STATE OF NEW YORK

6933

2023-2024 Regular Sessions

IN ASSEMBLY

May 9, 2023

Introduced by M. of A. RAMOS -- read once and referred to the Committee on Housing

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:

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

ARTICLE XXVIII
NEW YORK STATE FIRST HOME
SAVINGS PROGRAM

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

§ 1251. Purposes. The purposes of the program shall be to authorize the establishment of first home savings accounts and to provide guidelines for the maintenance of such accounts to:

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

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

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

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

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

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

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

4. "Financial organization" shall mean an organization authorized to do business in the state, and (a) 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 (b)(i) is licensed or chartered by the department of financial services, (ii) is chartered by an agency of the federal government, (iii) is subject to the jurisdiction and regulation of the securities and exchange commission of the federal government, (iv) 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, (v) or any banking organization as defined in subdivision eleven of section two of the banking law, national banking association, state chartered credit union, federal mutual savings bank, federal savings and loan association or federal credit union.

5. "First time home buyer" shall mean an individual or individuals, neither of whom has or had an ownership interest in a principal residence at any time, including residences owned in the United States or abroad. No such person shall own any other home including vacation or investment residences, including residences owned in the United States or abroad, except as otherwise provided in this subdivision. If either the individual or individuals are not first time home buyers, neither the individual or individuals shall be considered a first time home buyer. If an individual's only potentially disqualifying present ownership interest is ownership of a mobile or manufactured home, the individual shall be considered a first time home buyer and shall be eligible for a first home account deduction. For the purposes of this article a "mobile or manufactured home" shall mean a structure that is valued as personal property and not real property. If, due to his or her ownership of a mobile or manufactured home, the individual has claimed a real estate tax or home mortgage deduction on his or her personal income tax returns, such individual shall not be considered a first time home buyer regardless of whether the mobile of manufactured home was considered personal or real property.

6. "Ownership interest" shall mean a fee simple interest, a joint tenancy, a tenancy in common, a tenancy by the entirety, the interest of a tenant-share holder in a cooperative, a life estate or a land contract. Interests which do not constitute ownership interests include

the following: (a) remainder interests, (b) a lease with or without an option to purchase, (c) a mere expectancy to inherit an interest in a residence, (d) the interest that a purchaser of a residence acquires on the execution of a purchase contract and (e) an interest in real estate other than a residence.

7. "Program" shall mean the New York first home savings program established pursuant to this article.

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

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

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

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

(a) a qualified withdrawal;

(b) a withdrawal made as the result of death;

(c) an unforeseeable emergency; or

(d) need based upon qualifying for military service in the armed forces of the United States as determined by rules an regulations promulgated by the comptroller.

12. "Comptroller" shall mean the state comptroller.

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

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

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

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

§ 1253. Functions of the comptroller. 1. The comptroller shall implement the program under the terms and conditions established by this article and a memorandum of understanding with the commissioner relating to any terms or conditions not otherwise expressly provided for in this article.

2. In furtherance of such implementation the comptroller shall:

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

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

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

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

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

(f) develop marketing plans and promotion materials;

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

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

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

§ 1254. Powers of the comptroller. 1. The comptroller may implement the program through use of financial organizations as account depositories and managers. Under the program, an account owner may establish accounts directly with an account depository.

2. 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:

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

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

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

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

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

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

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

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

(i) 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.

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

4. The comptroller may select more than one financial organization for the program.

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

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

(b) 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 section twelve hundred fifty-five of this article;

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

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

(e) 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;

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

(g) 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;

(h) 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

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

6. 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.

7. 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.

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

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

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

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

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

(b) 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.

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

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

2. A first home savings account may be opened by any person who desires to save money for the payment of the qualified first home

purchase expenses of the account owner or designated beneficiary. An account owner may designate another person as successor owner of the account in the event of the death of the original account owner. Such person who opens an account or any successor owner shall be considered the account owner.

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

(i) the name, address and social security number or employer identification number of the account owner;

(ii) the designation of a designated beneficiary;

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

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

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

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

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

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

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

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

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

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

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

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

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

11. Contributions to a first home savings account shall be limited to one hundred thousand dollars per account. This amount shall not take into consideration any gain or loss to the principal investment into the 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. Withdrawals from the account during a period of less than twelve months from the date such account was created shall be considered a nonqualified withdrawal.

14. 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.

15. 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.

16. (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.

17. An annual fee may be imposed upon the account owner for the maintenance of the account.

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

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

(b) any restrictions on the substitution of beneficiaries;

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

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

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

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

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

19. First home savings agreements shall be subject to section fourteen-c of the banking law and the "truth-in-savings" regulations promulgated thereunder.

20. Nothing in this article or in any first home savings agreement entered into pursuant to this article shall be construed as a guarantee by the state that the account owner or designated beneficiary will qualify for the purchase of a home.

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

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

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

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

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

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

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

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

2. (a) Nothing in this article 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 the account owner or designated beneficiary with respect to:

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

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

(b) The comptroller 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.

§ 2. Subsection (b) of section 612 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) (A) Excess distributions received during the taxable year by a distributee of a first home savings account established under the New York state first home savings program provided for under article twenty-eight of the private housing finance law, to the extent such excess distributions are deemed attributable to the deductible contributions under paragraph forty-seven of subsection (c) of this section.

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

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

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

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

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

§ 3. Subsection (c) of section 612 of the tax law is amended by adding two new paragraphs 47 and 48 to read as follows:

(47) Contributions made during the taxable year by an account owner to a first home savings account established under the New York state first home savings program provided for under article twenty-eight of the private housing finance law, to the extent not deductible or eligible for credit for federal income tax purposes, provided, however, the exclusion provided for in this paragraph shall not exceed five thousand dollars for an individual or head of household, and for married couples who file joint tax returns, shall not exceed ten thousand dollars; provided, further that such exclusion shall be available only to the account owner and not to any other person. A taxpayer with an adjusted gross income in excess of two hundred fifty percent of the area median income as defined by the U.S. Department of Housing and Urban Development shall not be eligible for the tax deduction pursuant to this section.

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

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