

STATE OF NEW YORK

3399

2017-2018 Regular Sessions

IN SENATE

January 23, 2017

Introduced by Sen. PARKER -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the state finance law and the real property tax law, in relation to creating the New York state home ownership savings plan and creating a property tax exemption relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "New York
2 state home ownership savings plan".

3 § 2. The state finance law is amended by adding a new section 97-j to
4 read as follows:

5 § 97-j. New York state home ownership savings plan. 1. The purpose of
6 the New York state home ownership savings plan is to attract individuals
7 to reside and remain in the state by authorizing the establishment of
8 home ownership savings accounts and providing guidelines for the mainte-
9 nance of such accounts in order to enable individuals and couples to
10 receive a refundable tax credit to help them save toward the purchase of
11 a first home in New York state.

12 2. As used in this section:

13 (a) "Assets of the plan" means all contributions made into the plan,
14 any transfers made into the plan under this section and all income
15 earned therefrom and on assets substituted therefor, whether or not the
16 assets of the plan are in the form of qualified investments.

17 (b) "Couple" means individuals who have cohabited for a period of at
18 least five years in a conjugal relationship regardless of whether they
19 are married.

20 (c) "Comptroller" means the comptroller of the state of New York.

21 (d) "Contribution" means the amount of money paid by an individual to
22 a financial organization as a payment into a home ownership savings
23 plan.

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD07490-01-7

(e) "Financial organization" means a financial institution authorized to do business in the state of New York and (i) which is an authorized fiduciary to act as a trustee pursuant to the provisions of an act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time, or an insurance company; and

(ii) (1) is licensed or chartered by the department of financial services;

(2) is chartered by an agency of the federal government;

(3) is subject to the jurisdiction and regulation of the securities and exchange commission of the federal government; or

(4) is any other entity otherwise authorized to act in this state as a trustee pursuant to the provisions of an act of congress entitled "Employee Retirement Income Security Act of 1974" as such provisions may be amended from time to time.

(f) "Homeownership savings plan" means an arrangement entered into by an individual and a financial organization under which payment is made by the individual to the financial organization of an amount of money as a payment under the arrangement to be used, invested or otherwise applied by the financial organization for the purpose of providing to the individual as the planholder under the arrangement an amount of money to be used by the individual for the purchase by him or her of a qualifying eligible home.

(g) "Individual" means a person other than a trust or corporation as defined by the tax law.

(h) "Planholder" means an individual eighteen years of age or over to whom, under the plan, a single payment is agreed to be paid. Planholder does not include an individual to whom under a plan a single payment is agreed to be paid as a consequence of the death of another individual.

(i) "Eligible home" means:

(i) a detached house;

(ii) a semi-detached house;

(iii) a townhouse;

(iv) a share or shares of the capital stock of a co-operative corporation if the share or shares are acquired for the purpose of acquiring the right to inhabit a housing unit owned by the corporation;

(v) a condominium unit;

(vi) a residential dwelling that is a duplex, triplex or a fourplex;

(vii) a mobile home that complies with the prescribed standards and is suitable for year round permanent residential occupation;

(viii) a partial ownership interest as a tenant in common of real property, if the ownership interest was acquired for the purpose of acquiring the right to inhabit a housing unit forming part of the real property; or

(ix) any other residential property as may be prescribed.

(j) "Ownership of an eligible home" means:

(i) in the case of an eligible home as prescribed in subparagraphs (i), (ii), (iii) or (vi) of paragraph (i) of this subdivision, the individual has an ownership interest in the eligible home and owns a freehold estate in the land subjacent to the eligible home other than as a mortgagee or is a lessee of the land subjacent to the eligible home;

(ii) in the case of an eligible home that is a condominium unit, the individual is an owner of the unit and common elements within the meaning of New York state law;

(iii) in the case of an eligible home in the form of a share or shares of the capital stock of a co-operative corporation the individual has

1 acquired, jointly with another person or otherwise, the share or shares
2 to enable the individual to acquire a right to occupy a housing unit
3 owned by the co-operative corporation, the individual and the co-opera-
4 tive corporation have entered into an enforceable occupancy agreement in
5 respect of the housing unit, and the individual is entitled to vacant
6 possession of the housing unit under the terms of the occupancy agree-
7 ment;

8 (iv) in the case of an eligible home that is a mobile home suitable
9 for year-round permanent residential occupation, the individual, either
10 alone or jointly with another person, has completed the purchase of the
11 mobile home, the mobile home is situated on a foundation, which meets
12 the prescribed standards, on the land where it is to be inhabited, and
13 the land is owned by the individual, jointly with another person or
14 otherwise, or is occupied by the individual under a license or lease
15 that permits the individual to locate the mobile home on the land and to
16 occupy it as a year-round residence;

17 (v) in the case of an eligible home referred to in subparagraph (vii)
18 of paragraph (i) of this subdivision, the individual has acquired a
19 freehold estate in the real property, other than as a mortgagee, and is
20 entitled to vacant possession of said housing unit;

21 (vi) in the case of an eligible home of a prescribed class or nature,
22 or owned by a member of a prescribed class of persons, the prescribed
23 terms and conditions are met;

24 (vii) in the case of a gift or inheritance, a person who acquires an
25 ownership interest in an eligible home by gift from the owner of the
26 interest or by reason of the death of the owner of the interest shall be
27 deemed to own the eligible home for the purposes of this section on the
28 earliest date on or after the date of the gift or the death on which the
29 person resides in the eligible home is entitled to possession of the
30 eligible home or acquires the ownership interest in the eligible home.
31 This definition does not include an ownership interest acquired under
32 the terms of an agreement enforceable by or against the person legally
33 or beneficially entitled to the interest immediately following the death
34 of the owner of the interest;

35 (viii) in the case of a deemed owner of an eligible home, the comp-
36 troller may deem an individual to have owned an eligible home at a
37 particular time if ownership was at that time vested in a person under
38 the terms of an express or implied trust by which the person held the
39 property for the benefit of the individual, either alone or with one or
40 more other persons, and the comptroller is of the opinion that the indi-
41 vidual exercised effective control, either alone or with one or more
42 other persons, over the eligible home.

43 3. (a) The comptroller shall implement the plan under the terms and
44 conditions established by this section and a memorandum of understanding
45 relating to any terms or conditions not otherwise expressly provided for
46 in this section.

47 (b) In furtherance of such implementation the memorandum of under-
48 standing shall address the authority and responsibility of the comp-
49 troller and the corporation to:

50 (i) develop and implement the plan in a manner consistent with the
51 provisions of this section through rules and regulations established in
52 accordance with the state administrative procedure act;

53 (ii) engage the services of consultants on a contract basis for
54 rendering professional and technical assistance and advice;

1 (iii) make changes to the plan required for the participants in the
2 plan to obtain any eligible federal or state benefits or treatment under
3 any legislation;

4 (iv) charge, impose, and collect administrative fees and service
5 charges in connection with any agreement, contract or transaction relat-
6 ing to the plan;

7 (v) develop marketing plans and promotion material;

8 (vi) establish the methods by which the funds held in such accounts be
9 disbursed;

10 (vii) establish the method by which funds shall be allocated to pay
11 for administrative costs; and

12 (viii) do all things necessary and proper to carry out the purposes of
13 this section.

14 4. (a) The comptroller shall implement the program through use of
15 financial organizations as account depositories and managers. Under the
16 program, individuals may establish accounts directly with an account
17 depository.

18 (b) The comptroller may solicit proposals from financial organizations
19 to act as depositories and managers of the program. Financial organiza-
20 tions submitting proposals shall describe the investment instrument
21 which will be held in accounts. The comptroller shall select as program
22 depositories and managers the financial organization, from among the
23 bidding financial organizations that demonstrates the most advantageous
24 combination, both to potential program participants and this state, of
25 the following factors:

26 (i) financial stability and integrity of the financial organization;

27 (ii) the safety of the investment instrument being offered;

28 (iii) the ability of the investment instrument to track increasing
29 costs of the housing market;

30 (iv) the ability of the financial organization to satisfy recordkeep-
31 ing and reporting requirements;

32 (v) the financial organization's plan for promoting the program and
33 the investment it is willing to make to promote the program;

34 (vi) the fees, if any, proposed to be charged to persons for opening
35 accounts;

36 (vii) the minimum initial deposit and minimum contributions that the
37 financial organization will require;

38 (viii) the ability of banking organizations to accept electronic with-
39 drawals, including payroll deduction plans; and

40 (ix) other benefits to the state or its residents included in the
41 proposal, including fees payable to the state to cover expenses of oper-
42 ation of the program.

43 (c) The comptroller may enter into a contract with a financial organ-
44 ization. Such financial organization management may provide one or more
45 types of investment instrument.

46 (d) The comptroller may select more than one financial organization
47 for the program.

48 (e) A management contract shall include, at a minimum, terms requiring
49 the financial organization to:

50 (i) take any action required to keep the program in compliance with
51 requirements of this section and any actions not contrary to its
52 contract to manage the program to qualify as a qualified "homeownership
53 savings plan" as defined by this section;

54 (ii) keep adequate records of each account, keep each account segre-
55 gated from each other account, and provide the comptroller with the

1 information necessary to prepare the statements required by this
2 section;

3 (iii) compile and total information contained in statements required
4 to be prepared under this section and provide such compilations to the
5 comptroller;

6 (iv) if there is more than one program manager, provide the comp-
7 troller with such information necessary to determine compliance with
8 this section;

9 (v) provide the comptroller or his designee access to the books and
10 records of the program manager to the extent needed to determine compli-
11 ance with the contract;

12 (vi) hold all accounts for the benefit of the account owner;

13 (vii) be audited at least annually by a firm of certified public
14 accountants selected by the program manager and that the results of such
15 audit be provided to the comptroller;

16 (viii) provide the comptroller with copies of all regulatory filings
17 and reports made by it during the term of the management contract or
18 while it is holding any accounts, other than confidential filings or
19 reports that will not become part of the program. The program manager
20 shall make available for review by the comptroller the results of any
21 periodic examination of such manager by any state or federal banking,
22 insurance, or securities commission, except to the extent that such
23 report or reports may not be disclosed under applicable law or the rules
24 of such commission; and

25 (ix) ensure that any description of the program, whether in writing or
26 through the use of any media, is consistent with the marketing plan
27 developed in compliance with this section.

28 (f) The comptroller may provide that an audit shall be conducted of
29 the operations and financial position of the program depository and
30 manager at any time if the comptroller has any reason to be concerned
31 about the financial position, the recordkeeping practices, or the status
32 of accounts of such program depository and manager.

33 (g) During the term of any contract with a program manager, the comp-
34 troller shall conduct an examination of such manager and its handling of
35 accounts. Such examination shall be conducted at least biennially if
36 such manager is not otherwise subject to periodic examination by the
37 superintendent of financial services, the federal deposit insurance
38 corporation or other similar entity.

39 (h) (i) If selection of a financial organization as a program manager
40 or depository is not renewed, after the end of its term:

41 (1) accounts previously established and held in investment instruments
42 at such financial organization may be terminated;

43 (2) additional contributions may be made to such accounts;

44 (3) no new accounts may be placed with such financial organization;
45 and

46 (4) existing accounts held by such depository shall remain subject to
47 all oversight and reporting requirements established by the comptroller.

48 (ii) If the comptroller terminates a financial organization as a
49 program manager or depository, he or she shall take custody of accounts
50 held by such financial organization and shall seek to promptly transfer
51 such accounts to another financial organization that is selected as a
52 program manager or depository and into investment instruments as similar
53 to the original instruments as possible.

54 (i) The comptroller may enter into such contracts as it deems neces-
55 sary and proper for the implementation of the program.

1 5. (a) The terms of the plan do not permit any payment to the plan-
2 holder of any asset of the plan except by way of:

3 (i) a single payment of all of the assets of the plan to the commis-
4 sioner of housing to hold the assets of the plan as trust property in
5 trust for the planholder and the state jointly and to legally represent
6 the planholder in the purchase by the planholder of a qualifying eligi-
7 ble home, or

8 (ii) a single payment of all the assets of the plan, less the amount
9 to be withheld by the financial organization or the amount, if any,
10 directed by the comptroller to the planholder or to the legal personal
11 representative of the planholder upon the death of the planholder.

12 (b) The terms of the plan require the financial organization to with-
13 hold and remit to the comptroller any amount required under this section
14 on any payment of assets of the plan to the planholder or to the legal
15 personal representative of the planholder on the death of the planhold-
16 er.

17 (c) The terms of the plan provide that the financial organization will
18 accept repayment of assets into the plan from a commissioner of housing
19 to whom assets of the plan were paid.

20 (d) The terms of the plan provide that the payment to the planholder
21 is not capable in whole or in part of surrender, assignment or transfer
22 except as permitted by an election under this section.

23 (e) The planholder is at least eighteen years of age and a resident of
24 New York at the time of entering into the plan.

25 (f) The planholder shall be eligible for this program if they are a
26 first time homebuyer as defined under the federal SONYMA program and (i)
27 has not had any ownership interest in his or her primary residence at
28 any time during the three years prior to the date of making an applica-
29 tion, and (ii) at the time of making the application does not own a
30 vacation or investment home. This definition includes residences owned
31 in the United States and abroad.

32 (g) The terms of the plan prohibit any amendment to the terms of the
33 plan:

34 (i) that would result in the terms of the plan as amended failing to
35 comply with this section;

36 (ii) that would permit or require any person to do anything contrary
37 to this section; or

38 (iii) that would prevent or prohibit any person from doing anything
39 required by this section to be done.

40 (h) The terms of the plan provide that on the death of the planholder,
41 the financial organization shall transfer or distribute all assets of
42 the plan, less any amount required by this section to be withheld and
43 remitted to the comptroller, in accordance with this section.

44 (i) The terms of the plan prohibit the holding of the assets of the
45 plan in any form other than qualified investments.

46 (j) The plan includes a provision denying the financial organization
47 any right of set-off as regards the assets of the plan in connection
48 with any debt or obligation to the financial organization that the plan-
49 holder under the plan owes or may thereafter owe.

50 (k) The terms of the plan include the acknowledgment by the planholder
51 that he or she understands that the amount of a tax credit, if any,
52 available with respect to contributions made to the plan in any year
53 depend on the planholder's level of income for that year and that the
54 provisions of this section apply even if the planholder may not be enti-
55 tled to a tax credit in any year.

(l) The terms of the plan contain the consent of the planholder to the release to the comptroller of all information obtained by the financial organization with respect to the plan, the planholder and the planholder's spouse or common-law partner, if any, for the purposes of this section and the operation of the plan.

6. No tax credit shall be issued to individuals or couples whose income exceeds the maximum income limits established by the state of New York mortgage agency.

7. (a) Nothing in this section shall be construed to:

(i) give any designated beneficiary any rights or legal interest with respect to an account unless the designated beneficiary is the account owner;

(ii) guarantee that a designated beneficiary will be qualified for a home loan;

(iii) create state residency for an individual merely because the individual is a designated beneficiary; or

(iv) guarantee that amounts saved pursuant to the program will be sufficient to cover the qualified home ownership expenses of a designated beneficiary.

(b) (i) Nothing in this section shall create or be construed to create any obligation of the comptroller, the state, or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to:

(1) the rate of interest or other return on any account; and

(2) the payment of interest or other return on any account.

(ii) The comptroller and the corporation by rule or regulation shall provide that every contract, application, deposit slip, or other similar document that may be used in connection with a contribution to an account clearly indicate that the account is not insured by the state and neither the principal deposited nor the investment return is guaranteed by the state.

§ 3. The real property tax law is amended by adding a new section 421-p to read as follows:

§ 421-p. Exemption for properties purchased in target areas with a New York state home ownership savings plan. 1. Residential properties which have been purchased in target areas through a New York state home ownership savings plan pursuant to section ninety-seven-j of the state finance law shall be exempt from all local and municipal taxes.

2. For the purposes of this section "target areas" shall have the same meaning as defined by the state of New York mortgage agency.

3. (a) Applications for exemption under this section shall be filed with the assessors between February first and March fifteenth of the calendar year and the assessors shall certify to the collecting officer the amount of exemption from local and municipal taxes.

(b) The assessor and local housing agency may promulgate rules and regulations to carry out the provisions of this section and may require payment of a reasonable filing fee.

§ 4. This act shall take effect immediately.