SESSION OF 2020

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2516

As Amended by House Committee on Rural Revitalization

Brief*

HB 2516, as amended, would enact the First-time Home Buyer Account Act (Act) and would establish modifications to the Kansas adjusted gross income of an individual for contributions to a first-time home buyer savings account (account).

Definitions (New Section 2)

The bill would define the terms "account or first-time home buyer savings account," "designated beneficiary," "eligible expenses," "financial institution," "first-time home buyer," and "Secretary."

First-time Home Buyer Savings Accounts (New Section 3)

The bill would allow individuals on and after July 1, 2021, to open an account with a financial institution and designate the entirety of the account as an account that would be used to pay or reimburse a designated beneficiary's eligible expenses for the purchase or construction of a primary residence in Kansas. The bill would allow an individual to be the account holder of multiple accounts or jointly own an account, provided the individuals file a joint income tax return. An account holder in compliance with the

---

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

Act would be eligible for income tax modifications as stated in KSA 79-32,117.

The bill would require the account holder, by April 15 of the year after the taxable year the account holder established the account, to designate a beneficiary of the account. The bill would not prohibit an account holder from designating the account holder as the designated beneficiary. An account holder would be allowed to change the designated beneficiary at any time, but no account could have more than one designated beneficiary at one time. An individual could be the designated beneficiary of more than one account if the accounts are held by separate account holders, but no account holder would be authorized to designate the same designated beneficiary on multiple accounts held by the same account holder.

The bill would apply the following limits to an account established pursuant to the Act:

- Maximum contribution to an account in any tax year:
- $3,000 for an individual; and
- $6,000 for a married couple filing a joint return.

Maximum amount of all contributions into an account in all tax years:

- $24,000 for an individual; and
- $48,000 for a married couple filing a joint return; and
- The maximum total amount in an account would be $50,000.

The bill would allow moneys to remain in an account for an unlimited duration without the interest or income being subject to recapture or penalty. Further, the bill would prohibit the account holder from using moneys in an account to pay expenses for administering the account, except for a service fee that may be deducted by a financial institution. In addition, the account holder would be responsible for maintaining documentation for the account and for eligible expenses related to the designated beneficiary's purchase or construction of a primary residence.

Account Moneys (New Section 4)

Use of Account Moneys

The bill would allow the moneys in an account to be used for the following:

- Eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located in Kansas;
- Eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located outside of Kansas if the designated beneficiary is active-duty military and was stationed in Kansas for any time after the creation of the account;
- Eligible expenses that would have qualified pursuant to this section, but the contract for purchase or construction did not close;
- The transfer to another newly created account; and
- To pay service fees assessed by the financial institution.

The bill would allow the moneys to be used for the above purposes even if a designated beneficiary is a joint owner of a primary residence with another person who is not a designated beneficiary of the account.

Moneys in an account could not be used to purchase a manufactured or mobile home that is not taxed as real property.

Recapture of Account Moneys and Penalties

The bill would subject moneys withdrawn from an account to recapture by the Secretary of Revenue (Secretary) in the tax year in which they were withdrawn if:

- At the time of withdrawal, it has been less than a year since the first deposit in the account; or
- The moneys are used for any purpose other than the expenses or transactions authorized pursuant to the uses outlined in this section.

Moneys subject to recapture would be an amount equal to the amount withdrawn from an account and would be added to the Kansas adjusted gross income of the account holder or of the designated beneficiary, if the account holder is deceased. If any moneys are subject to recapture, the account holder would be required to pay a penalty in the following amounts:

- If the withdrawal of moneys occurred ten or less years after the first deposit of the account, 5.0 percent of the amount subject to recapture; and
- If the withdrawal of moneys occurred more than ten years after the first deposit in the account, 10.0 percent of the amount subject to recapture.

The penalties would not apply if the withdrawn moneys are:

- Used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence outside Kansas; or

- From an account in which the designated beneficiary is deceased and the account holder did not designate a new designated beneficiary during the same tax year.

Further, if the account holder or account holders are deceased and the account does not have a surviving transfer on death beneficiary, the moneys in the account resulting from contributions or income earned from assets in the account would be subject to recapture in the tax year of the death or deaths, but no penalty would be assessed.

Reports (New Section 5)

The bill would require the Secretary to establish forms for an account holder to annually report information about any accounts held by the account holder. An account holder would be required to annually file all forms required by the Secretary, the form 1099 for the account issued by the financial institution, and any other supporting documentation required by the Secretary with the account holder's state income tax return.

The bill would require the Secretary to adopt rules and regulations necessary to administer the Act prior to July 1, 2021.

Financial Institutions (New Section 6)

The bill would state financial institutions would not be required to:

- Designate an account as a first-time home buyer savings account or designate the beneficiaries of an account in the financial institution's account contracts or systems in any way;
- Track the use of moneys withdrawn from an account; or
- Report any information to the Department of Revenue (Department) or any other governmental agency that is not otherwise required by law.

The bill would state financial institutions would not be responsible or liable for:

- Determining or ensuring an account holder is eligible for a Kansas adjusted gross income modification;
- Determining or ensuring moneys in the account are used for eligible expenses; or
- Reporting or remitting taxes or penalties related to the use of account moneys.

Modifications to Kansas Adjusted Gross Income of an Individual (Section 7)

The bill would add to the federal adjusted gross income for all taxable years beginning after December 31, 2020:

- The amount of any contributions to, or earnings from, an account if distributions from the account were not used to pay for expenses or transactions authorized or were not held for the minimum length of time pursuant to the bill; and

- Contributions to, or earnings from, the account, including any amount resulting from the account holder not designating a surviving transfer on death beneficiary pursuant to the bill.

The bill would also create a subtraction modification from the federal adjusted gross income for all taxable years beginning after December 31, 2020:

- The amount contributed to a first-time home buyer savings account in an amount not to exceed $3,000 for an individual or $6,000 for a married couple filing a joint return; or

- Amounts received as income earned from assets in an account.

Background

The bill was introduced by the House Committee on Rural Revitalization at the request of Representative Adam Smith.

In the House Committee hearing, representatives of the Heartland Credit Union Association, Kansas Association of Realtors, and Kansas Bankers Association provided proponent testimony, stating the bill has the potential to spur economic activity across Kansas, the program has been used successfully in other states, and the program could provide a catalyst to additional housing in Kansas. Representatives of the Kansas Housing Association, Inc., Kansas Housing Resources Corporation, and Kansas Manufactured Housing Association provided written-only proponent testimony.

A representative of the Kansas Land Title Association provided neutral testimony, noting the organization supports the bill regarding first-time home buyer savings accounts, but proposed an amendment to clarify the penalty and enforcement provisions of the bill. No opponent testimony was provided.

The House Committee amended the bill to remove a provision that would prohibited the title of any home purchased or constructed with moneys from an account for at least two years unless reasonable circumstances exist that were unforeseen at the time the home was purchased or constructed and allow the designated beneficiary to request an exception from these requirements from the Secretary. The House Committee also amended the bill to change the date on which an individual may open an account and the date by which the Secretary would be required to adopt rules and regulations from January 1, 2021, to July 1, 2021.

According to the fiscal note prepared by the Division of the Budget on the bill as introduced, the Department estimates the bill would decrease State General Fund (SGF) revenues by $3.3 million in FY 2022 and estimates there would be similar reductions in SGF revenue in future fiscal years. In addition, the Department indicates the bill would require $200,036 from the SGF in FY 2021 to implement the bill and to modify the automated tax system. The bill would require the Department to hire 2.0 new FTE positions to answer taxpayer questions and manage the new first-time home buyer savings account tax credit. The required programming for this bill by itself would be performed by existing staff of the Department. In addition, if the combined effect of implementing the bill and other enacted legislation exceeds the Department's programming resources, or if the time for implementing the changes is too short, additional expenditures may be required for outside contract programmer services beyond the Department's current budget. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2021 Governor's Budget Report*.