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NOTICE 24-22

ADOPTION SAVINGS ACCOUNT ACT

(JANUARY 16, 2025)

During the 2024 Legislative Session House Bill 2465 was passed and signed into law. The Bill establishes the Adoption Savings Account Act and amends K.S.A. 79-32,117 which relates to income tax modifications.

New Section 1 provides sections 1 through 7 are known and may be cited as the adoption savings account act.

Definitions

New Section 2 provides definitions for the terms "adoption savings account", "account holder", "designated beneficiary", "eligible expenses", and "financial institution". Subsections (b), (c), (d), (e), and (f) provide:

(b) "Account" or "adoption savings account" means an individual savings account established in accordance with the provisions of this act.

(c) "Account holder" means an individual who establishes an account that is designated as an adoption savings account pursuant to the provisions of section 3, and amendments thereto, with a financial institution.

(d) "Designated beneficiary" means the individual designated by an account holder pursuant to the provisions of section 3, and amendments thereto, as the individual whose eligible expenses are expected to be paid from the account for the adoption of a child.

(e) "Eligible expenses" means:

(1) Reasonable fees for legal and other professional services rendered in connection with an adoption or placement for adoption not to exceed customary fees for similar services by professionals of equivalent experience and reputation where the services are performed;

(2) reasonable fees of a licensed child-placing agency;

(3) actual and necessary expenses incidental to the adoption or placement proceeding;

(4) actual medical expenses of the mother attributable to pregnancy and birth;

(5) actual medical expenses of the child; and

(6) reasonable living expenses of the mother that are incurred during or as a result of the pregnancy.

(f) "Financial institution" means any state or federally chartered bank, trust company, savings and loan association or credit union that is:

(1) Authorized to do business in this state; and

(2) insured by the federal deposit insurance corporation or the national credit union administration.

Opening Account and Qualification for Modification

New Section 3(a) relates to the opening of an adoption savings account. It provides adoption savings accounts may be opened on and after July 1, 2025, and describes who may be an account owner. It also provides a taxpayer who complies with the requirements of the act may claim a new income tax subtraction modification allowed by K.S.A. 79-32,117, as amended.

Designation of Account Beneficiary

New Section 3(b) relates to the designation of a prospective adoptive parent as the designated beneficiary of the account. It provides an account holder may name themselves as the designated beneficiary of an account, and that the account holder may change the name of the designated beneficiary, but there may be only one designated beneficiary on an account. An individual may be designated as the designated beneficiary of more than one account if such accounts are held by separate account holders. No account holder is authorized to designate the same designated beneficiary on multiple accounts held by such account owner, except when opening certificates of deposit.

Contributions to Account and Payment of Expenses

New Section 3(c)(1) establishes limits on the amount of contribution to an account. It provides the maximum contribution in any tax year at $6,000 for an individual, and $12,000 for a married couple filing a joint return. The maximum amount of all contributions into an account in all tax years is $48,000 for an individual and $96,000 for a married couple filing a joint return. And, the maximum total amount in an account is limited to $100,000. New Section (3)(c)(2) provides that if a limit set by (c)(1) is exceeded, all interest or other income earned by the investment of moneys in the account after the limit is exceeded will be subject to Kansas income tax. New Section (3)(c)(3) provides moneys may remain in an account for an unlimited amount of time without the interest or income being subject to recapture or penalty.

New Section 3(d) provides the account holder cannot use moneys in the account to pay expenses of administering the account, except for a service fee assessed by a financial institution. In addition, the account holder is responsible for maintaining documentation for the account and for eligible expenses related to the designated beneficiary's adoption of a child.

Use of Funds

New Section 4(a) delineates the purposes for which moneys in an adoption savings account may be used. This includes: (1) Used for eligible expenses related to a designated beneficiary's adoption of a child; (2) used for eligible expenses that would have qualified but the adoption was not completed; (3) transferred to another newly created account; (4) invested in certificates of deposit opened and designated as adoption savings accounts; and (5) used to pay service fees assessed by the financial institution.

Recapture of Funds for Tax Purposes

New Section 4(b) addresses the recapture of moneys withdrawn from an account if the moneys were not withdrawn properly or for an approved purpose. It provides moneys withdrawn from an account are subject to recapture (i.e. subject to Kansas income tax) in the tax year they were withdrawn if: (1) At the time of 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) of New Section 4.

New Section 4(c) delineates the amount of moneys subject to recapture. It provides moneys that are subject to recapture is an amount equal to the moneys withdrawn from an account, and that this amount is to be added to the account holder's Kansas adjusted gross income pursuant to K.S.A. 79-32,117(b), or, if the account holder is no longer living, to the designated beneficiary's Kansas adjusted gross income. If any moneys are subject to recapture, the account holder shall pay a penalty in the following amounts: (1) If the withdrawal of moneys occurred 10 or less years after the first deposit in the account, 5% of the amount subject to recapture; and (2) if the withdrawal of moneys occurred more than 10 years after the first deposit in the account, 10% of the amount subject to recapture.

New Section 4(d) limits the penalties provided in 4(c). In accordance with this provision, the penalties provided in 4(c) do not apply if the moneys are withdrawn from an account after the death of the designated beneficiary, and the account holder did not designate a new designated beneficiary during the same tax year.

New Section 4(e) addresses both recapture and the abatement of penalties in the event of the death of an account holder. It provides that if the account holder dies or, if the account is jointly owned and the account owners die, and the account does not have a surviving payable on death beneficiary, then all of the moneys in the account resulting from contributions or income earned from assets in the account are subject to recapture in the tax year of the death or deaths pursuant to K.S.A. 79-32,117, but no penalty shall be assessed pursuant to subsection (c). The recaptured moneys in the account will be reported on the owner or owner's year of death income tax return.

Reporting Requirements

New Section 5 relates to reporting requirements at the time of filing the account holder's income tax return. It requires the Secretary of Revenue to establish forms for an account holder to annually report information about any accounts held by such account holder. And it provides the account holder to annually file, with the account holder's state income tax return, all forms required by the secretary under this section, the form 1099 for the account issued by the financial institution, and any other supporting documentation the secretary requires.

Financial Institution Responsibilities and Marketing of Accounts

New Section 6 relates to financial institution responsibilities. New Section 7 relates to marketing of the adoption savings account program by the State Treasurer.

Modifications

In accordance with K.S.A. 79-32,117, certain addition and subtraction modifications are made to a taxpayer's federal adjusted gross income to determine the taxpayer's Kansas adjusted gross income.

Section 9 amends K.S.A. 79-32,117(b) to add new subsection (xxix), which requires an addition modification for improper use of funds in an adoption savings account. Effective for all taxable years beginning after December 31, 2024, the recapture provision requires the addition of the amount of any contributions to, or earnings from, an adoption savings account if distributions from the account were not used to pay for expenses or transactions authorized pursuant to New Section 4, or were not held for the minimum length of time required pursuant to New Section 4. Contributions to, or earnings from, the account also include any amount resulting from the account holder not designating a surviving payable on death beneficiary pursuant to New Section 4(e).

Section 9 also amends K.S.A. 79-32,117(c) to add new subsection (xxx), which allows a subtraction modification for the amount contributed to an adoption savings account. Effective for all taxable years beginning after December 31, 2024, it allows a subtraction modification for (1) an amount not to exceed $6,000 for an individual or $12,000 for a married couple filing a joint return, or (2) amounts received as income earned from assets in an adoption savings account.

Adoption Credit

Section 10 amends K.S.A. 79-32,202a, which provides an adoption credit. For additional information about the credit, see **Notice 24-20 Adoption Credit** which is available through the Department's website at:**www.ksrevenue.gov**.

Effective Date

Unless otherwise noted, the provisions of the Bill are effective July 1, 2024.

TAXPAYER ASSISTANCE

Additional copies of this notice, forms or publications are available from our web site, www.ksrevenue.gov. If you have questions about this Notice, please contact:

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