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NOTICE 23-05

FIRST-TIME HOME BUYERS SAVINGS ACCOUNTS

(JULY 17, 2023)

During the 2023 Legislative Session House Bill 2197 was passed and signed into law. The Bill amends the first-time home buyer savings account act to provide a procedure for distribution of the account balance upon the death of an account holder, and to change the term "transfer on death" to "payable on death". It also amends the Kansas income tax modification for certain contributions to, or earnings from, a first-time home buyer savings account to recognize amended language in the first-time home buyer savings account act.

Section 2 of the Bill amends K.S.A. 2022 Supp. 58-4903(b) to add language regarding the death of an account holder. The new provision, which is added to the subsection dealing with designation of an account beneficiary, states:

> *(2) The naming of a designated beneficiary shall not create a survivorship interest in the account for such designated beneficiary. In the event of the death of an account holder, the balance of such account shall be paid to the payable on death beneficiary in accordance with K.S.A. 9-1215, and amendments thereto, or, in the absence of a named payable on death beneficiary, in accordance with the provisions of the Kansas probate code.*

Section 3 of the Bill amends K.S.A. 2022 Supp. 58-4904(e), which relates to recapture, upon the death of an account holder, of the amount of contributions to, or income earned from, an account claimed as a subtraction modification provided under K.S.A. 79-32,117(c)(xxviii), when there is no surviving beneficiary. The amendment changes the term "transfer on death" to "payable on death" as it relates to a beneficiary.

Section 4 of the Bill amends K.S.A. 2022 Supp. 58-4906 to provide direction to financial institutions regarding the death of an account holder. New section (c) provides:

> *(c) A financial institution may rely on such financial institution's account records for determining a payable on death beneficiary for a first-time home buyer savings account. If the payable on death beneficiary in a financial institution's account records conflicts with the designated beneficiary on any form required by the secretary under the first-time home buyer savings account act, the payable on death beneficiary in such financial institution's account records shall control.*

Section 5 of the Bill amends K.S.A. 2022 Supp. 79-32,117(b)(xviii), which establishes an income tax addition modification recapture of certain amounts related to first-time home buyer savings accounts. The amendment recognizes the change from the term "transfer on death" to

"payable on death" made to K.S.A. 2022 Supp. 58-5904(e) in Section 3. The subsection is amended as follows:

> (xxviii) For all taxable years beginning after December 31, 2021, the amount of any contributions to, or earnings from, a first-time home buyer savings account if distributions from the account were not used to pay for expenses or transactions authorized pursuant to K.S.A. 2022 Supp. 58-4904, and amendments thereto, or were not held for the minimum length of time required pursuant to K.S.A. 2022 Supp. 58-4904, 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~~ *payable* on death beneficiary pursuant to K.S.A. 2022 Supp. 58-4904(e), and amendments thereto.

The provisions of the Bill will be effective for tax year 2022, and all subsequent years. Forms and additional information are available through the Department's website at: www.ksrevenue.gov.

TAXPAYER ASSISTANCE

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