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NOTICE 21-06

First-Time Home Buyers Savings Account Act

(AUGUST 9, 2021)

During the 2021 Legislative Session House Bill 2187 was passed and signed into law. The Bill establishes the first-time home buyer savings account act, which may be used to pay or reimburse a designated beneficiary's eligible expenses for the purchase or construction of a primary residence in Kansas. As part of the Bill, K.S.A. 79-32,117 is amended to provide new Kansas income addition and subtraction modifications for contributions to first-time home buyer savings accounts.

New Section 1 of the Bill establishes the first time home buyers savings account act.

New Section 2 provides definitions for the following terms: account or first-time home buyer savings account, account holder, designated beneficiary, eligible expenses, financial institution, first-time home buyer, and Secretary. The term "first-time home buyer" is defined to mean an individual who:

(1) Has never owned or purchased under contract for deed, either individually or jointly, a single-family, owner-occupied primary residence including, but not limited to, a condominium unit or a manufactured or mobile home that was assessed and taxed as real property; or

(2) as a result of the individual's dissolution of marriage, has not been listed on a property title for at least three consecutive years.

New Section 3 defines the process of opening an account and designating a beneficiary as follows:

(a) an individual may open an account on and after July 1, 2022.

(b) an account holder may designate themselves or someone else as the beneficiary of the account by no later than April 15 of the year following the taxable year during which the account is established; there can be only one designated beneficiary per account; they may change the beneficiary at any time; an individual may be the beneficiary of more than one account if they are held by separate account holders.

(c) (1) defines the limits of the account as follows:

(A) annual maximum contribution shall be $3,000 for an individual, $6,000 for a married couple filing a joint return;

(B) maximum amount of all contributions in all tax years shall be $24,000 for an individual and $48,000 for a married couple filing a joint return; and

(C) the maximum amount in each account shall be $50,000.

(2) states that if limits set in paragraph (1) are exceeded, all interest or other income earned shall be subject to Kansas income tax.

(3) Moneys may remain in an account for an unlimited duration without the interest or income being subject to recapture or penalty.

(d) account holder shall not use moneys in the account to pay expenses of administering the account, except a service fee; account holder is responsible for maintaining appropriate documentation related to account.

New Section 4 defines how the moneys in the account may be used for eligible expenses and what happens if they are not used for eligible expenses and become subject to recapture. Subsection (a)(1) of New Section 4 states:

New Sec. 4. (a)(1) The moneys in a first-time home buyer savings account may be:

(A) used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located in this state;

(B) used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located outside of this state if such designated beneficiary is active-duty military and was stationed in Kansas for any time after the creation of the account;

(C) used for eligible expenses that would have qualified pursuant to paragraph (1)(A) or (1)(B) but the contract for purchase or construction did not close;

(D) transferred to another newly created account; and

(E) used to pay service fees assessed by the financial institution.

New Section 4 also provides moneys not used for an eligible purpose are subject to recapture. Subsection (b) of New Section 4 provides:

(b) Moneys withdrawn from an account shall be subject to recapture by the secretary in the tax year in which they were withdrawn if:

(1) At the time of the withdrawal, it has been less than a year since the first deposit in the account; or

(2) the moneys are used for any purpose other than the expenses or transactions authorized pursuant to subsection (a)(1).

New Section 5 states that the Secretary shall establish forms for the account holder to use in filing annual state tax returns and adopt rules and regulations necessary to administer the program.

New Section 6 states that a financial institution is not required to designate an account as a first-time home buyer savings account, track the use of moneys, report any information to the department of revenue; or be responsible or liable for determining eligibility of an account holder, or that the moneys are used for eligible expenses, or report use of moneys in the account.

Section 7 amends K.S.A 79-32,117, which requires or allows additions to or subtractions from federal adjust gross income in order to calculate Kansas adjusted gross income. Subsection (b) of the statute is amended to provide an addition modification:

(b) There shall be added to federal adjusted gross income:

(xxvii) For all taxable years beginning after December 31, 2021, the amount of any contributions to, or earnings from, a first-time home buyers savings account if distributions from the account were not used to pay for expenses or transactions authorized pursuant to section 4, and amendments thereto, or were not held for the minimum length of time required pursuant to section 4, and amendments thereto. Contributions to, or earnings from, such account shall also include any amount resulting from the account holder not designating a surviving transfer on death beneficiary pursuant to section 4(e), and amendments thereto.

Subsection (c) of the statute is amend to provide a subtraction modification:

(c) There shall be subtracted from federal adjusted gross income:

(xxv) For all taxable years beginning after December 31, 2021: (1) The amount contributed to a first-time home buyer savings account pursuant to section 3, and amendments thereto, in an amount not to exceed $3,000 for an individual or $6,000 for a married couple filing a joint return; or (2) amounts received as income earned from assets in a first-time home buyer savings account.

The provisions of the Bill will be effective for tax year 2022, and all subsequent tax years. Forms and additional information will be available in the near future.

TAXPAYER ASSISTANCE

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