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MEMORANDUM

To: Chairman Kelly and members of the House Financial Institutions and Rural Development Committee

From: Office of Revisor of Statutes

Date: February 8, 2021

Subject: **HB 2187-Enacting the first-time home buyer savings account act.**

House Bill No. 2187 enacts the first-time home buyer savings account act and establishes income tax addition and subtraction modifications for contributions to such savings accounts.

Section 1 provides for the citation of the first-time home buyer savings account act.

Sec. 2 provides definitions for the act, including:

"Eligible expenses" means a down payment and any closing costs that may be included as part of a real estate settlement agreement, including, but not limited to, appraisal fees, mortgage origination fees and inspection fees or any down payment, costs and fees that may be include as part of financing the construction or a primary residence.

"First-time home buyer" means an individual who: (1) Has never owned or purchased under contract for deed, either individually or jointly, a single-family, owner-occupied primary residence including, but not limited to, a condominium unit or a manufactured or mobile home that was assessed and taxed as real property; or (2) as a result of the individual's dissolution of marriage, has not been listed on a property title for at least three consecutive years.

Sec. 3 provides that on and after July 1, 2022, an individual may open an account with a financial institution and designate such account as a first-time home buyer savings account to be used to pay or reimburse a designated beneficiary's eligible expenses for the purchase or construction of a primary residence in Kansas. The account holder shall designate a designated beneficiary of the account. No account shall have more than one designated beneficiary. An individual may be designated as the designated beneficiary of more than one account if such accounts are held by separate account holders. No account holder shall be authorized to designate the same beneficiary on multiple accounts by such account holder.

This section also provides the following limitations on a first-time home buyer savings account:

- (1) The maximum contribution to an account in any tax year shall be \$3,000 for an individual and \$6,000 for a married couple filing a joint return;
- (2) the maximum amount of all contributions into an account in all tax years shall be \$24,000 for an individual and \$48,000 for a married couple filing a joint return; and

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(3) the maximum total amount in an account shall be \$50,000.

Sec. 4 establishes the purposes for which money in the account may be used. The moneys may be:

- (1) Used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located in this state;
- (2) used for eligible expenses related to a designated beneficiary's purchase or construction of a primary residence located outside the state if they are active-duty military and was stationed in Kansas for any time after the creation of the account;
- (3) used for the above expenses but the contract for purchase or construction did not close;
- (4) transferred to another newly created account; and
- (5) used to pay service fees assessed by the financial institution

Moneys in the account are subject to recapture and added to the Kansas adjusted gross income of the account holder or, if the account holder is no longer living, the designated beneficiary if such moneys are withdrawn from the account less than a year from the first deposit in the account or the moneys are used for any purpose other than those approved by this section.

If moneys from the account are used for other purposes, the account holder shall also pay a penalty of: (1) 5% of the amount subject to recapture if the withdrawal occurred 10 or less years after the first deposit in the account; and (2) 10% if the withdrawal occurred more than 10 years after the first deposit.

Such penalties shall not apply if: (1) The withdrawn moneys are used for a designated beneficiary's purchase or construction of a home outside of Kansas; or (2) the moneys are from an account in which the designated beneficiary died, and the account holder did not designate a new beneficiary.

Sec. 5 requires the secretary of revenue to establish forms for an account holder to annually report account information and requires the account holder to annually file with the account holder's state income tax return all forms required by the secretary, the form 1099 for the account issued by the financial institution and any other supporting documentation the secretary requires. The secretary is also required, prior to July 1, 2022, to adopt rules and regulations necessary to administer the provisions of the first-time home buyer savings account act.

Sec. 6 states that no financial institution shall be required to:

- (1) Designate an account as a first-time home buyer savings account or designate the beneficiaries of an account in the financial institution's account contracts or systems or in any other way;
- (2) track the use of moneys withdrawn from an account; or
- (3) report any information to the department of revenue or any other governmental agency that is not otherwise required by law

A financial institution is also not responsible or liable for:

- (1) Determining or ensuring an account holder is eligible for a Kansas income tax modification;

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- (2) determining or ensuring that moneys in the account are used for eligible expenses;
- or
- (3) reporting or remitting taxes or penalties related to the use of account moneys.

Sec. 7 amends K.S.A. 79-32,117 to establish addition and subtraction modifications to Kansas adjusted gross income. For all taxable years after December 31, 2021, the amount of any contributions, or earnings from, a first-time home buyer savings account if distributions were not for eligible expenses or not held for the minimum length of time are to be added to the Kansas adjusted gross income of the account holder, or if the account holder is longer living, the designated beneficiary.

A subtraction modification is established for the amount contributed to a first-time home buyer savings account, not to exceed \$3,000 for an individual or \$6,000 for a married couple filing a joint return or amounts received as income earned from assets in a first-time home buyer savings account.

The bill becomes effective upon publication in the statute book (July 1, 2021).