

STATE OF NEW YORK

4058--A

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IN SENATE

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Introduced by Sens. LITTLE, ADDABBO, AKSHAR, AVELLA, BROOKS, COMRIE, CROCI, DeFRANCISCO, DILAN, FUNKE, GALLIVAN, GIANARIS, HAMILTON, HANNON, HELMING, KAMINSKY, KENNEDY, LATIMER, MURPHY, O'MARA, ORTT, PHILLIPS, RANZENHOFER, RITCHIE, ROBACH, SANDERS, SAVINO, SEWARD, VALE-SKY, YOUNG -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the private housing finance law, in relation to establishing the New York state first home savings program, which authorizes first time home buyers to establish savings accounts to purchase a home; and to amend the tax law, in relation to establishing a personal income tax deduction for deposits into such accounts

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

1 Section 1. The private housing finance law is amended by adding a new
2 article 28 to read as follows:

3 ARTICLE XXVIII

4 NEW YORK STATE FIRST HOME

5 SAVINGS PROGRAM

6 Section 1250. Program established.

7 1251. Purposes.

8 1252. Definitions.

9 1253. Functions of the comptroller.

10 1254. Powers of the comptroller.

11 1255. Program requirements; first home savings account.

12 1256. Program limitations; first home savings account.

13 § 1250. Program established. There is hereby established a first home
14 savings program and such program shall be known and may be cited as the
15 "New York state first home savings program".

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

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1 § 1251. Purposes. The purposes of the program shall be to authorize
2 the establishment of first home savings accounts and to provide guide-
3 lines for the maintenance of such accounts to:

4 1. enable residents of this state to benefit from the tax incentive
5 provided for qualified state first home savings accounts under section
6 six hundred twelve of the tax law; and

7 2. incentivize residents to save for the purchase of a first home
8 within the state.

9 § 1252. Definitions. As used in this article, the following terms
10 shall have the following meanings:

11 1. "Account" or "first home savings account" shall mean an individual
12 savings account established in accordance with the provisions of this
13 article for the exclusive benefit of the account owner or designated
14 beneficiary that is the first time buyer of a home, townhome, condomin-
15 ium or unit in a cooperative housing corporation.

16 2. "Account owner" shall mean a taxpayer who enters into a first home
17 savings agreement pursuant to the provisions of this article, including
18 a person who enters into such an agreement as a fiduciary or agent on
19 behalf of a trust, estate, partnership, association, company or corpo-
20 ration.

21 3. "Designated beneficiary" shall mean, with respect to an account or
22 accounts, the designated individual or individuals whose first home
23 purchase expenses are expected to be paid from the account or accounts.

24 4. "Financial organization" shall mean an organization authorized to
25 do business in the state, and (a) which is an authorized fiduciary to
26 act as a trustee pursuant to the provisions of an act of congress enti-
27 tled "Employee Retirement Income Security Act of 1974", as such
28 provisions may be amended from time to time, or an insurance company;
29 and (b)(i) is licensed or chartered by the department of financial
30 services, (ii) is chartered by an agency of the federal government,
31 (iii) is subject to the jurisdiction and regulation of the securities
32 and exchange commission of the federal government, (iv) is any other
33 entity otherwise authorized to act in this state as a trustee pursuant
34 to the provisions of an act of congress entitled "Employee Retirement
35 Income Security Act of 1974", as such provisions may be amended from
36 time to time, (v) or any banking organization as defined in subdivision
37 eleven of section two of the banking law, national banking association,
38 state chartered credit union, federal mutual savings bank, federal
39 savings and loan association or federal credit union.

40 5. "First time home buyer" shall mean an individual or individuals,
41 neither of whom has or had an ownership interest in a principal resi-
42 dence at any time, including residences owned in the United States or
43 abroad. No such person shall own any other home including vacation or
44 investment residences, including residences owned in the United States
45 or abroad, except as otherwise provided in this subdivision. If either
46 the individual or individuals are not first time home buyers, neither
47 the individual or individuals shall be considered a first time home
48 buyer. If an individual's only potentially disqualifying present owner-
49 ship interest is ownership of a mobile or manufactured home, the indi-
50 vidual shall be considered a first time home buyer and shall be eligible
51 for a first home account deduction. For the purposes of this article a
52 "mobile or manufactured home" shall mean a structure that is valued as
53 personal property and not real property. If, due to his or her ownership
54 of a mobile or manufactured home, the individual has claimed a real
55 estate tax or home mortgage deduction on his or her personal income tax
56 returns, such individual shall not be considered a first time home buyer

1 regardless of whether the mobile of manufactured home was considered
2 personal or real property.

3 6. "Ownership interest" shall mean a fee simple interest, a joint
4 tenancy, a tenancy in common, a tenancy by the entirety, the interest of
5 a tenant-share holder in a cooperative, a life estate or a land
6 contract. Interests which do not constitute ownership interests include
7 the following: (a) remainder interests, (b) a lease with or without an
8 option to purchase, (c) a mere expectancy to inherit an interest in a
9 residence, (d) the interest that a purchaser of a residence acquires on
10 the execution of a purchase contract and (e) an interest in real estate
11 other than a residence.

12 7. "Program" shall mean the New York first home savings program estab-
13 lished pursuant to this article.

14 8. "Qualified first home purchase expenses" shall mean monies applied
15 for the purchase or construction of a house, townhouse, condominium or
16 unit in a cooperative housing corporation within the state to be used as
17 a primary residence of the account owner or designated beneficiary for a
18 period of not less than two years after purchase.

19 9. "Qualified residential housing" shall mean a house, townhouse,
20 condominium or unit in a cooperative housing corporation within the
21 state.

22 10. "Qualified withdrawal" shall mean a withdrawal from an account to
23 pay the qualified first home purchase expense of the account owner or
24 designated beneficiary of the account.

25 11. "Nonqualified withdrawal" shall mean a withdrawal from an account
26 but shall not include:

27 (a) a qualified withdrawal;
28 (b) a withdrawal made as the result of death;
29 (c) an unforeseeable emergency; or
30 (d) need based upon qualifying for military service in the armed forc-
31 es of the United States as determined by rules and regulations promulgat-
32 ed by the comptroller.

33 12. "Comptroller" shall mean the state comptroller.

34 13. "Management contract" shall mean the contract executed by the
35 comptroller and a financial organization selected to act as a depository
36 and manager of the program.

37 14. "First home savings agreement" shall mean an agreement between the
38 comptroller or a financial organization and the account owner.

39 15. "Program manager" shall mean a financial organization selected by
40 the comptroller to act as a depository and manager of the program.

41 16. "Commissioner" shall mean the commissioner of taxation and
42 finance.

43 § 1253. Functions of the comptroller. 1. The comptroller shall imple-
44 ment the program under the terms and conditions established by this
45 article and a memorandum of understanding with the commissioner relating
46 to any terms or conditions not otherwise expressly provided for in this
47 article.

48 2. In furtherance of such implementation the comptroller shall:

49 (a) develop and implement the program in a manner consistent with the
50 provisions of this article through rules and regulations established in
51 accordance with the state administrative procedure act;

52 (b) engage the services of consultants on a contract basis for render-
53 ing professional and technical assistance and advice;

54 (c) seek rulings and other guidance from the United States Department
55 of Treasury and the Internal Revenue Service relating to the program;

1 (d) make changes to the program required for the participants in the
2 program to obtain the state income tax benefits or treatment provided by
3 this article;

4 (e) charge, impose and collect administrative fees and service charges
5 in connection with any agreement, contract or transaction relating to
6 the program;

7 (f) develop marketing plans and promotion materials;

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

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

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

14 § 1254. Powers of the comptroller. 1. The comptroller may implement
15 the program through use of financial organizations as account deposito-
16 ries and managers. Under the program, an account owner may establish
17 accounts directly with an account depository.

18 2. 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 (a) financial stability and integrity of the financial organization;

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

28 (c) the ability of the investment instrument to track increasing costs
29 of residential housing;

30 (d) the ability of the financial organization to satisfy recordkeeping
31 and reporting requirements;

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

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

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

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

40 (i) 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 3. 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 4. The comptroller may select more than one financial organization for
47 the program.

48 5. A management contract shall include, at a minimum, terms requiring
49 the financial organization to:

50 (a) take any action required to keep the program in compliance with
51 requirements of section twelve hundred fifty-five of this article and
52 any actions not contrary to its contract to manage the program to quali-
53 fy as a "first home savings account" under paragraph forty-two of
54 subsection (c) of section six hundred twelve of the tax law;

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

1 information necessary to prepare the statements required by section
2 twelve hundred fifty-five of this article;

3 (c) compile and total information contained in statements required to
4 be prepared under section twelve hundred fifty-five of this article and
5 provide such compilations to the comptroller;

6 (d) if there is more than one program manager, provide the comptroller
7 with such information necessary to determine compliance with section
8 twelve hundred fifty-five of this article;

9 (e) 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 (f) hold all accounts for the benefit of the account owner;

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

25 (i) ensure that any description of the program, whether in writing or
26 through the use of any media, is consistent with the marketing plan as
27 developed pursuant to the provisions of section twelve hundred fifty-
28 three of this article.

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

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

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

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

44 (ii) additional contributions may be made to such accounts;

45 (iii) no new accounts may be placed with such financial organization;
46 and

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

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

55 9. The comptroller may enter into such contracts as it deems necessary
56 and proper for the implementation of the program.

1 § 1255. Program requirements; first home savings account. 1. First
2 home savings accounts established pursuant to the provisions of this
3 article shall be governed by the provisions of this section.

4 2. A first home savings account may be opened by any person who
5 desires to save money for the payment of the qualified first home
6 purchase expenses of the account owner or designated beneficiary. An
7 account owner may designate another person as successor owner of the
8 account in the event of the death of the original account owner. Such
9 person who opens an account or any successor owner shall be considered
10 the account owner.

11 (a) An application for such account shall be in the form prescribed by
12 the program and contain the following:

13 (i) the name, address and social security number or employer identifi-
14 cation number of the account owner;

15 (ii) the designation of a designated beneficiary;

16 (iii) the name, address, and social security number of the designated
17 beneficiary; and

18 (iv) such other information as the program may require.

19 (b) The comptroller and the corporation may establish a nominal fee
20 for such application.

21 3. Any person, including the account owner, may make contributions to
22 the account after the account is opened.

23 4. Contributions to accounts may be made only in cash.

24 5. An account owner may withdraw all or part of the balance from an
25 account as authorized under rules governing the program. Such rules
26 shall include provisions that will generally enable the determination as
27 to whether a withdrawal is a nonqualified withdrawal or a qualified
28 withdrawal.

29 6. (a) An account owner may change the designated beneficiary of an
30 account in accordance with procedures established by the memorandum of
31 understanding pursuant to the provisions of section twelve hundred
32 fifty-three of this article.

33 (b) An account owner may transfer all or a portion of an account to
34 another first home savings account.

35 (c) Changes in designated beneficiaries and transfers under this
36 subdivision shall not be permitted to the extent that they would cause
37 all accounts for the same beneficiary to exceed the permitted aggregate
38 maximum account balance.

39 7. The program shall provide separate accounting for each designated
40 beneficiary.

41 8. No account owner or designated beneficiary of any account shall be
42 permitted to direct the investment of any contributions to an account or
43 the earnings thereon more than two times in any calendar year.

44 9. Neither an account owner nor a designated beneficiary may use an
45 interest in an account as security for a loan. Any pledge of an interest
46 in an account shall be of no force and effect.

47 10. The comptroller shall promulgate rules or regulations to prevent
48 contributions on behalf of a designated beneficiary in excess of an
49 amount that would cause the aggregate account balance for all accounts
50 for a designated beneficiary to exceed a maximum account balance, as
51 established from time to time by the comptroller.

52 11. Contributions to a first home savings account shall be limited to
53 one hundred thousand dollars per account. This amount shall not take
54 into consideration any gain or loss to the principal investment into the
55 account.

12. In the event that an individual makes a "nonqualified withdrawal" of monies from the first home savings account such individual shall have the entire account taxed, including any interest, as though it was income at the account owner's federal tax rate in the tax years the monies were withdrawn, and incur an additional ten percent state penalty on the amount of earnings. In the event account owners or designated beneficiary does not use the qualified residential housing as a primary residence for a period of not less than two years after the purchase of such housing, the account owner shall have the entire account taxed, including any interest, as though it was ordinary income at the account owner's federal tax rate in the tax years the monies were withdrawn and incur an additional ten percent state penalty on the amount of earnings. For purposes of this article, the two year period shall begin at the time title is transferred to the first time home buyer. The penalty shall be in addition to any taxes due pursuant to a non-qualified withdrawal from a first home savings account.

13. Penalties may be waived by the commissioner if the individual can show proof that the reason the individual did not use the qualified residential housing as a primary residence for a period of two years or more after the purchase or construction was due to either:

(a) an employment relocation outside the state and such relocation required the individual to become a resident of another state;

(b) an unforeseeable emergency;

(c) an absence due to qualifying military service; or

(d) death.

For purposes of this subdivision, an "unforeseeable emergency" shall mean a severe financial hardship resulting from illness, accident or property loss to the account owner, or his or her dependents resulting in circumstances beyond their control. The circumstances that constitute an unforeseeable financial emergency will depend on the facts of each case, however, withdrawal of account funds may not be made, without penalty, to the extent that such hardship is or may be relieved by either:

(i) reimbursement or compensation by insurance or otherwise; or

(ii) liquidation of the individual's assets to the extent the liquidation of such assets would not itself cause severe financial hardship.

14. The commissioner and the comptroller are directed to promulgate all rules and regulations necessary to implement the provisions of this subsection and are hereby directed to establish, supervise and regulate first home savings accounts authorized to be created by this section.

15. (a) If there is any distribution from a first home savings account to any individual or for the benefit of any individual during a calendar year, such distribution shall be reported to the Internal Revenue Service and the account owner, the designated beneficiary, or the distributee to the extent required by federal law or regulation.

(b) Statements shall be provided to each account owner at least once each year within sixty days after the end of the twelve month period to which they relate. The statement shall identify the contributions made during a preceding twelve month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the comptroller shall require to be reported to the account owner.

(c) Statements and information relating to accounts shall be prepared and filed to the extent required by federal and state tax laws.

1 16. An annual fee may be imposed upon the account owner for the main-
2 tenance of the account.

3 17. The program shall disclose the following information in writing to
4 each account owner of a first home savings account:

5 (a) the terms and conditions for establishing a first home savings
6 account;

7 (b) any restrictions on the substitution of beneficiaries;

8 (c) the person or entity entitled to terminate the first home savings
9 agreement;

10 (d) the period of time during which a beneficiary may receive benefits
11 under the first home savings agreement;

12 (e) the terms and conditions under which money may be wholly or
13 partially withdrawn from the program, including, but not limited to, any
14 reasonable charges and fees that may be imposed for withdrawal;

15 (f) the probable tax consequences associated with contributions to and
16 distributions from accounts; and

17 (g) all other rights and obligations pursuant to first home savings
18 agreements, and any other terms, conditions, and provisions deemed
19 necessary and appropriate by the terms of the memorandum of understand-
20 ing entered into pursuant to section twelve hundred fifty-three of this
21 article.

22 18. First home savings agreements shall be subject to section four-
23 teen-c of the banking law and the "truth-in-savings" regulations promul-
24 gated thereunder.

25 19. Nothing in this article or in any first home savings agreement
26 entered into pursuant to this article shall be construed as a guarantee
27 by the state that the account owner or designated beneficiary will qual-
28 ify for the purchase of a home.

29 20. To establish that an account owner or designated beneficiary is a
30 first time home buyer, the individual shall complete a form promulgated
31 by the comptroller certifying, under the penalties of perjury, that such
32 individual is a first time home buyer.

33 21. An individual must not intend to use any portion of the real prop-
34 erty purchased using the first home savings account funds in a trade or
35 business, or as a vacation home or as an investment, except as an owner
36 occupied multiple dwelling with no more than two rental units.

37 22. Monies withdrawn from first home savings accounts and any interest
38 which has accrued shall not be considered as ordinary income to the
39 account owner for state personal income taxation purposes, so long as
40 the monies are applied for the purchase or construction of a qualified
41 first home purchase by the account owner or designated beneficiary of
42 the account.

43 § 1256. Program limitations; first home savings account. 1. Nothing in
44 this article shall be construed to:

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

48 (b) guarantee that the account owner or designated beneficiary will be
49 financially qualified to purchase a home;

50 (c) create state residency for an individual merely because the indi-
51 vidual is a designated beneficiary; or

52 (d) guarantee that amounts saved pursuant to the program will be
53 sufficient to cover the down payment or closing costs pursuant to the
54 purchase of a qualified first home.

55 2. (a) Nothing in this article shall create or be construed to create
56 any obligation of the comptroller, the state, or any agency or instru-

1 mentality of the state to guarantee for the benefit of the account owner
2 or designated beneficiary with respect to:

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

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

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

10 § 2. Subsection (b) of section 612 of the tax law is amended by adding
11 a new paragraph 42 to read as follows:

12 (42) (A) Excess distributions received during the taxable year by a
13 distributee of a first home savings account established under the New
14 York state first home savings program provided for under article twen-
15 ty-eight of the private housing finance law, to the extent such excess
16 distributions are deemed attributable to the deductible contributions
17 under paragraph forty-two of subsection (c) of this section.

18 (B) (i) The term "excess distributions" means distributions which are
19 not:

20 (I) qualified withdrawals within the meaning of subdivision ten of
21 section twelve hundred fifty-two of the private housing finance law;

22 (II) withdrawals made as a result of the death or disability of the
23 designated beneficiary within the meaning of subdivision eleven of
24 section twelve hundred fifty-two of such law; or

25 (III) transfers described in paragraph (b) of subdivision six of
26 section twelve hundred fifty-five of such law.

27 (ii) Excess distributions shall be deemed attributable to deductible
28 contributions to the extent the amount of any such excess distribution,
29 when added to all previous excess distributions from the account,
30 exceeds the aggregate of all nondeductible contributions to the account.

31 § 3. Subsection (c) of section 612 of the tax law is amended by adding
32 two new paragraphs 42 and 43 to read as follows:

33 (42) Contributions made during the taxable year by an account owner to
34 a first home savings account established under the New York state first
35 home savings program provided for under article twenty-eight of the
36 private housing finance law, to the extent not deductible or eligible
37 for credit for federal income tax purposes, provided, however, the
38 exclusion provided for in this paragraph shall not exceed five thousand
39 dollars for an individual head of household, and for married couples who
40 file joint tax returns, shall not exceed ten thousand dollars; provided,
41 further that such exclusion shall be available only to the account owner
42 and not to any other person.

43 (43) Distributions from a first home savings account established under
44 the New York state first home savings program provided for under article
45 twenty-eight of the private housing finance law, to the extent includi-
46 ble in gross income for federal income tax purposes.

47 § 4. This act shall take effect on the one hundred eightieth day after
48 it shall have become a law, and shall apply to taxable years commencing
49 on or after the first of January next succeeding the date on which it
50 shall have become law; provided, however, that effective immediately,
51 the commissioner of taxation and finance and the comptroller are author-
52 ized and directed to promulgate any rules or regulations necessary to
53 implement the provisions of this act on its effective date on or before
54 such date.