A.3d at

464. The purpose of the reassessment was to align tax obligations with the true market value of the properties.

47. The reassessment valued non-residential properties using an “income approach.” Tyler Technologies, *New Castle County, DE Mass Appraisal of Real Property 2025 Reassessment* (Apr. 24, 2025), at 8, perma.cc/MYW6-RXTA (“Reassessment Report”). This approach values a property based on “what an informed investor would pay for the income stream associated with” the property. *Id.*

48. As part of the reassessment process, all taxpayers received tentative valuation notices in fall 2024 informing them of the values assessed by the contractor New Castle County hired to complete the reassessment. Reassessment Report at 2. Taxpayers had the opportunity to contest the tentative assessment through an informal value review hearing before the property tax roll was certified. *Id.*

49. Until March 31, 2025, taxpayers could appeal the reassessed value of their property to the Board of Assessment Review. See New Castle County Property Reassessment, *Formal Appeal Process - Frequently Asked Questions*, perma.cc/V5WA-XLT4.

50. New Castle County made the reassessed values effective for Fiscal Year 2026, which began on July 1, 2025. See New Castle County Property Reassessment Frequently Asked Questions, perma.cc/V87N-KD9U.

51. Following the reassessment, the School Board Defendants each set a “new real estate tax rate” to achieve a determined amount of allowable revenue. 14 *Del. C. § 1916(b)*.

52. Each School Board Defendant “deliver[ed] its warrant, with a duplicate of the assessment list, to the receiver of taxes and county treasurer of” New Castle County. 14 *Del. C.* § 1916(d).

53. New Castle County mailed these tax bills to taxpayers the week of July 21, 2025.

54. Plaintiffs’ members received tax bills in July reflecting their property’s newly assessed values and the school district’s newly calculated tax rate following the reassessment.

55. While the impact of the reassessment varied across types of non-residential properties, for many of Plaintiffs’ members, especially those who own multi-family unit buildings, their newly assessed property values drastically increased, even relative to the overall average market increase across all properties. Reassessment Report at 18.

56. For example, the New Castle County and Christina School District tax bill for River Commons, a multi-family unit building in Wilmington that participates in the low-income housing tax credit program, increased 116% compared to last year, just based on the reassessed value.

57. As another example, the Colonial School District tax bill for an apartment building in New Castle, The Garrison, nearly tripled—going from \$77,680.99 in 2024 to \$206,111.29 in 2025 after the reassessment.

58. These are just two examples of many. Numerous Plaintiffs' members received a substantially higher tax bill as a result of the reassessment, some more than twice as large.

59. These tax bills require full payment by September 30, 2025.

C. The General Assembly enacts HB242 in a special one-day session

60. The General Assembly convened a special one-day session on August 12, 2025, to address concerns by residential property owners whose tax bills increased following the reassessment.

61. The General Assembly bypassed the ordinary committee process in considering new legislation during this special session.

62. Among other bills, the General Assembly enacted, and the Governor signed into law House Bill 242, as amended by House Amendment No. 1, entitled "An Act Relating to Local School Taxes in the 2025-2026 School Year" (HB242).

63. Under the statute, "[t]he school board of a school district located entirely in New Castle County may, for the 2025-2026 school tax year, reset the local school tax rate using a residential and a non-residential tax rate." *Id.* § 1(1).

64. The statute requires "[t]he non-residential tax rate" to be "at least equal to the residential tax rate" and not "more than 2 times the residential tax rate." *Id.*

65. But the "total amount of revenue projected to be collected through use of the residential and non-residential tax rates may not exceed the total amount of revenue the district was projected to collect under its original 2025-2026 tax warrant." *Id.*

66. In other words, HB242 putatively authorizes the School Board Defendants to redistribute the tax burden from residential to non-residential property owners. It does not authorize the collection of any additional tax revenue.

67. The statute requires the School Boards to report these "[n]ew tax rates ... to the County ... with a new warrant not later than 10 business days from the effective date of this Act." *Id.* § 1(2).

68. Because New Castle County already issued tax bills for this year, HB242 provides that the County "shall supplement any tax bill already issued to taxpayers ... and adjust initial billing using the new local school tax rates set by the district," extending the deadline to pay these new bills until November 30, 2025. *Id.* §1(3).

D. The School Board Defendants deliver new, retroactive tax warrants with higher tax rates for non-residential properties

69. On August 21, 2025, the Appoquinimink School District Board of Education approved an 80% increase in the tax rate of non-residential properties. It reduced the tax rate for homeowners from 63.75 cents per hundred dollars of assessed value to 57.69 cents per hundred dollars, while raising the non-residential rate to \$1.15 per hundred dollars, making the non-residential rate 99% higher than the residential rate.

70. On August 18, 2025, the Brandywine School District Board of Education approved a 56% increase in the tax rate of non-residential properties. It reduced the tax rate for homeowners from 66.61 cents per hundred dollars of assessed value to

56.09 cents per hundred dollars, while increasing the non-residential rate to \$1.0382 per hundred dollars, making the non-residential rate 85% higher than the residential rate.

71. On August 19, 2025, the Colonial School District Board of Education approved a 35% increase in the tax rate of non-residential properties. It reduced the tax rate for homeowners from 55.17 cents per hundred dollars of assessed value to 45.23 cents per hundred dollars, while raising the non-residential rate to 74.294 cents per hundred dollars, making the non-residential rate 64% higher than the residential rate.

72. On August 21, 2025, the Christina School District Board of Education approved a 51% increase in the tax rate of non-residential properties. It reduced the tax rate for homeowners from 79.97 cents per hundred dollars of assessed value to 61.50 cents per hundred dollars, while raising the non-residential rate to \$1.2102 per hundred dollars, making the non-residential rate 97% higher than the residential rate.

73. On August 20, 2025, the Red Clay Consolidated School District Board of Education approved a 48% increase in the tax rate of non-residential properties. It reduced the tax rate for homeowners from 67.19 cents per hundred dollars of assessed value to 59.18 cents per hundred dollars, while raising the non-residential rate to 99.237 cents per hundred dollars, making the non-residential rate 68% higher than the residential rate.

74. On August 25, 2025, the NCC Vocational Technical School District Board of Education approved a 40% increase in the tax rate of non-residential properties. It reduced the tax rate for homeowners from 4.3 cents per hundred dollars of assessed value to 3.7 cents per hundred dollars, while raising the non-residential rate to 6 cents per hundred dollars, making the non-residential rate 62% higher than the residential rate.

75. The School Board Defendants reported those “[n]ew tax rates” and “delivered ... new warrant[s]” to New Castle County. HB242 § 1(2).

76. “Upon receipt of” these “new warrant[s],” New Castle County will imminently be “supplement[ing]” the “tax bill already issued to taxpayers” who own non-residential property for the 2025-2026 tax year. HB242 § 1(3). New Castle County has stated it intends to mail these supplemental bills before the end of September 2025.

77. The intent of these new rates was to “reset residential properties to once again make up about” the same percentage “of the total tax burden” as in previous years. Jacob Owens, *Delaware Explained: Revised school district taxes* (Aug. 22, 2025), perma.cc/H73R-XVQK.

78. But the necessary counterpart of that intent is a disproportionate shift of tax burden to properties classified as non-residential. In Christina School District, for example, while non-residential properties accounted for just 31% of assessed property value in the district, they now will bear nearly 45% of the tax burden to

bring residential tax burden back to pre-reassessment levels, equating to a \$32 million shift in tax burden from residential to non-residential property owners.

79. In Brandywine School District, moreover, apartments comprised 4.5% of the tax burden before reassessment. But after the Brandywine School Board increased non-residential tax rates under HB242, in order to maintain the same residential tax burden prior to reassessment, apartments now comprise 6.5% of the tax burden, nearly a 50% increase.

80. For many of Plaintiffs' members who own multi-family unit buildings, this means that they will now endure even greater tax burden on top of the increased tax burden they already sustained during the reassessment.

81. For example, following the HB242 retroactive tax increases, the school district tax bill for The Garrison will now exceed \$280,000, even though the initial 2025 tax bill of \$206,111.29 was already nearly three times as much as last year. That is, the school district property taxes will have increased more than 260% in just one year, from \$77,680.99 in 2024 to more than \$280,000.

E. HB242 and Defendants' implementation of it are unlawful

82. The Defendants' implementation of HB242 is unlawful for at least four independent reasons.

83. *First*, the Act violates the Delaware Constitution's Uniformity Clause by unreasonably treating taxpayers differently.

84. The Uniformity Clause of the Delaware Constitution requires "[a]ll taxes shall be uniform upon the same class of subjects within the territorial limits of

the authority levying the tax.” Del. Const. Art. VIII § 1. “The Delaware Supreme Court has held that the Uniformity Clause requires all taxpayers within the same general class to be treated the same.” *In re: Delaware Pub. Schs. Litig.*, 239 A.3d 451, 463 (Del. Ch. 2020).

85. HB242 defies this protection by explicitly treating two classes of property differently—residential versus non-residential properties.

86. HB242 permits the School Board Defendants to impose higher tax rates on non-residential properties without reason.

87. This type of “[d]eliberate discrimination between the taxpayers” cannot be reconciled with the Uniformity Clause. *Brennan v. Black*, 104 A.2d 777, 797 (1954).

88. Indeed, just this week, the Newark City Council rejected a proposal to similarly distinguish between residential and non-residential tax rates for city property taxes because it “believe[d] that split rates might violate the Uniformity Clause of the Delaware Constitution.” Josh Shannon, *Newark opts not to adjust tax rate to address reassessment problems*, Newark Post (Sept. 9, 2025), perma.cc/MF6F-79TY. As the Newark City Manager recognized, the Uniformity Clause expressly authorizes counties and municipalities to “exempt from ... taxation such property ... as in their opinion will best promote the public welfare,” implying that any other property classifications cannot survive constitutional scrutiny. Del. Const. Art. VIII § 1; see City of Newark, *Potential Changes to 2025 Property Tax Structure* (Sept. 3, 2025), perma.cc/9PMK-7K4N.

89. HB242 also treats differently the class of properties it intended to help—those that sustained a substantial increase in tax burden due to reassessment.

90. The category of non-residential properties is diverse—ranging from apartments to small businesses to industrial buildings. Accordingly, the changes in assessed values for certain non-residential properties varied greatly. Some, such as apartment buildings, increased significantly in value.

91. Simply distinguishing residential from non-residential properties violates the Uniformity Clause by treating differently properties that saw the most significant increase in assessed value. While such residential properties have their tax burden eased, the most valuable non-residential properties, which saw similar increases in tax burden, now face even greater tax burden under HB242.

92. Many of the non-residential properties are apartment buildings, meaning that the increased tax burden under HB242 is likely to be borne by Delaware families who rent rather than own their own homes, in the form of higher rents. HB242 eases the tax burden on New Castle County homeowners by concentrating the burden on County residents who rent.

93. *Second*, HB242 violates the Delaware Constitution's prohibition on retroactive tax increases.

94. Article VIII § 9 of the Delaware Constitution provides that "[a]ny law which shall have the effect of increasing the rates of taxation on personal income for any year or part thereof prior to the date of the enactment thereof ... shall be void."

95. HB242 imposes a retroactive increase in tax rate. The School Board Defendants already issued tax warrants for the 2025-2026 school year (14 *Del. C.* § 1916(d)). HB242 putatively authorizes a subsequent tax rate increase for this same school year, which for tax purposes, begins on July 1 to coincide with the Fiscal Year 2026. HB242 § 1(1); *see generally* Fiscal Year 2026 Appropriations Act, 85 Del. Laws c.62 (2025) (making appropriations for “the fiscal year ending June 30, 2026”); *see also* Colonial School District, *Tax Rate Proposal Fiscal Year 2026* (July 8, 2025), perma.cc/X854-335V, at 1 (showing that the previously issued tax warrants cover a taxpayer’s obligations beginning on “July 1, 2025”).

96. HB242 became effective on the date of its enactment—August 12, 2025.

97. Non-residential properties were assessed under an “income approach,” which estimates their value based on “the income and expense stream of a property.” Reassessment Report at 8.

98. By authorizing the School Board Defendants to go back and raise tax rates for certain taxpayers’ “income” for “part” of the “year ... prior to the date of the enactment”—that is, beginning on July 1, 2025—the Act “shall be void.” Del. Const. Art. VIII § 9.

99. *Third*, the School Board Defendants unlawfully increased the taxation rate without a referendum vote.

100. The “only tool” school boards have to increase tax rates is “the referendum process.” *Young v. Red Clay Consol. Sch. Dist.*, 159 A.3d 713, 720-726 (Del. Ch. 2017); *see generally* 14 *Del. C.* §§ 1903, 1911.

101. Following a "general reassessment of all real estate," the School Board Defendants "shall calculate a new real estate tax rate which, at its maximum, would realize no more than a 10% increase in actual revenue over the revenue derived by real estate tax levied in the fiscal year immediately preceding such reassessed real estate valuation." 14 Del. C. § 1916(b).

102. But if a School Board Defendant wishes to levy "[a]ny subsequent increase in rate of taxation" after it first resets the rates following a general reassessment, such increase "shall be achieved only by an election of the qualified voters in such local school district according to the procedures in § 1903 of this title." 14 Del. C. § 1916(b) (emphasis added).

103. The School Board Defendants had already set "a new real estate tax rate" following the reassessment before the July deadline. 14 Del. C. § 1916(b), (d).

104. The tax bills associated with this "new real estate tax rate" were already sent to taxpayers and are due at the end of September. 14 Del. C. § 1916(b).

105. The School Board Defendants' approval to subsequently increase tax rates for non-residential properties thus violates the plain text of 14 Del. C. § 1916(b) because they did not hold "an election of the qualified voters ... according to the procedures in § 1903" to receive voter approval of the "subsequent increase in rate of taxation."

106. *Fourth*, the School Board Defendants' retroactive imposition of a heightened, differential tax rate for non-residential properties renders the recent

assessments for those properties invalid as they no longer reflect their “fair market value[s].”

107. 9 Del. C. § 8306(a) requires that a property “shall be assessed at its fair market value.”

108. Because non-residential properties were assessed under the “income approach,” which considers “what an informed investor would pay for the income stream associated with a particular piece of real estate,” it necessarily follows that a differential tax rate affects a non-residential property’s income, and thus “what an informed investor would pay” for it. Reassessment Report at 8.

109. As conducted, the reassessment did not capture the subsequent increase in tax burden for non-residential properties under HB242 because the assumption was that all properties would be treated the same and bear the same tax rate.

110. The deadline for appealing a property’s assessed value has long passed—appeals in New Castle County were due to be filed on March 31, 2025.

111. The reassessments therefore no longer reflect the “fair market value” of non-residential properties. See 9 Del. C. § 8306(a).

112. Defendants’ implementation of HB242—taking action to retroactively increase the tax rate for non-residential properties—is thus unconstitutional, contrary to statute, and *ultra vires*.

F. Plaintiffs will be irreparably harmed absent interim relief

113. Plaintiffs and their members will imminently be irreparably harmed unless the Court grants interim relief preserving the status quo and temporarily enjoining implementation of HB242.

114. Some of Plaintiffs' members' properties, particularly apartment buildings, have recently been suffering from softening rental demand. As these businesses typically run on thin margins to generate positive cash flow, some properties have been struggling to turn a profit recently due to lower occupancy. The owners of these properties have had to decrease rents and invest in property improvements to try to maintain occupancy levels high enough to generate positive net income.

115. Plaintiffs' members, like most businesses, rely in part on loaned funds for operating and investment capital to grow and sustain their businesses.

116. Virtually all of these loans have some type of acceleration provision(s), which, if triggered, requires the debt to be repaid on an accelerated timeframe, if not immediately.

117. For example, many of Plaintiffs' members have loans which require their property to maintain a certain minimum Debt Service Coverage Ratio (DSCR). The DSCR measures a debtor's ability to generate sufficient cash to cover its debt obligations. It is calculated by dividing the net operating income by total debt service.

118. Many of Plaintiffs' members' loans also have provisions that require a property to maintain a loan-to-value (LTV) ratio, a metric lenders use to assess risk,

below a certain maximum. This metric is calculated by dividing the remaining loan balance by the property's market value.

119. If either of these metrics falls out of compliance with the standard required under Plaintiffs' members' loans, acceleration or default is triggered, requiring the debtor to repay the loan more quickly or all at once. And if the debtor cannot make such a compressed, substantial repayment to the lender, the lender will likely exercise its right to foreclose on the property.

120. The unexpected, substantial tax increase under HB242 will affect both of these ratios for all properties.

121. The large tax expense itself will hamper the net income of properties. For those properties that were already struggling to generate positive net income, this sudden, enormous expense will drive the DSCR below their loan's required threshold, triggering acceleration of repayment or default.

122. Similarly, such a sizeable increase in tax burden undermines the market value of the Plaintiffs' members' properties, increasing the LTV ratio. For some properties that were substantially levered, this change will be enough to trigger default under loan provisions that require the property maintain a certain LTV ratio.

123. Once these provisions are triggered, the debtors will have to divert and/or collect enormous funds to repay the loan.

124. At a minimum, such an unexpected, substantial diversion of cash will disrupt ongoing investments and property improvements, causing Plaintiffs' members to permanently miss out on business opportunities, such as new property

investments and tenants. These "lost opportunit[ies]" are, "of course, an irreparable harm," as they "cannot adequately be compensated by a monetary award alone." *Bali v. Christiana Care Health Servs., Inc.*, 1999 WL 413303, *4-5 (Del. Ch. 1999).

125. For some of Plaintiffs' members, it will be impossible to make the required payments. The properties that were already struggling cannot simply cover this expense by immediately raising rent to generate more revenue—they were already decreasing rent just to maintain occupancy. These members will likely permanently lose their properties to foreclosure.

126. For example, after the HB242 tax expense, The Garrison will no longer be economically self-sustaining. Combined with the timing of its payments against the principal value of the property, it is unlikely that The Garrison will have enough cash flow to cover its full debt service payments, which will trigger default. At that point, the lender will either take possession of the property through foreclosure, or the owner will have to sell The Garrison, likely at a loss.

127. As another example, the substantial, unanticipated tax expense under HB242 will trigger a loan covenant breach that could lead to the foreclosure of Spring Crossing Apartments at 41 Winterhaven Dr., Newark, DE 19702, a 363-unit apartment building. The enormous HB242 retroactive tax expense will drive the DSCR for the property too low and trigger a breach of the DSCR loan covenant. That breach would require the owner to immediately pay down the remainder of the loan balance. If it cannot come up with the funds to do so, the lender is likely to foreclose on the property.

128. Separately, some members are negotiating or in the process of executing deals to purchase or sell properties classified as non-residential for tax purposes. The retroactive tax increase under HB242 threatens to thwart these deals. Offers made to purchase Plaintiffs' members' properties that would likely have been accepted are now likely void and forever lost after the enactment of HB242, which materially changes the appraisal value of a property.

129. For instance, the owner of Spring Crossing Apartments received an offer in August to purchase the property, which the owner likely would have accepted. But the purchaser is still within the due diligence period, and after the implementation of HB242, it is unlikely that the offer is still valid or that the purchaser would maintain the offer.

130. Plaintiffs will also be irreparably harmed absent interim relief preserving the status quo because they will not be able to recoup their tax overpayment even if they ultimately prevail on their claims.

131. The supplemental tax bills that will be issued under HB242 will be due in full on November 30, 2025. HB242 § 1(2).

132. By the time the merits of this case are resolved, many if not all non-residential property owners will have paid their tax bill.

133. There is a finite pool of tax funds, which will be expended during the 2025-2026 school year.

134. Because the tax rate changes under HB242 cannot increase “[t]he total amount of revenue” collected, any increases in the tax rate for non-residential properties must be offset by lowering the rates for residential properties.

135. That means, once these funds are expended, the only way Defendants can obtain the funds to repay Plaintiffs the amount they overpaid would be by requiring residential property owners to pay a supplemental tax bill. But such action would face the same legal obstacles Plaintiffs raise here—it would be a supplemental, retroactive tax rate increase.

136. Because it is thus “unlikely that disputed payments made pursuant” to HB242 “could be recovered,” Plaintiffs will suffer irreparable harm absent interim relief staying the implementation of HB242. *Ledbetter v. Baldwin*, 479 U.S. 1309, 1310 (1986); see *Natl Insts. of Health v. Am. Pub. Health Ass’n*, __ S. Ct. __, 2025 WL 2415669 (Aug. 21, 2025) (per curiam) (reasoning that “irreparable harm” is satisfied if “funds ‘cannot be recouped’ and are thus ‘irrevocably expended’” (quoting *Philip Morris USA, Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in chambers))).

137. The balance of equities strongly favors interim relief preserving the status quo. The amount of total tax revenue Defendants collect is the same, whether or not they implement HB242. But without an interim stay, Plaintiffs likely could not recover at all even if they prevail.

138. Plaintiffs have raised colorable claims that the tax rate increases for non-residential properties under HB242 are unlawful.

139. The Court should therefore issue a temporary restraining order or preliminary injunction staying Defendants' implementation of HB242 pending review on the merits.

FIRST COUNT

Declaratory Judgment and Injunctive Relief: HB242 is unlawful on its face and as applied for violating the Uniformity Clause, Delaware Constitution Article VIII § 1

140. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

141. Article VIII § 1 of the Delaware Constitution requires that "[a]ll taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax."

142. HB242 defies this constitutional limitation by explicitly discriminating between residential and non-residential properties in setting school district tax rates. This "[d]eliberate discrimination between the taxpayers" cannot be reconciled with the Uniformity Clause. *Brennan v. Black*, 104 A.2d 777, 797 (1954).

143. The Act further defies this constitutional limitation by treating differently properties that incurred the most significant assessment increase—while HB242 eases the tax burden for such residential properties, it correspondingly imposes an even greater tax burden on such non-residential properties.

144. Because HB242 does not treat "all taxpayers within the same general class ... the same," it is unlawful on its face. *In re: Delaware Pub. Schs. Litig.*, 239 A.3d 451, 463 (Del. Ch. 2020).

145. HB242 is also unlawful under the Uniformity Clause as applied by the School Board Defendants, who have implemented the differential tax rates between residential and non-residential properties in an unreasonable manner.

146. Plaintiffs are entitled to a declaratory judgment that HB242 is unlawful on its face and as-applied by Defendants. See 10 *Del. C.* § 6501.

147. Plaintiffs have no adequate remedy at law.

SECOND COUNT

Declaratory Judgment and Injunctive Relief: HB242 is void for violating the prohibition on retroactive taxes, Delaware Constitution Article VIII § 9

148. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

149. Article VIII § 9 of the Delaware Constitution provides that “[a]ny law which shall have the effect of increasing the rates of taxation on personal income for any year or part thereof prior to the date of the enactment thereof ... shall be void.”

150. Prior to the enactment of HB242, the School Board Defendants issued tax warrants for the 2025-2026 school year, which cover the Fiscal Year 2026, running from July 1, 2025 to June 30, 2026. 14 *Del. C.* § 1916(d).

151. Prior to the enactment of HB242, New Castle County issued bills to taxpayers for the Fiscal Year 2026, which are due on September 30, 2025.

152. The Governor signed HB242 into law on August 12, 2025. The Act went into effect on that date.

153. HB242 authorizes the School Board Defendants to raise the tax rates for non-residential property owners for the 2025-2026 school year, which has “the effect of increasing the rates of taxation on personal income” for “part” of the “year ... prior to the date of the enactment.” Del. Const. Art. VIII § 9.

154. The assessed values of non-residential properties were based on an “income approach,” which measured the “income stream associated with” the taxpayer’s property. Reassessment Report at 8. The school district property tax, and any subsequent increases under HB242, is therefore a tax on Plaintiffs’ members’ “personal income” for purposes of Article VIII § 9 of the Delaware Constitution.

155. Accordingly, HB242 “shall be void.” Del. Const. Art. VIII § 9; see 10 Del. C. § 6501.

156. Plaintiffs are entitled to a declaratory judgment that HB242 is void under the Delaware Constitution. See 10 Del. C. § 6501.

157. Plaintiffs have no adequate remedy at law.

THIRD COUNT

Declaratory Judgment and Injunctive Relief:
The School Board Defendants’ actions to increase non-residential tax rates constitute *ultra vires* action by government officials, contrary to 14 Del. C. §§ 1903, 1911, 1916(h)

158. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

159. The School Board Defendants must hold a referendum and obtain the majority of the votes approving any increase in the school district tax under 14 *Del. C.* § 1902. See 14 *Del. C.* §§ 1903, 1911.

160. Following a general reassessment, the School Board Defendants "shall calculate a new real estate tax rate which, at its maximum, would realize no more than [a] 10% increase in actual revenue over the revenue derived by real estate tax levied in the fiscal year immediately preceding such reassessed real estate valuation." 14 *Del. C.* § 1916(b).

161. The School Board Defendants already set this "new real estate tax rate" prior to "the second Thursday in July," when they "deliver[ed] [their] warrant[s], with a duplicate of the assessment list, to the receiver of taxes and county treasurer." 14 *Del. C.* § 1916(d).

162. The School Board Defendants "subsequent[ly] increase[d]" the "rate of taxation" for non-residential properties after HB242's enactment. 14 *Del. C.* § 1916(b).

163. This tax rate increase can "be achieved only by an election of the qualified voters in such local school district according to the procedures in § 1903." 14 *Del. C.* § 1916(b).

164. The School Board Defendants did not hold an election pursuant to § 1903 before issuing revised tax warrants reflecting the increased tax rates for non-residential properties.

165. The School Board Defendants' actions are thus *ultra vires* as they are contrary to the statutory requirements requiring a referendum. See *Haddock v. Bd. of Pub. Ed. in Wilmington*, 84 A.2d 157, 159, 162-164 (Del. Ch. 1951) (holding that school board lacked authority to award contract because it did not "comply with the strict provisions of the statute" and thus its action was "ultra vires").

166. Plaintiffs have no adequate remedy at law.

FOURTH COUNT

Declaratory Judgment and Injunctive Relief: The School Board Defendants' retroactive tax rate increase constitutes *ultra vires* action by government officials, contrary to 9 Del. C. § 8306

167. Plaintiffs repeat and re-allege each and every allegation contained above as if fully set forth herein.

168. 9 Del. C. § 8306 provides that a property "shall be assessed at its fair market value."

169. Under the most recent general reassessment, non-residential properties were assessed using an "income approach," which considers "what an informed investor would pay for the income stream associated with a particular piece of real estate." Reassessment Report at 8.

170. During the most recent general reassessment, it was presumed that the school district tax rates for residential and non-residential properties would be equal.

171. The taxes owed in association with ownership of a non-residential property affect the property's potential income and thus its fair market value.

172. The reassessment did not account for a subsequent increase in tax burden for non-residential properties.

173. Property owners relied on these assessments. Had non-residential property owners known that they would be subjected to heightened tax rates, many more would have timely appealed their assessments.

174. The reassessments no longer capture the "fair market value" of non-residential properties in light of the School Board Defendants' retroactive increase in non-residential property tax rate under HB242, 9 *Del. C.* § 8306.

175. The inability to now appeal the reassessments—after the retroactive tax increase under HB242—creates a substantial due process problem. *See United States v. Carlton*, 512 U.S. 26, 32 (1994) (recognizing that retroactive tax legislation may violate due process when it is "so harsh and oppressive as to transgress the constitutional limitation").

176. The School Board Defendants' retroactive tax rate increase is thus *ultra vires*, as it invalidates the reassessments under 9 *Del. C.* § 8306. *See Haddock*, 84 A.2d at 159, 162-164.

177. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray for judgment in their favor and against Defendants and request that the Court enter an Order:

- (a) granting preliminary injunctive and other appropriate equitable relief staying the Defendants' implementation of HB242 pending adjudication of the merits;

- (b) declaring HB242 void under the Delaware Constitution;
- (c) declaring Defendants' implementation of HB242 unlawful pursuant to 10 *Del. C.* § 6501;
- (d) enjoining Defendants' implementation of HB242; and
- (e) granting such other relief that this Court deems just and proper.

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