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:

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

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

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

2. As used in this section:

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

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

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

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

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

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(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

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

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

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

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

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

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

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

(b) In furtherance of such implementation the memorandum of understanding shall address the authority and responsibility of the comptroller and the corporation to:

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

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

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

(iv) charge, impose, and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the plan;

(v) develop marketing plans and promotion material;

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

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

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

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

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

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

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

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

(iv) the ability of the financial organization to satisfy recordkeeping and reporting requirements;

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

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

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

(viii) the ability of banking organizations to accept electronic withdrawals, including payroll deduction plans; and

(ix) other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

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

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

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

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

(ii) keep adequate records of each account, keep each account segregated from each other account, and provide the comptroller with the

information necessary to prepare the statements required by this section;

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

(iv) if there is more than one program manager, provide the comptroller with such information necessary to determine compliance with this section;

(v) provide the comptroller or his designee access to the books and records of the program manager to the extent needed to determine compliance with the contract;

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

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

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

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

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

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

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

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

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

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

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

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

(i) The comptroller may enter into such contracts as it deems necessary and proper for the implementation of the program.

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

(i) a single payment of all of the assets of the plan to the commissioner of housing to hold the assets of the plan as trust property in trust for the planholder and the state jointly and to legally represent the planholder in the purchase by the planholder of a qualifying eligible home, or

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

(b) The terms of the plan require the financial organization to withhold and remit to the comptroller any amount required under this section on any payment of assets of the plan to the planholder or to the legal personal representative of the planholder on the death of the planholder.

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

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

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

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

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

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

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

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

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

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

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

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